56 Fulcrum St
Richlands, QLD 4077
Ph: (07) 3217 0238
Email: orders@brumbysunstate.com.au
Web: www.brumbysunstate.com.au
ABN: 91148001290

NEW ACCOUNT APPLICATION

A. BUSINESS DETAILS

Trading Name: .....

Business Phone:..... Fax No:..... Mobile:.....

ABN :..... Email :.....

Business Owner:.....Business Contact:..... Position:.....

Postal Address:..... Postcode:.....

Delivery Address:..... Postcode:.....

(Please note: We cannot deliver to PO Boxes)

Preferred Delivery times:.....

(Please supply above & special instructions for our Courier to ensure all deliveries are made on first attempt)

Category:

❑ **MIND BODY SPIRIT** ❑ **CHILDREN'S** ❑ **COOKING** ❑ **GIFT** ❑ **STYLE & DESIGN** ❑ **HEALTH** ❑ **RELIGION**

❑ **LIFESTYLE (GARDENING, CRAFT)** ❑ **REFERENCE (PUZZLES, GAMES, TRAVEL)** ❑ **BOOKSHOP**

❑ **HOMEWARES STORE** ❑ **NEWSAGENT** ❑ **OTHER (Please Specify: _____)**

Sole Trader YES/NO **Partnership** YES/NO **Company** YES/NO **Trust** YES/NO **Home/Online** YES/NO

C. TRADING TERMS

1. I / We acknowledge having read the Terms & Conditions of Trade Brumby Sunstate as set out in the attachment to this application and on the website www.brumbysunstate.com.au , and I / we agree to be bound by them.

2**. Will you accept backorders? (Default is 'Always')**
For further information about our backorder policies, please refer to page 2 under the heading 'Backorder Policies'.

❑**ALWAYS** ❑**NEVER** ❑ **CUSTOMER SERVICE TO CALL FIRST**

D. CREDIT

A 6 month trading history (or 6 orders) is required before commercial credit will be considered, a separate Application for Commercial Credit Account form will be provided for this.

Please provide below your company and credit card details for making payment and forward to Brumby Sunstate Pty Ltd. Should you wish to pay by direct debit, please ensure all company details in the form are complete and make a note below that you wish to pay by direct debit. Payment will be required immediately upon receipt of the Proforma Invoice and the receipt will need to be emailed to Brumby Sunstate as proof of payment. The invoice value will be charged to your nominated credit card on the day of despatch.

Name on card: ----------

Card Type: ☐ Bankcard ☐ Mastercard ☐ VISA

Card Number: _____ _____ _____ _____

Card Expiry Date: ____/ ____

D. SIGNATURES

Name of Applicant:.....

Signature:.....

BRUMBY SUNSTATE SUMMARY OF COMMERCIAL TERMS

Firm Sale: All sales are on a firm basis and no returns will be accepted without prior arrangement.

Prices: Prices advertised are recommended retail only, and are subject to change without notice. All pricing is inclusive of GST.

Small Order Freight and Handling Surcharge: Available stock orders below $200 wholesale, will be held to merge with future orders and back orders. Any orders requested to be released below $200 will attract a small order surcharge of $13.50.

Freight: Freight charges vary depending on location; please contact Customer Service or your Sales Rep to check the applicable rate.

Incorrect Supply and Damaged Deliveries: Claims for incorrect supply must be forwarded direct to Brumby Sunstate Customer Service and must quote the Brumby Sunstate invoice number and date. No claims for short supply or damages will be considered beyond a fourteen (14) day period from the date of invoice.

Payment Terms: For customers who have been given credit, payment is nett 30 days from the end of the month in which the goods were invoiced. No settlement discount is allowed. These terms are strictly enforced. Credit terms may be cancelled without notice if these payment terms are not adhered to. If any payments are overdue at any time, then the entire amount owing by the customer to Brumby Sunstate shall immediately become due and payable, including those amounts that would not otherwise be due and payable until some future period, as well as any applicable late payment administration fee.

Debt Recovery Costs: The customer is liable for all out-of-pocket expenses and all other reasonable expenses including debt collection commission and legal costs on a solicitor/own basis incurred by Brumby Sunstate for enforcement of obligations and recovery of moneys due from the customer to Brumby Sunstate.

Late Payment Administration Fee: Accounts not paid in accordance with Brumby Sunstate's terms of payment will be subject to a late payment administration fee of $10.00 per week.

Proforma Orders: Proforma orders, which require payment for the order to be made before the goods are released, will be held for a maximum of seven days and returned to stock if payment is not received during this period. Once an order reaches the minimum $200 wholesale, proforma customers will be contacted for payment.

Title to Goods: Brumby Sunstate shall retain title on all goods supplied on an "all monies" basis. This means that Brumby Sunstate retains title to all goods supplied until all monies owing to Brumby Sunstate by the customer has been paid in full. Brumby Sunstate reserves the right at any time to repossess any goods not fully paid for in accordance with our trading terms.

Backorder Policies: Any titles that cannot be supplied will automatically go to "backorder", unless otherwise selected on your application. Backorder reports can be requested via customer service at any time.
A backorder is a title that cannot be supplied on a customer order for various reasons. The following backorder options are available to customers:

- **ALWAYS** - Accept All Backorders.

Any titles that cannot be supplied will automatically go to backorder. If a backordered title is then reordered by the customer, the new order will be added to the existing backorder.

- **NEVER** - Never Backorder.

Any titles that cannot be supplied at the time of order will be omitted from the order

All titles that are out of stock, on order, not yet published or reprinting will be backordered unless the , 'Never Backorder' option is chosen. When backordered titles arrive into stock, they will merge with current orders and be released once reaching the minimum for freight free delivery.

Terms and Conditions of Trade
Brumby Sunstate

1. Definitions

1.1 "ACL" means the Australian Consumer Law contained in schedule 2 of the Competition and Consumer Act 2010 (Cth) as amended, re-enacted or replaced, and includes any subordinate legislation.
1.2 "Brumby Sunstate" shall mean Singdow Pty Ltd trading as Brumby Sunstate ABN 91148001290 and its successors and assigns.
1.3 "Buyer" shall mean the buyer or customer or any person acting on behalf of and with the authority of the buyer. Where more than one buyer has entered into this agreement, the buyers shall be jointly and severally liable for all obligations.
1.4 "Goods" shall mean goods supplied by the Brumby Sunstate to the Buyer (and where the context so permits shall include any supply of services).
1.5 "GST" shall mean Goods and Services Tax as defined in the A New Tax System (Goods and Services) Tax Act 1999 (Cth) or any amendment, re-enactment or replacement Act, and includes any related subordinate legislation.
1.6 "Guarantor(s)" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer (if a limited liability Buyer) on a principle debtor basis as set out in this agreement.
1.7 "PPS Register means the Personal Property Securities Register established under the PPSA.
1.8 "PPSA" means the Personal Property Securities Act 2009 (Cth) as amended, re-enacted or replaced, and includes any subordinate legislation.
1.9 "Price" shall mean the cost of the Goods as agreed between Brumby Sunstate and the Buyer subject to clause 2 of these Terms and Conditions.

2. PRICE AND TERMS OF PAYMENT

2.1 The Price shall be as indicated on the invoice provided by the Brumby Sunstate to the Buyer.
2.2 All prices appearing on this website are inclusive of GST and are subject to change without notification.
2.3 If the Buyer has applied for a Commercial Credit Account and been approved by the Brumby Sunstate, payment for delivered Goods is due within thirty days (30) from the date of invoice (the "Due Date").
2.4 Where the Buyer defaults in making payment as provided:
    a) The whole of the charge then outstanding shall become due and payable; and
    b) Brumby Sunstate may refuse delivery of the Goods ordered until the whole of the charge is paid to the satisfaction of Brumby Sunstate; and
    c) Brumby Sunstate reserves its right to demand payment of interest from the Buyer at a rate of 15% pa, such interest to be calculated on daily balances upon the remainder of the whole of the charge then outstanding from the date of the default until payment is made in full; and
    d) Brumby Sunstate reserves its right to demand payment of any overdue account keeping fees, debt collection costs, GST or other penalties, agency costs, and legal costs (on a solicitor/client basis) from the Buyer incurred by Brumby Sunstate as a result of the Buyer's default and such costs shall be recoverable by Brumby Sunstate in any subsequent proceedings as a liquidated demand.
2.5 Where the Buyer has not applied for a Commercial Credit Account or not been approved by Brumby Sunstate, payment must be made by cash on delivery of by credit card on dispatch of the Goods.
2.6 Any acquiescence by Brumby Sunstate to the failure of the Buyer to pay for Goods on the Due Date will in no circumstance constitute a waiver by Brumby Sunstate of its right to payment on the Due Date nor will it be construed as an agreement to provide credit otherwise than in accordance with these terms.

3. DELIVERY

3.1 Delivery of the Goods shall be made to the Buyer's address or other location as provided by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tended for delivery, or delivery of the Goods shall be made to the Buyer at Brumby Sunstate's address.
3.2 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivered to the Buyer for purposes of this agreement.
3.3 The Buyer shall bear the costs of delivering the Goods from Brumby Sunstate's premises to the location specified by the Buyer unless otherwise agreed.
3.4 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered may be less than the quantity purchased provided that the Price shall be adjusted pro rata regarding the discrepancy.
3.5 Delivery will ordinarily take place within 2 – 10 business days of placement of the order, however, any date or time specified by Brumby Sunstate for delivery of the Goods is intended as an estimate only and the failure of Brumby Sunstate to deliver shall not entitle the Buyer to treat this agreement as repudiated.
3.6 Any advice given as to the date of intended delivery is given subject to the Goods ordered being available and Brumby Sunstate having the capacity to effect delivery on that date.
3.7 The Brumby Sunstate shall not be liable for any loss or damage whatever due to failure by Brumby Sunstate to meet any estimated time for delivery or to deliver the Goods (or any of them) promptly or at all.

4. WARRANTIES AND LIABILITIES

4.1 The Buyer hereby acknowledges and agrees that Brumby Sunstate makes no representation or warranty, express or implied, as to the truth, accuracy, relevance, completeness or usefulness of the Goods, whether oral or written, communicated to the Buyer; and that Brumby Sunstate shall have no liability, in negligence or otherwise as a result of the Buyer's use of or reliance upon the Information.
4.2 The Buyer agrees that no representations or statements of any kind, including, but not limited to dealer advertising, presentations, oral or written, made by any agent or representative of Brumby Sunstate which are not stated herein shall be binding upon the parties to this contact.

4.3 Subject to any applicable legislation affecting the right of Brumby Sunsate to limit its liability, under no circumstance shall Brumby Sunstate be liable to the Buyer for any damages, claims of losses whatsoever, including but not limited to any claims for lost profits, lost savings or other special, incidental or consequential damages arising out of Brumby Sunstate's supply of the Goods regardless of the circumstances.

4.4 Notwithstanding the foregoing Brumby Sunstate may at its option provide the Buyer a replacement or credit for Goods purchased where the Buyer:

a) Provides within seven (7) days of the Buyer's receipt of the Goods, written notice to Brumby Sunstate its agent or Supplier as to the reason for the return and/or credit for the Goods.
b) Receives written authority from Brumby Sunstate its agent or Supplier permitting the return of the Goods to Brumby Sunstate
c) Agrees that should Brumby Sunstate accept the return of the Goods delivered to the Buyer it shall be by a carrier approved by Brumby Sunstate
d) Agrees to pay Brumby Sunstate for all and any handling fee, freight costs, government charges for the purpose of delivering the Goods to Brumby Sunstate premises
e) Agrees to pay Brumby Sunstate for all and any handling fees, freight costs, government charges for the purpose of supplying and/or replacing the Goods again.

4.5 Pursuant to Clause 4.4:

a) IF the Buyer fails to give such notification within seven days of the date of delivery then the Goods shall be deemed to be delivered in accordance with the order placed.
b) Where the Buyer fails to keep the Goods delivered in the condition they were in when delivered or declines a reasonable request of Brumby Sunstate to inspect the Goods the Buyer shall be deemed to have accepted the Goods as delivered.
c) Where the Buyer returns the Goods for whatever reason the risk in the Goods shall remain with the Buyer until the Goods are accepted by Brumby Sunstate at Brumby Sunstate's premises.

5. BUYERS DISCLAIMER

5.1 The Buyer hereby disclaims any right to rescind, or cancel this agreement or to sue for damage or to claim restitution arising out of any misrepresentation made to him by any servant or agent of Brumby Sunstate. The Buyer acknowledges that it buys the Goods relying solely upon his own skill and judgment, and that Brumby Sunstate shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer which shall be personal to the Buyer and shall not be transferrable to any subsequent buyer.

6. RISK

6.1 Notwithstanding Brumby Sunstate may retain title to the Goods pursuant to clause 7 of these Terms and Conditions, all risk for the Goods passes to the Buyer on delivery.

6.2 If any of the Goods are damaged or destroyed prior to ownership in the Goods passing to the Buyer as set out in Clause 7 Brumby Sunstate is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions, to receive all insurance proceeds in relation to the Goods. This entitlement applies whether or not the Price has become payable under these Terms and Conditions and this clause is evidence of the deemed assignment by the Buyer of their interest or entitlement to the insurance proceeds in favour of Brumby Sunstate.

7. TITLE

7.1 Notwithstanding delivery of the Goods, the Buyer acknowledges and agrees that property in the Goods shall not pass until:

a) the Buyer has paid all amounts owing for the particular Goods, and
b) the Buyer has met all other obligations due by the Buyer to Brumby Sunstate in respect of all agreements between Brumby Sunstate and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until Brumby Sunstate shall have received payment for the Goods and all other obligations of the Buyer are met.

7.2 It is further agreed by the parties that:

a) until such time as ownership of the Goods shall pass from Brumby Sunstate to the Buyer, Brumby Sunstate may give notice in writing to the Buyer to return the Goods or any of them to Brumby Sunstate. Upon such notice, the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
b) If the Buyer fails to return the Goods to Brumby Sunstate then Brumby Sunstate or Brumby Sunstate's agent may enter upon and into the land and premises owned, occupied or used by the Buyer, or any other premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.

8. PERSONAL PROPERY SECURITIES

8.1 In this clause 'financing statement', 'financing change statement', 'security agreement' and 'security interest' have the meanings given to those terms by the PPSA.

8.2 The Buyer acknowledges and agrees that these terms and conditions:

a) constitute a security agreement for the purposes of the PPSA; and
b) create a security interest in:
   (i) Goods previously supplied by Brumby Sunstate to the Buyer (if any);
   (ii) all Goods that will be supplied in the future by Brumby Sunstate to the Buyer;
   (iii) the proceeds of sale of all Goods previously supplied or to be supplied; and
   (iv) all present and after acquired personal property of the Buyer,

   to secure payment of all monies (including but not limited to the Price and any interest) owing by the Buyer to Brumby Sunstate from time to time under these terms and conditions and under any other agreement or arrangement between the Buyer and Brumby Sunstate.

8.3 The Buyer 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 Brumby Sunstate may reasonably require to:
   (i) register a financing statement or financing change statement in relation to a security interest on the PPS Register and otherwise do all things necessary and required by Brumby Sunstate to ensure that any security interest registered by Brumby Sunstate is a perfected security interest under the PPSA;
   (ii) register any document on any register reasonably necessary to secure Brumby Sunstate's interest under these terms and conditions;

(iii) register any other document required to be registered under the PPSA; or
(iv) correct a defect in a statement referred to in clauses 8.3(a)(i), (ii) or (iii);

b) indemnify, and upon demand reimburse, Brumby Sunstate for all expenses incurred in registering a financing statement or financing change statement on the PPS Register or releasing any Goods that are the subject of a security interest;
c) not make an amendment demand in respect of a security interest, apply to the Registrar to register a financing change statement in respect of a security interest, without the prior written consent of Brumby Sunstate; and
d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Brumby Sunstate; and
e) immediately advise Brumby Sunstate of any material change in its business practices of selling the Goods which may result in a change in the use of the Goods by the Buyer or in the nature of proceeds derived from the sale of the Goods.

8.4 Brumby Sunstate and the Buyer agree that sections 96 and 125 of the PPSA do not apply to the security interest created by these terms and conditions.
8.5 The Buyer hereby waives its rights to receive notices, information or statements (as the case may be) under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
8.6 The Buyer waives its rights as a grantor and/or a Buyer under sections 142 and 143 of the PPSA.
8.7 Unless otherwise agreed to in writing by Brumby Sunstate, the Buyer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
8.8 The Buyer unconditionally ratifies any actions taken by Brumby Sunstate under clauses 8.3 to 8.5.
8.9 The Buyer irrevocably appoints Brumby Sunstate to be its attorney to do such acts and execute such documents as the Buyer could personally do or execute (including the appointment of a substitute attorney) which in the opinion of Brumby Sunstate (acting reasonably) is necessary or expedient to give effect to any right, power or remedy conferred on Brumby Sunstate by these terms and conditions or the PPSA and to give effect to the matters contemplated by these terms and conditions.
8.10 The provisions of this clause 8 will survive termination of these terms and conditions or any other agreement between Brumby Sunstate and the Buyer for the sale of Goods, for whatever reason.

9. LIEN AND STOPPAGE IN TRANSIT

9.1 Where Brumby Sunstate has received or been tendered the whole of the Price and the payment has been dishonored, Brumby Sunstate shall have:

a) a lien on the Goods;
b) the right to retain the Goods while Brumby Sunstate is in possession of them;
c) a right to stop the Goods in transit whether or not delivery has been made or ownership has passed to the Buyer; and
d) a right of resale or disposal, provided that the lien of Brumby Sunstate shall continue despite commencement or proceeding or judgment for the Price having been obtained.

10. DEFAULT AND CONSEQUENCES OF DEFAULT

10.1 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify Brumby Sunstate from any and against all Brumby Sunstate's costs and disbursements (on a full indemnity basis) and in addition all of Brumby Sunstate's agents costs of collection.
10.2 Without prejudice to any other remedies Brumby Sunstate may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) Brumby Sunstate may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under these Terms and Conditions. Brumby Sunstate will not be liable to the Buyer for any loss or damage the Buyer suffers because Brumby Sunstate exercises its rights under this clause.
10.3 In the event that:

a) any money payable to Brumby Sunstate becomes overdue, or in Brumby Sunstate's opinion the Buyer will be unable to meet its payments as they fall due; or
b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or
c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any assets of the Buyer,
d) then without prejudice to Brumby Sunstate's other remedies at law:
e) Brumby Sunstate shall be entitled to cancel any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
f) all amounts owing to Brumby Sunstate shall, whether or not due for payment, immediately become payable.

11. THE COMPETITION AND CONSUMER ACT 2010 AND FAIR TRADING ACT

11.1 Nothing in this agreement is intended to have the affect of contracting out any applicable provisions of the Competition and Consumer Act 2010 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

12. CONSUMER

12.1 Where the Buyer is a consumer, as that term is defined in the ACL, the Goods come with consumer guarantees that cannot be excluded under the ACL.
12.2 If the Buyer is a consumer, then the Buyer is entitled to a replacement or refund for a 'major failure' and for compensation of any other reasonably foreseeable loss or damage. The consumer is also entitled to have the Goods repaired or replaced if the Goods fail to be of an acceptable quality and the failure does not amount to a major failure. What constitutes a 'major failure' is set out in the ACL.

13. LEGILSATION

13.1 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,

Brumby Sunstate becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Buyer, then the Buyer must pay Brumby Sunstate these additional amounts on demand.

14. JURISDICTION

14.1 This agreement shall be governed by the laws of the State of Queensland and without prejudice to the ability of any party to sue any other party in any other jurisdiction the parties submit to the non-exclusive jurisdiction of the Courts.

15. TERMINATION

15.1 Brumby Sunstate's agreement to continue to deliver or sell shall always be conditional upon being satisfied of the Buyer's ability to pay and comply with these conditions. Where Brumby Sunstate ceases to be so satisfied it may suspend and/or terminate the supply of Goods and all moneys then outstanding by the Buyer shall immediately become due, payable and recoverable.

15.2 Brumby Sunstate may terminate this agreement or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. Brumby Sunstate shall not be liable for any loss or damage whatever arising from such cancellation.

16. GENERAL

16.1 This agreement constitutes the entire agreement between the parties relating in any way to the subject matter. All previous negotiations, understandings, representations, warranties or commitments about the subject matter are merged in this agreement and are of no further effect.

16.2 If any provisions of this agreement shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

16.3 Failure by Brumby Sunstate to enforce any of the Terms and Conditions shall not be construed as a waiver of any of Brumby Sunstate's rights hereunder or a waiver of continuing breach.

16.4 Brumby Sunstate shall be under no liability whatever to the Buyer for any indirect loss or expense (including loss of profit) suffered by the Buyer arising out of a breach by Brumby Sunstate of these Terms and Conditions.

16.5 In the event of any breach of this agreement by Brumby Sunstate, the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of Brumby Sunstate exceed the Price in relation to the Goods.

16.6 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, industrial action, flood, storm or other event beyond the reasonable control of either party.

16.7 All payments required to be made by the Buyer under this agreement must be made free of any set-off or counterclaim and without deduction or withholding whatsoever.

16.8 The credit facilities provided by Brumby Sunstate are not transferable by the Buyer without the prior written consent of Brumby Sunstate. Brumby Sunstate may assign, license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

16.9 Brumby Sunstate reserves the right to review these Terms and Conditions at any time from time to time. If, following any such review, there is to be any change, it will take effect from the date on which Brumby Sunstate notifies the Buyer of such change.