

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants: Please complete all sections and read the Terms and Conditions of Trade overleaf or attached. * Indicates required field.

Customer's Details: *					
Individual	Sole Trader	Trust	Partnership	Company	Other:
Full or Legal Name: *					
Trading Name (if different from above):					
Physical Address: *				State: *	Postcode: *
Billing Address:				State:	Postcode:
Email Address: *					
Phone No:*		Fax No:		*Mobile No:	
Personal Details: (please complete if you are an Individual)					
D.O.B.			Driver's Licence No:		
Business Details: (please complete if you are a Sole Trader, Trust, Partnership, Company or Other - as specified)					
ABN: *		ACN: *		Date Established (current owners): *	
Nature of Business: *					
Paid Up Capital: * \$		Estimated Monthly Purchases: * \$		Credit Limit Required: * \$	
Principal Place of Business is: Rented Owned Mortgaged (to whom):					
Directors / Owners / Trustee * (if more than two, please attach a separate sheet)					
(1) Full Name: *				D.O.B. *	
Private Address: *				State: *	Postcode: *
Driver's Licence No: *		Phone No: *		Mobile No: *	
(2) Full Name:				D.O.B.	
Private Address:				State:	Postcode:
Driver's Licence No:		Phone No:		Mobile No:	
Account Terms:					
30 Days		COD		Other:	
Purchase Order Required?		Yes	No	Accounts to be emailed? Yes No	
Accounts Email Address:					
Accounts Contact:				Phone No:	
Bank and Branch:				Account No:	
Trade References: * (please provide companies that are willing to do trade references)					
Name:		Address:		Phone / Fax / Email:	
1.					
2.					
3.					

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Fanola Australia Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.**

SIGNED (CUSTOMER): * _____

SIGNED (FANOLA AUSTRALIA PTY LTD): _____

Name: * _____

Name: _____

Position: * _____

Position: _____

WITNESS TO CUSTOMER'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

OFFICE USE ONLY				
Account / Ref. No.	Credit Limit	Approved By	Data Inputted	Date
	\$			

CREDIT CARD AUTHORISATION FORM

To Be Completed By Applicants: Please complete all sections and read the Terms and Conditions of Trade overleaf or attached. * Indicates required field.

Date: _____ REF Number: _____ ABN / ACN Number: _____

Customer's Trade Name: * _____

Customer's Full or Legal Name: * _____

Phone: _____ Fax: _____

Mobile: * _____ Email: * _____

Physical Address: * _____ State: * _____ Postcode: * _____

Billing Address: _____ State: _____ Postcode: _____

CREDIT CARD AUTHORISATION

Card Type: * Visa Mastercard American Express Diners

Cardholder's Name: * _____

Card Number: *

Expiry Date: *

I authorise Fanola Australia Pty Ltd to arrange payment of my account by debiting my credit card account the number of which is specified above.

I acknowledge that Fanola Australia Pty Ltd may terminate this request at any time by written or verbal notice and I must adopt an alternative method of payment.

I have read and understand the GENERAL TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Fanola Australia Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Card Authority and agree to be bound by these conditions.

CARDHOLDER'S SIGNATURE: * _____ DATE: * _____

PERSONAL/DIRECTORS GUARANTEE AND INDEMNITY

IN CONSIDERATION of Fanola Australia Pty Ltd and its successors and assigns ("Fanola Australia") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

("the Customer") [Insert Company Name In Box Provided]

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to Fanola Australia of all monies which are now owing to Fanola Australia by the Customer and all further sums of money from time to time owing to Fanola Australia by the Customer in respect of goods and services supplied or to be supplied by Fanola Australia to the Customer or any other liability of the Customer to Fanola Australia, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with Fanola Australia, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to Fanola Australia, the Guarantor will immediately on demand pay the relevant amount to Fanola Australia. In consideration of Fanola Australia agreeing to supply the Goods to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to Fanola Australia registering any interest so charged. The Guarantor irrevocably appoints Fanola Australia and each director of Fanola Australia as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which Fanola Australia may reasonably require to:
 - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (b) register any other document required to be registered by the PPSA or any other law; or
 - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** Fanola Australia on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, Fanola Australia in connection with:
 - (a) the supply of goods and/or services to the Customer; or
 - (b) the recovery of monies owing to Fanola Australia by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to Fanola Australia's nominees contract default fee and legal costs; or
 - (c) monies paid by Fanola Australia with the Customer's consent in settlement of a dispute that arises or results from a dispute between, Fanola Australia, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by Fanola Australia to the Customer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood Fanola Australia's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to Fanola Australia by the Customer and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on Fanola Australia's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to Fanola Australia, each Guarantor shall be a principal debtor and liable to Fanola Australia accordingly.
6. If any payment received or recovered by Fanola Australia is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and Fanola Australia shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to Fanola Australia.**
9. I/we irrevocably authorise Fanola Australia to obtain from any person or company any information which Fanola Australia may require for credit reference purposes. I/We further irrevocably authorise Fanola Australia to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with Fanola Australia as a result of this Guarantee and Indemnity being acted on by Fanola Australia.
10. The above information is to be used by Fanola Australia for all purposes in connection with Fanola Australia considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR 1
FULL NAME: * _____
HOME ADDRESS: * _____
DATE OF BIRTH: * _____
SIGNATURE OF WITNESS: * _____
NAME OF WITNESS: _____
OCCUPATION: _____
PRESENT ADDRESS: _____
EXECUTED as a Deed this _____ day of _____ 20____

GUARANTOR 2
FULL NAME: * _____
HOME ADDRESS: * _____
DATE OF BIRTH: * _____
SIGNATURE OF WITNESS: * _____
NAME OF WITNESS: _____
OCCUPATION: _____
PRESENT ADDRESS: _____
EXECUTED as a Deed this _____ day of _____ 20____

Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT

FANOLA AUSTRALIA PTY LTD – TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Fanola Australia" means Fanola Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Fanola Australia Pty Ltd.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting Fanola Australia to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by Fanola Australia to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Fanola Australia and the Customer in accordance with clause 6 below.
- 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. ACCEPTANCE

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Fanola Australia.
- 2.3 The Customer acknowledges and accepts that Fanola Australia at their discretion, reserves the right not to supply Goods if, for any reason (including but not limited to, where the Goods are not or cease to be available, account disputes or conditions placed on Fanola Australia by their suppliers). Fanola Australia shall not be liable to the Customer for any loss or damage the Customer suffers due to Fanola Australia exercising its rights under this clause.
- 2.4 Fanola Australia reserves the right to review the Customer's credit terms periodically, and may, at Fanola Australia's sole discretion vary the credit terms and/or refuse to continue to supply credit.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. ERRORS & OMISSIONS

- 3.1 The Customer acknowledges and accepts that Fanola Australia shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Fanola Australia in the formation and/or administration of this contract; and/or
 - (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by Fanola Australia in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Fanola Australia; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. CHANGE IN CONTROL

- 4.1 The Customer shall give Fanola Australia not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Fanola Australia as a result of the Customer's failure to comply with this clause.

5. AUTHORISED REPRESENTATIVES

- 5.1 Unless otherwise limited as per clause 5.2 the Customer agrees that should the Customer introduce any third party to Fanola Australia as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods or Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies Fanola Australia in writing that said person is no longer the Customer's duly authorised representative).
- 5.2 In the event that the Customer's duly authorised representative as per clause 5.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise Fanola Australia in writing of the parameters of the limited authority granted to their representative.
- 5.3 The Customer specifically acknowledges and accepts that they will be solely liable to Fanola Australia for all additional costs incurred by Fanola Australia (including Fanola Australia's profit margin) in providing any Goods, Services or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

6. PRICE AND PAYMENT

- 6.1 At Fanola Australia's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Fanola Australia R to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to Fanola Australia's current price list; or
 - (c) Fanola Australia's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Fanola Australia reserves the right to change the Price if a variation to Fanola Australia's quotation is requested. Any variation from the specifications of the Goods (including, but not limited to, shipment delays, any variation as a result of fluctuations in currency exchange rates or increases to Fanola Australia in the cost of taxes, levies, materials and labour) will be charged for on the basis of Fanola Australia's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by Fanola Australia within ten (10) working days. Failure to do so will entitle Fanola Australia to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 At Fanola Australia's sole discretion, a deposit may be required.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Fanola Australia, which may be:
- (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with Fanola Australia's payment schedule;
 - (c) thirty (30) days following the end of the month in which a statement is delivered to the Customer's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Fanola Australia.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Fanola Australia.
- 6.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Fanola Australia nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Fanola Australia an amount equal to any GST Fanola Australia must pay for any supply by Fanola Australia under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. DELIVERY OF GOODS

- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that Fanola Australia (or Fanola Australia's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At Fanola Australia's sole discretion, the cost of delivery is in addition to the Price.

FANOLA AUSTRALIA PTY LTD – TERMS & CONDITIONS OF TRADE

- 7.3 Any time specified by Fanola Australia for delivery of the Goods is an estimate only. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. Fanola Australia will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods as arranged then Fanola Australia shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 Fanola Australia may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

8. RISK

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Fanola Australia is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Fanola Australia is sufficient evidence of Fanola Australia's rights to receive the insurance proceeds without the need for any person dealing with Fanola Australia to make further enquiries.
- 8.3 If the Customer requests Fanola Australia to leave Goods outside Fanola Australia's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8.4 Any advice, recommendation, information, assistance or service provided by Fanola Australia in relation to Goods or Services supplied is given in good faith, is based on Fanola Australia's own knowledge and experience and shall be accepted without liability on the part of Fanola Australia and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.

9. TITLE

- 9.1 Fanola Australia and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Fanola Australia all amounts owing to Fanola Australia; and
- (b) the Customer has met all of its other obligations to Fanola Australia.
- 9.2 Receipt by Fanola Australia of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Fanola Australia on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Fanola Australia and must pay to Fanola Australia the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Fanola Australia and must pay or deliver the proceeds to Fanola Australia on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Fanola Australia and must sell, dispose of or return the resulting product to Fanola Australia as it so directs.
- (e) the Customer irrevocably authorises Fanola Australia to enter any premises where Fanola Australia believes the Goods are kept and recover possession of the Goods.
- (f) Fanola Australia may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Fanola Australia.
- (h) Fanola Australia may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

10. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Fanola Australia for Services – that have previously been supplied and that will be supplied in the future by Fanola Australia to the Customer.
- 10.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Fanola Australia may reasonably require to;
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Fanola Australia for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Fanola Australia;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Fanola Australia;
- (e) immediately advise Fanola Australia of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 Fanola Australia and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Fanola Australia, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by Fanola Australia under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. SECURITY AND CHARGE

- 11.1 In consideration of Fanola Australia agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies Fanola Australia from and against all Fanola Australia's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Fanola Australia's rights under this clause.
- 11.3 The Customer irrevocably appoints Fanola Australia and each director of Fanola Australia as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

12. DEFECTS, WARRANTIES AND RETURNS, COMPETITION AND CONSUMER ACT 2010 (CCA)

- 12.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Fanola Australia in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow Fanola Australia to inspect the Goods.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 12.3 Fanola Australia acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

FANOLA AUSTRALIA PTY LTD – TERMS & CONDITIONS OF TRADE

- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Fanola Australia makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Fanola Australia's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, Fanola Australia's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Fanola Australia is required to replace the Goods under this clause or the CCA, but is unable to do so, Fanola Australia may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, Fanola Australia's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Fanola Australia at Fanola Australia's sole discretion;
 - (b) limited to any warranty to which Fanola Australia is entitled, if Fanola Australia did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
 - (b) Fanola Australia has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Fanola Australia shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by Fanola Australia;
 - (e) fair wear and tear, any accident, or act of God.
- 12.10 Fanola Australia may in its absolute discretion accept non-defective Goods for return in which case Fanola Australia may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 12.11 Notwithstanding anything contained in this clause if Fanola Australia is required by a law to accept a return then Fanola Australia will only accept a return on the conditions imposed by that law.

13. INTELLECTUAL PROPERTY

- 13.1 Where Fanola Australia has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Fanola Australia. Under no circumstances may such designs, drawings and documents be used without the express written approval of Fanola Australia.
- 13.2 The Customer warrants that all designs, specifications or instructions given to Fanola Australia will not cause Fanola Australia to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Fanola Australia against any action taken by a third party against Fanola Australia in respect of any such infringement.
- 13.3 The Customer agrees that Fanola Australia may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Fanola Australia has created for the Customer.

14. DEFAULT AND CONSEQUENCES OF DEFAULT

- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Fanola Australia's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes Fanola Australia any money the Customer shall indemnify Fanola Australia from and against all costs and disbursements incurred by Fanola Australia in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Fanola Australia's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Fanola Australia may have under this contract, if a Customer has made payment to Fanola Australia, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Fanola Australia under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 14.4 Without prejudice to Fanola Australia's other remedies at law Fanola Australia shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Fanola Australia shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Fanola Australia becomes overdue, or in Fanola Australia's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Fanola Australia;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15. CANCELLATION

- 15.1 Without prejudice to any other remedies Fanola Australia may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Fanola Australia may suspend or terminate the supply of Goods to the Customer. Fanola Australia will not be liable to the Customer for any loss or damage the Customer suffers because Fanola Australia has exercised its rights under this clause.
- 15.2 Fanola Australia may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Fanola Australia shall repay to the Customer any money paid by the Customer for the Goods. Fanola Australia shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Fanola Australia as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

16. PRIVACY ACT 1988

- 16.1 The Customer agrees for Fanola Australia to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Fanola Australia.
- 16.2 The Customer agrees that Fanola Australia may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 16.3 The Customer consents to Fanola Australia being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Customer agrees that personal credit information provided may be used and retained by Fanola Australia for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or

FANOLA AUSTRALIA PTY LTD – TERMS & CONDITIONS OF TRADE

- (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.5 Fanola Australia may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
- (b) name of the credit provider and that Fanola Australia is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Fanola Australia has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of Fanola Australia, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.7 The Customer shall have the right to request (by e-mail) from Fanola Australia:
- (a) a copy of the information about the Customer retained by Fanola Australia and the right to request that Fanola Australia correct any incorrect information; and
- (b) that Fanola Australia does not disclose any personal information about the Customer for the purpose of direct marketing.
- 16.8 Fanola Australia will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 16.9 The Customer can make a privacy complaint by contacting Fanola Australia via e-mail. Fanola Australia will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

17. SERVICE OF NOTICES

- 17.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 17.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

18. TRUSTS

- 18.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (Trust) then whether or not Fanola Australia may have notice of the Trust, the Customer covenants with Fanola Australia as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Customer will not without consent in writing of Fanola Australia (Fanola Australia will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer as Trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.

19. DISPUTE RESOLUTION

- 19.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

20. GENERAL

- 20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Fanola Australia has its principal place of business, and are subject to the jurisdiction of the Campbelltown Courts in New South Wales.
- 20.3 Subject to clause 12 Fanola Australia shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Fanola Australia of these terms and conditions (alternatively Fanola Australia's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 20.4 Fanola Australia may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 20.5 The Customer cannot licence or assign without the written approval of Fanola Australia.
- 20.6 Fanola Australia may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Fanola Australia's sub-contractors without the authority of Fanola Australia.
- 20.7 The Customer agrees that Fanola Australia may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Fanola Australia to provide Goods to the Customer.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.