TERMS AND CONDITIONS

Payment terms
1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the Supplier) from the date of invoice, or where no term is provided, thirty (30) days from the date of delivery of the goods.

 Jurisdiction
26. The Supplier shall sell and the Applicant shall purchase the goods in accordance with the Corporations Act of 2001 (Australia) Pty Ltd ABN 60 989 737 949 and its related bodies corporate (as that term is defined in the Corporations Act) at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.

27. The Supplier may, at any time, unilaterally vary the terms of credit in its absolute and unfettered discretion.

28. The Applicant shall be responsible for ensuring the accuracy of the terms of any and all communications made to the Supplier, and shall hold the Supplier harmless against any liability claimed or incurred by the Applicant, and for giving the Supplier any necessary information relating to the goods within a sufficient time to enable the Supplier to perform the contract in accordance with its terms. The Supplier reserves the right to vary the terms of credit in accordance with any variation in the circumstances of the sale or purchase or any event which may affect the sale or purchase, including but not limited to any loss, damages, costs and expenses incurred or suffered by the Supplier in consequence of any inaccurate order or lack of information aforementioned.

29. If any processes is to be applied to the goods by the Supplier in accordance with a specification submitted by the Applicant, the Applicant shall indemnify the Supplier against all loss, damages, costs and expenses incurred by the Supplier in connection with the process and shall indemnify the Supplier against any claim of infringement of any trade mark or other industrial or intellectual property rights of any other person which results from the use of the Supplier’s specifications.

30. Where the goods are purchased by the Supplier’s specification, the Supplier reserves the right to make any changes in the specification of the goods which do not materially affect their quality or price.

31. No order which has been accepted by the Supplier may be cancelled or rescinded by the Applicant except with the agreement in writing of the Supplier and on terms that the Applicant shall indemnify the Supplier against any loss of profit, damages, charges and expenses incurred by the Supplier as a result of the cancellation or rescinding.

Price of the Goods
32. The price of the goods shall be the Supplier’s quoted price. All prices quoted are valid for thirty (30) days after which time they may be altered by the Supplier without giving notice to the Applicant.

33. The Supplier reserves the right, by giving notice to the Applicant at any time before delivery of the goods, to increase the price of the goods or any part thereof, and such increase in price may be notified to the Applicant by the Supplier which is due to any factor beyond the control of the Supplier, any change in delivery dates, quantities, or credit terms, or by agreement with the Applicant, or any delay which is caused by any instructions of the Applicant or failure of the Applicant to give to the Supplier adequate information or instructions.

34. The Applicant agrees that if the Supplier exercises any power to enter the premises, the Applicant agrees that entry will not give rise to any action of trespass or similar action on the part of the Supplier.

35. The Supplier may be entitled to retain therefrom any excess over the amount outstanding to the Supplier under this or any other contract between theSupplier and Applicant under which the price is due.

36. Until that time as the property in the goods passes to the Applicant, the Applicant shall hold the goods as the Supplier’s fiduciary agent and bailee, and shall keep the goods properly stored (without charge) protected and insured as identified by the Supplier’s property.

37. Until that time the Applicant shall not be entitled to resell or use the goods in the ordinary course of its business and the proceeds of any such sale or use of the goods shall be held by the Applicant in trust for the Supplier until paid to the Supplier.

38. The Applicant shall not pledge or in any way charge by way of security any of the goods which remain the property of the Supplier.

Refunds
39. Any refunds will be the sole discretion of the Supplier, and therefore the Supplier may, at any time and for any reason, cancel any refund.

40. The Supplier shall not be liable for any loss of profit, damages, charges, and expenses incurred by the Supplier as a result of the cancellation or rescinding.

41. The Applicant shall not be liable for any immediate and due and payable to the Supplier.

Indemnity
42. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier may incur in its enforcement of rights, on an indemnity basis.

Provision of further information
43. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of the goods to reflect any increase in the Supplier’s terms of credit.

Cancellation of terms of credit
44. The Applicant shall be entitled to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.

Cancellations
45. All cancellations of sales orders submitted by the Applicant will be subject to a cancellation fee of fifteen percent (15%) of the total value of the order.

Basis of the Sale
46. The Applicant shall sell and the Applicant shall purchase the goods in accordance with any written quotation of the Supplier which is accepted by the Applicant, or any written order of the Applicant, which is accepted by the Supplier, subject in either of these conditions, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Applicant.

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55. The Applicant must give the Supplier a copy of the trust deed upon request.

56. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the Applicants have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

57. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

58. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

59. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.

60. Until ownership of the goods passes, the Supplier waives its rights it would otherwise have under the PPSA:
   (a) under section 95 to receive notice of intention to remove an accession;
   (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
   (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
   (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
   (e) under section 130 to receive a notice to dispose of goods;
   (f) under section 132(2)(i) to receive a statement of account following disposal of goods;
   (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
   (h) under section 135 to receive notice of any proposal of the Applicant to retain goods;
   (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
   (j) under section 142 to redeem the goods;
   (k) under section 143 to reinstate the security agreement; and
   (l) under section 157(1) and 157(3) to receive a notice of any verification statement.

61. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).

62. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.

63. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows:
   (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 22 and 62.
   (b) Secondly, in payment of any interest incurred in accordance with clause 69.
   (c) Thirdly, in payment of the outstanding invoice(s).

64. In circumstances where the Supplier seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Applicant will be allocated in a manner at the Supplier's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and proceeds over which the Supplier seeks to enforce its purchase money security interest.

65. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 64 herein.

66. Payments allocated (and/or reallocated) under clause 64 and/or 65 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

Taxes and duty
67. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.

68. If as a result of:
   (a) any legislation becoming applicable to the subject matter of this agreement; or
   (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

Interest rates
69. The interest rate on any outstanding debts is a fixed rate of 11 percent per annum.

The Applicant hereby applies for the opening of an account and provides the information in support thereof.

I am/We are authorised to sign this credit application form on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge.

Signature
Name (print) ______________________
Witness name (print) ______________________
Position ______________________
Date ______________________

Signature
Name (print) ______________________
Witness name (print) ______________________
Position ______________________
Date ______________________

FOR COMPLETION BY THE SUPPLIER

The Applicant's credit application is accepted. Signed for and on behalf of the Supplier.
ACCOUNT APPROVED FOR CASH ON DELIVERY / 7 DAYS / 14 DAYS / 30 DAYS
(supplier to nominate)

CREDIT LIMIT: $
DEED OF GUARANTEE & INDEMNITY

To
Optical Solutions (Australia) Pty Ltd ABN 60 098 737 949
(Supplier)

(Guarantors) hereby covenant and undertake and if more than one, jointly and severally, as follows.

Jurisdiction
1. The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of New South Wales, and the laws of the commonwealth of Australia which are in force in New South Wales.
2. The parties to this guarantee and indemnity submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

Consideration
3. In consideration of the Supplier extending or agreeing to extend credit or further credit to the Applicant at the Guarantors' request (testified by the Guarantors' execution of this agreement), for goods sold or to be sold from time to time, the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Applicant on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Applicant to the Supplier arising out of a relationship of trustee and beneficiary.

Guarantee and indemnity
4. The Guarantors agree to guarantee and indemnify the Supplier against all losses damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Applicant to make due payment of any money owing to the Supplier whether for goods sold or otherwise or to observe the terms of any agreement between the Applicant and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Applicant or any Guarantor and whether successful or not or whether frustrated by the Applicant or Guarantor or by operation of law and including costs ordered by a court to be paid by the Supplier to the Applicant or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier.
5. This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier to the credit of any account of the Applicant or the Guarantors, or deemed to be held on trust for the Applicant for the Supplier, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 3 and 4 of this guarantee and indemnity.
6. Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
7. The Supplier will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Applicant to pay with or without notice to the Applicant or the Guarantors, and for any money owing was the Guarantors' own. Further, the Suppliers will have the right to proceed against the Guarantors notwithstanding any other rights they may have in relation to the recovery of the amounts hereby guaranteed.
8. This guarantee and indemnity will remain in full force until such time as the Supplier releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Applicant.
9. This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
   (a) any other security taken by the Supplier from the Applicant or from any other person;
   (b) any waiver or indulgence, whether as to time or otherwise, given to the Applicant or to the Guarantors or any one or more of the Guarantors;
   (c) by any other act, matter or thing which under the law relating to sureties would or might but for this guarantee and indemnity have been available to the Guarantors for the benefit of the Guarantors or for the benefit of the Supplier;
   (d) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier by the Guarantee and Indemnity or by operation of law and including costs ordered by a court to be paid by the Supplier to the Applicant or any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier;
   (e) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier by the Guarantee and Indemnity or by operation of law and including costs ordered by a court to be paid by the Supplier to the Applicant or any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier;

Right of subrogation
10. In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Applicant under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Applicant unless and until the Supplier has been paid in full.
11. In the event of the Applicant going into liquidation, the Guarantors will be prohibited from proving in competition with the Applicant unless and until the Supplier has been paid in full.

Insolvency of Applicant
12. No sum of money which the Applicant pays to the Supplier and the Supplier later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Applicant by reason of the Corporations Act 2001, Bankruptcy Act 1966 or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remaining owed by the Applicant.

Costs
13. The Supplier is at liberty from time to time to charge the account of the Applicant with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:
   (a) the account of the Applicant;
   (b) this guarantee and indemnity;
   (c) any other security in respect of the indebtedness of the Applicant to the Supplier;
   (d) the preparation, completion and stamping of this deed;
   (e) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this deed;
   and the same will be part of the monies secured by this deed.
14. The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.
15. The Guarantors appoint as their duly constituted attorney the Supplier's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

Variation
16. The Guarantors authorise the Supplier to give time or any other indulgence or consideration to the Applicant in respect of compliance with its obligations to the Supplier, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
17. The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Supplier making any variation or alteration in the terms of its agreement(s) with the Applicant, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

Severance
18. If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining and are to continue to be enforceable in accordance with their terms.

Security/charge
19. The Guarantors charge in favour of the Supplier all of their estate and interest in any real property that the Guarantors own in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder, for the purpose of this guarantee and indemnity, be considered as
20. The Guarantors charge in favour of the Supplier all of their estate and interest in any real property that the Guarantors own in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder, for the purpose of this guarantee and indemnity, be considered as
21. This guarantee and indemnity secures the repayment of all monies owed by the Applicant, and this deed constitutes the entire guarantee.
22. Where the Guarantors have previously entered into an agreement with the Supplier by which the Guarantors have granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this deed and will secure all indebtedness and obligations of the Guarantors under this deed. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Service of notices
23. For the avoidance of any doubt, the security interest(s) created by this instrument in favour of the Guarantors under this deed constitutes security interests pursuant to the Personal Property Securities Act 2009.
24. The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Privacy Act
25. The Guarantors agree to accept service of any document required to be served, including any notice under this agreement or the PPSC or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Guarantors or the Guarantors' authorised representative.

Dated

Signed, sealed and delivered by the guarantor

Name
Position
Witness signature

Name
Position
Witness signature

DEED OF GUARANTEE & INDEMNITY

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