



## CREDIT APPLICATION FORM

**Echelon Sports Pty Ltd (ABN 54 027 369 648) as Trustee for the ZIPP Australia Trust**

FULL TRADING NAME \_\_\_\_\_

REGISTERED BUSINESS OR COMPANY NAME \_\_\_\_\_ ("Customer")

ABN: \_\_\_\_\_

PRIVATE COMPANY  PUBLIC COMPANY

ACN: \_\_\_\_\_

TRADING ADDRESS \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

\_\_\_\_\_ P/CODE \_\_\_\_\_

PHONE ( ) \_\_\_\_\_ FAX ( ) \_\_\_\_\_

EMAIL \_\_\_\_\_ P/CODE \_\_\_\_\_

SOLE TRADER  PARTNERSHIP  TRUST  COMPANY

ARE BUSINESS PREMISES: OWNED  LEASED  MORTGAGED  RENTED

BANK, BRANCH & ACCOUNT NO. \_\_\_\_\_

CONTACT NAME (ACCOUNTS) \_\_\_\_\_

CREDIT ACCOUNT  CASH ACCOUNT

### OWNERS' OR DIRECTORS' INFORMATION

NAME \_\_\_\_\_

NAME \_\_\_\_\_

PRIVATE ADDRESS \_\_\_\_\_

PRIVATE ADDRESS \_\_\_\_\_

\_\_\_\_\_ P/CODE \_\_\_\_\_

\_\_\_\_\_ P/CODE \_\_\_\_\_

PHONE ( ) \_\_\_\_\_

PHONE ( ) \_\_\_\_\_

DRIVERS LICENCE NO. \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_

DRIVERS LICENCE NO. \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_

**TRADING REFERENCES** *Please provide the names, addresses and phone numbers of four (4) current references.*

| NAME | ADDRESS | FAX |
|------|---------|-----|
| 1.   |         |     |
| 2.   |         |     |
| 3.   |         |     |
| 4.   |         |     |

### TRUSTEE COMPANY

Where the Customer makes this application as a Trustee, the Customer warrants that:

- (a) the person signing this Credit Application is authorised to sign as Trustee;
- (b) all rights of indemnity which the Customer now has or may have in the future or may otherwise have against the property of the Trust of which the Customer is a Trustee and/or beneficiary, have not been modified or excluded as a result of any act by the Customer or any document signed by the Customer as a result of any breach of fiduciary duty or in any other way; and

(c) the Customer has not released and will not cause to be released, lost or diminished in any manner whatsoever, any rights of indemnity.

NAME OF TRUST \_\_\_\_\_

NAME OF TRUSTEE \_\_\_\_\_

DATE OF TRUST DEED \_\_\_\_\_

ADDRESS OF TRUSTEE \_\_\_\_\_

NAME OF SETTLOR \_\_\_\_\_

The Customer applies to Echelon Sports Pty Ltd ABN 55 379 881 751 as Trustee for the ZIPP Australia Trust ("Echelon") for credit. The Customer acknowledges receipt of and accepts the terms and conditions contained in pages 1 to 5 of this Agreement ("the Terms") and confirms that:

- (a) the Terms are the sole basis of the sale of the Goods to the exclusion of any conditions of sale appearing on any of the Customer's documents;
- (b) any conditions in correspondence or in the Customer's order documents are not a variation of the Terms nor a counter-offer and are to be ignored in determining the parties' respective rights unless Echelon accepts in writing a variation to the Terms;
- (c) Echelon may update or vary the Terms at any time, and that these changes will apply as soon as the Customer accepts them in writing or by ordering further Goods.

**GUARANTEE AND INDEMNITY**

Personal Guarantees will be required from the individual directors where the Customer is a company or a company acting as trustee of a trust. The Guarantors named below warrant that they are authorised to sign this Credit Application on behalf of the Customer.

|                                      | GUARANTOR (1) | GUARANTOR (2) |
|--------------------------------------|---------------|---------------|
| DATE                                 |               |               |
| NAME OF GUARANTOR(S) (BLOCK letters) |               |               |
| POSITION(S)                          |               |               |
| SIGNATURE(S)                         | x             | x             |

**PERSONAL GUARANTEE AND INDEMNITY** The Guarantors acknowledge that they have received a copy of the Terms and that they have read and understood them and been given an opportunity to seek legal advice on them. In consideration of Echelon supplying to Goods to the Customer on credit pursuant to the Terms:

- (a) The Guarantors (and if more than one, jointly and severally) agree to pay to Echelon all money due and payable by the Customer (or any subsequent owner of the Customer's business name) if the Customer at any time:
  - (i) fails to pay any money due to Echelon; or
  - (ii) fails to perform or observe any term or condition of credit or sale to be performed by the Customer;
- (b) The Guarantors agree to indemnify Echelon against any costs Echelon incurs relating to any sale by or credit granted by Echelon to the Customer, or any subsequent owner of the Customer's business name. This includes expenses and legal costs associated with the collection of outstanding monies, and any loss suffered by Echelon as a result of the Customer's failure to perform or observe any term or condition of credit or sale;
- (c) Subject to sub clause (d), the Guarantors agree that this is a continuing Guarantee and Indemnity that will not be invalidated, released, discharged or otherwise affected by any variation of the terms upon which Goods are supplied by Echelon and paid for by the Customer, or any event, act, omission, matter or thing whatsoever;
- (d) Upon transfer or assignment of the Customer's business or otherwise termination of trading relations between Echelon and the Customer, Echelon will provide the Guarantors with a written release from this Guarantee within 7 days where:
  - any assignee or transferee of the Customer's business has entered into a Personal Guarantee and Indemnity with Echelon, or the Customer has otherwise returned all property belonging to Echelon to Echelon; and
  - the Customer has satisfied all accounts Echelon has in respect to this Guarantee and Indemnity.
- (e) The Guarantors understand this Guarantee and Indemnity binds them personally.

Echelon may assign its rights under this Credit Application and in particular, this Guarantee and Indemnity provision, without the prior consent or knowledge of the Guarantors. In this event, this Guarantee and Indemnity will remain in full force and effect in relation to the indebtedness incurred by the Customer to Echelon (or its assignee) both before and after the date of that assignment. A reference to Echelon in this paragraph includes its assignee or successor.

| GUARANTOR (1)    |
|------------------|
| DATE:            |
| SIGNATURE:       |
| PRINT NAME:      |
| WITNESS:         |
| NAME OF WITNESS: |

| GUARANTOR (2)    |
|------------------|
| DATE:            |
| SIGNATURE:       |
| PRINT NAME:      |
| WITNESS:         |
| NAME OF WITNESS: |



## TRADING TERMS

Echelon Sports Pty Ltd (ABN 55 379 881 751) as Trustee for the ZIPP Australia Trust ("Echelon")

### 1. General

- 1.1. The whole of the Agreement between Echelon and the Customer referred to in the Credit Application is as set out in these terms and conditions as amended from time to time and any terms that are implied which cannot be excluded by law ("**Terms**").
- 1.2. Any other contractual terms of the Customer that are contrary to or inconsistent with the Terms do not apply nor do they constitute a counter-offer.
- 1.3. By receiving delivery of all or part of the goods that Echelon supplies under the Terms ("**Goods**"), the Customer is deemed to have accepted the Terms and to have agreed that they apply to the exclusion of all others.
- 1.4. The Customer acknowledges that the Goods are acquired for the purpose of re-supply and not for the Customer's own use.
- 1.5. All Goods are charged at the price prevailing at the date of invoice which is at all times subject to fluctuations, availability and other influences outside Echelon's control.
- 1.6. The Customer must pay any Goods and Services Tax within the meaning of the A New Tax System (Goods and Services) Act 1999 ("**GST**") or other government imposts.
- 1.7. Echelon will take reasonable steps to pass to the Customer the benefit of any reduction in the costs Echelon incurs for the supply of the Goods resulting from the imposition of the GST.
- 1.8. The Customer warrants that the details provided in this Agreement are true and accurate at the day of signing.
  - a. Where the Customer fails to complete any required information field of the Agreement, the Customer gives Echelon authority to insert information or details into this Agreement on behalf of the Customer in accordance with information supplied by the customer or publicly available on a search.
  - b. Where any of the Customer information supplied pursuant to this clause becomes outdated or is otherwise incorrect, the Customer gives Echelon authority to correct this information or these details on their behalf, and authorise the correction of obvious errors/omissions.
- 1.9. Echelon may terminate this agreement at any time upon five (5) days written notice.

### 2. Credit Terms

- 2.1. If the account is indicated as a cash account on the first page of the credit application form, the credit terms shall be cash payment in full prior to dispatch of any goods. Further, the terms of clauses 2.2, 5 and 10 shall not apply while the account is maintained on that basis and no credit is provided.
- 2.2. Payment is due on or before 30 days after the end of the month in which the invoice is issued unless otherwise stated. If Echelon is not paid for the Goods within this time, interest will accrue daily on all outstanding monies at a rate of 15% per annum. The right to charge interest is without prejudice to any other right or remedy.

2.3. The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a solicitor/client basis) that Echelon incurs for enforcement of obligations and recovery of monies that the Customer owes Echelon.

### 3. Delivery & Supply

Any times quoted for delivery are estimates only. Echelon will not be liable for failure to deliver, or for delay in delivery. The Customer will not be relieved of any obligation to accept or pay for goods, by reason of any delay in delivery or dispatch. Echelon reserves the right to stop supply at any time if the Customer fail to comply with these Terms.

### 4. Billing

- 4.1. The Customer must pay to Echelon the amount of each invoice in accordance with the terms of such invoice and upon remittance must not make any deductions from, or setoffs against the invoice amount for any reason whatsoever, unless Echelon has issued a valid credit note.
- 4.2. Further or alternatively, the Customer must not withhold or delay any payment due to Echelon for any reason whatsoever, including but not limited to the amount of any claim which the Customer alleges that Echelon has against Echelon or any money that Echelon owes the Customer.
- 4.3. Dishonoured cheques will incur a \$20 handling charge.

### 5. Retention of Title

- 5.1. Until full payment has been made for all Goods and any other sums in any way outstanding from the Customer to Echelon from time to time:
  - a. All sums outstanding by the Customer to Echelon become immediately due and payable if the Customer:
    - i. defaults in paying any other sums due to Echelon; or
    - ii. becomes bankrupt, or commits any act of bankruptcy, or a creditor of the Customer has judgment entered against the Customer in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed,despite the provisions of any other clause in the Terms;
  - b. The property in the Goods does not pass to the Customer and the Customer will hold the Goods as Bailee for Echelon (returning them to Echelon on request). The Goods are at the Customer's risk from the time of delivery and the Customer must insure the Goods from the time of delivery;
  - c. All payments received from third parties by the Customer for the Goods must be held on trust for Echelon pursuant to the Bailee/Bailor relationship, and any book debts of the Customer relating to the proceeds of sale of Goods, and the proceeds of any insurance on the Goods are also held on trust for Echelon; and
  - d. Echelon (including Echelon's nominated

agent) is irrevocably authorised to enter any premises where the Goods are kept, and to use the Customer's name and to act on the Customer's behalf, if necessary, to recover possession of the Goods.

## 6. Cancellations

No cancellations or partial cancellation of an order by the Customer is effective unless Echelon has agreed in writing to the cancellation request. Cancellations are subject to a restocking fee of \$25 or 15% of the value of the Goods cancelled, whichever is greater. Cancellation will not be accepted on Goods that are not regular stock which are in the process of manufacture or ready for shipment.

## 7. Returns

- 7.1. Echelon will accept only those Goods returned for warranty replacement. Freight will be paid one way by the Customer and one way by Echelon. All Goods must be returned in the original packaging, and the Customer is responsible for all damage incurred during return shipment. All returns must be sent to Echelon at PO Box 49, Bulimba QLD 4171 or other address advised by Echelon.
- 7.2. Echelon will organise a pick up of any miss shipped Goods. All freight costs for miss shipped Goods will be paid by Echelon.

## 8. Lost, Incomplete or Damaged Shipments

The Customer must submit to Echelon in writing any complaint, claim, or notification of lost Goods, incomplete Goods, or Goods damaged in transit within seven (7) days of the date of the invoice rendered for the Goods. Otherwise, the Customer is deemed to have accepted the Goods and cannot refuse to pay for the Goods on the basis that they were lost, incomplete, or damaged in transit.

## 9. Privacy Act 1988 ("Privacy Act")

- 9.1. To enable Echelon to assess the Customer's application for credit, the Customer authorises Echelon:
  - a. to obtain from a credit reporting agency a credit report containing personal information about the Customer and the Customer's guarantors pursuant to Section 18K(1)(b) of the *Privacy Act* (Cth); and
  - b. to obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities.
- 9.2. In accordance with s. 18N(1)(b) of the *Privacy Act* (Cth) the Customer authorises Echelon to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act* (Cth).
- 9.3. The Customer understands the information can be used for the purposes of assessing the Customer's application for credit (s. 18L(4) *Privacy Act*), notifying other credit providers of a default by the Customer and assessing the Customer's credit worthiness.

## 10. Personal Property Securities Act 2009 ("PPSA")

- 10.1. Echelon and Customer acknowledge:
  - a. that the retention of title arrangement provided by clause 5 of this Agreement gives Echelon a Security Interest; and
  - b. that Security Interest relates to all property provided from Echelon to the Customer for on-sale by the Customer on a retention of title basis.
- 10.2. The Customer consents to Echelon effecting a registration on the PPSR (in any manner Echelon considers appropriate) in relation to the Security Interest arising under clause 10.1(a). The Customer agrees to provide all assistance reasonably required by Echelon to facilitate this.
- 10.3. If Chapter 4 of the PPSA applies to the enforcement of a Security Interest arising under this Agreement, Echelon and Customer agree the following provisions of the PPSA will not apply to the enforcement of that Security Interest:
  - a. section 95, to the extent that it requires Echelon to give the Customer a notice about removal of goods installed on or affixed to secured property;
  - b. section 96, to the extent that it limits Echelon's rights where there is accession of the secured property;
  - c. section 125, to the extent that it limits how Echelon can deal with property which has been seized by it pursuant to the PPSA;
  - d. section 130, to the extent that it requires Echelon to give the Customer a notice of its disposal of any property seized by it under the PPSA;
  - e. section 132(3)(d), to the extent that it requires Echelon to provide a statement of account to the Customer following its disposal of any seized property pursuant to the PPSA;
  - f. section 132(4), to the extent that it requires Echelon to provide a statement of account to the Customer where it hasn't disposed of any seized property pursuant to the PPSA;
  - g. section 142, to the extent that it limits rights conferred upon Echelon under the PPSA; and
  - h. section 143, to the extent that it limits Echelon's ability to terminate this Agreement if property is seized pursuant to the PPSA.
- 10.4. Despite clause 10.1, notices or documents required to be given to the Customer for the purposes of the PPSA must be given in accordance with the PPSA.

## 11. Notification

- 11.1. The Customer must notify Echelon in writing within seven days of:
  - a. any alteration or change of ownership of the Customer's business name or company name. The Customer agrees that the Customer is liable to Echelon for all Goods that Echelon supplies to the new owner of the Customer's business or company name until notice of any such change is received;
  - b. the issue of any legal proceedings against the Customer; or

- c. the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.

11.2. If there is a change of ownership Echelon reserves the right not to supply the new owner and to terminate this agreement immediately by notice in writing.

## 12. Warranties

- 12.1. If a warranty claim is made in relation to a product with a wholesale value of \$50 or less, the Customer may replace the item from the Customer's existing stock and return the item to Echelon for review. Echelon will examine the item to determine if it is covered by warranty. Echelon is not bound by any decision of the Customer regarding a warranty claim.
- 12.2. If a warranty claim is made in relation to a product with a wholesale value of more than \$50, the Customer must contact Echelon and return the item to Echelon. Echelon will examine the item within 7 days of it being returned and will advise the Customer if the item is covered under warranty.
- 12.3. Echelon's decision regarding any warranty claim is final and non-contestable by the Customer.
- 12.4. Echelon's liability for defective goods is limited to replacing them or at Echelon's option refunding the price of the defective goods if:
  - a. defects have arisen solely from faulty materials or workmanship; or
  - b. the goods have not received maltreatment, inattention or interference; and
  - c. notice of the defects is given to Echelon within 30 days of delivery to the Customer.
- 12.5. Echelon's liability for breach of a condition or guarantee implied by Division 1 of Part 3-2, Schedule 3 of the *Competition and Consumer Act 2010* (Cth) is limited to:
  - a. in the case of goods, any one of the following as determined by Echelon:
    - i. the replacement of the goods or the supply of equivalent goods; or
    - ii. the repair of the goods; or
    - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - b. in the case of services, any one of the following as determined by Echelon:
    - i. the supplying of the services again; or
    - ii. the payment of the cost of having the services supplied again.
- 12.6. Echelon's liability under section 274 of the *Competition and Consumer Act 2010* (Cth) is expressly limited to a liability to pay to the Customer an amount equal to:
  - a. the cost of replacing the goods; or
  - b. the cost of obtaining equivalent goods; or
  - c. the cost of having the goods repaired, whichever is the lowest amount.
- 12.7. Should the *Sale of Goods Act 1896* (Qld) apply, the Customer and Echelon agree under s. 56 of that Act to specifically exclude any warranties or other terms which might be implied into the Terms by that Act.

- 12.8. In respect of any other law in Australia which applies to the Terms, Echelon gives no conditions or warranties in respect of goods or services supplied except those that are implied and which cannot be excluded by law.

## 13. Limitation of Liability

- 13.1. Echelon enters into this Agreement as Trustee of the ZIPP Australia Trust ("**the Trust**") and in no other capacity. A liability arising under or in connection with this Agreement is limited to and can be enforced against Echelon only to the extent to which it can be satisfied out of the assets of the Trust.
- 13.2. Except in the case of fraud, negligence, breach of trust or breach of duty on the part of Echelon which will render Echelon personally liable:
  - a. the Customer may enforce its rights against Echelon arising from non performance of Echelon's obligations only by seeking recourse to the assets of the Trust;
  - b. if the Customer does not recover all money owing to it by Echelon, the Customer may not seek to recover the shortfall by:
    - i. bringing proceedings against Echelon in its personal capacity; or
    - ii. applying to have Echelon wound up or proving in the winding up of Echelon unless another creditor has initiated proceedings to wind up Echelon;
  - c. the Customer waives its rights and releases Echelon from any personal liability whatsoever:
    - i. which the Customer may suffer as a result of any breach of this Agreement by Echelon; or
    - ii. which cannot be paid or satisfied out of the assets of the Trust.

## 14. Failure To Act

- 14.1. The following does *not* constitute a waiver of any subsequent default or a waiver of Echelon's right to demand timely payment of future obligations or strict compliance with the Terms:
  - a. Echelon's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision under this Agreement; or
  - b. Echelon's failure to exercise any right or remedy available under the Terms or at law; or
  - c. Echelon's failure to insist upon timely payment of monies when due or to demand the payment of any charges or fees which accrue or any extension of credit or forbearance during the term of this agreement.

## 15. Legal Construction

- 15.1. The Terms are governed and interpreted according to the laws of Queensland and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Queensland.
- 15.2. If any provision of the Terms is held to be illegal or unenforceable, that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms will continue in full force and effect.