



Picone Group Australasia Pty Ltd

ABN: 84 168 178 574

Customer Profile & Image & Data License Agreement.

Registered Business Name:	
ACN Number / ABN Number:	A.C.N. <input type="text"/> A.B.N. <input type="text"/>
Applicants Name:	

**Aust: Fax To +61 7 5502 2266
Freecall: 1800 002 425**

**NZ: Freefax To 0800 402 736
NZ Freecall: 0800 340 456**

TERMS AND CONDITIONS OF SALE

1) DEFINITIONS AND CONTRACT

That goods listed under the heading "Description" on the invoice, statement, and/or delivery docket ("Goods") supplied by Picone Group Australasia Pty Ltd A.B.N. 84 168 178 574 ("Picone") to the person placing an order for the purchase of goods ("Customer") are sold subject to these terms and conditions. No variation to these Terms and Conditions is permitted unless expressly accepted by Picone in writing.

2) ORDER ACCEPTANCE

No order shall be binding on Picone until accepted by Picone. Picone reserves the right to accept any order in whole or part. Where Picone makes a part delivery of any order, such delivery shall constitute a separate contract.

3) PAYMENT TERMS

All credit orders are accepted by Picone subject to satisfactory credit approval. Where credit approval has not been granted, payment for the Goods is required prior to delivery to the Customer.

Where credit has been granted, payment for the Goods is to be made on or before 30 days from the date of invoice. Payment is to be made in full without set off or deduction. Any disputed invoices will be investigated and, if resolved in favor of the Customer, a credit will be issued to the Customer.

4) TITLE OF GOODS

- a) Ownership in the Goods does not pass to the Customer until the Customer has discharged all outstanding indebtedness, whether in respect of the Goods or otherwise, to Picone.
- b) The Customer shall take delivery of the Goods at Picone's warehouse. Risk in respect of the Goods shall pass on delivery.
- c) The Customer gives Picone, its agents and servants, leave and license, to enter at any time on and into any premises occupied by the customer, to inspect, search for or remove any of the Goods.
- d) If the Goods are sold by the Customer, the Customer acknowledges that such sale is by the Customer as bailee for and on behalf of Picone. i.e. holds the proceeds of the sale on trust for Picone, in an account in the name of Picone, until payment in full to Picone for the Goods is made.
- e) Each of the rights and obligations in this clause are severable and independent so that if any is deemed to be invalid or unenforceable, it shall be automatically deleted from this clause.

5) DELIVERY

Prices for the Goods will, unless otherwise stated, not include delivery. Picone reserves the right to charge separately for delivery to the point of delivery specified by the Customer.

6) RETURN OF GOODS

Any Goods delivered to the Customer which are damaged or defective, or which are not otherwise in accordance with the Customer's order, may be returned to Picone within 30 days of delivery, at no cost to the Customer.

The Customer may otherwise return Goods (excluding special purchases which may not be returned) to Picone:

- a) provided that it does so within 30 days of delivery;
- b) provided that the Goods are in their original packaging, unopened, and otherwise in a saleable condition: and
- c) at the Customer's expense

In the case of all Goods returned;

- d) the invoice number must be quoted
- e) a credit will be given to the Customer: and
- f) risk in the Goods remains with the Customer until the Goods are received by Picone.
- g) the customer must contact Picone and request a "Return Authorisation" (RA) from Picone, prior to returning any item and display the RA number on all packaging and correspondence

7) CONFLICTS

These Terms and Conditions shall apply to the exclusion of all other terms and conditions contained in the Customer's order. In the event of any inconsistency, Picone shall be deemed, by delivering Goods to the Customer or supplying services to the Customer, to have made an offer to the Customer to sell the Goods or supply services subject to these Terms and Conditions, which offer will be deemed to have been accepted if the Customer retains the Goods or accepts the services.

8) WARRANTY

Except for those required or implied by legislation, Picone gives no express warranty in relation to the Goods and/or services supplied to the Customer, and the Customer acknowledges that it has not relied on any representation or warranty made by and on behalf of Picone in respect of the Goods and/or services. Certain legislation (including the Trade Practices Act 1974) may imply certain conditions and warranties onto this contract. To the extent that such conditions and warranties may, as between Picone and the Customer, lawfully be excluded, all such conditions and warranties are hereby expressly excluded.

9) LIABILITY

The liability of Picone to the Customer arising out of or relating to the supply of the Goods and matters incidental thereto, or for breach of a condition or warranty which cannot lawfully be excluded is limited, at the option of Picone, to any one or more of the following:

- a) If the breach relates to Goods:
 - i. the replacement of the Goods or the supply of equivalent Goods;
 - ii. the repair of such Goods;
 - iii. the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - iv. the payment of the cost of having the Goods repaired.
- b) If the breach relates to services:
 - i. the supplying of the services again; or
 - ii. the payment of the cost of having the services supplied again.

To the fullest extent permitted by law the liability of Picone to the Customer in respect of any loss or damage (including consequential or indirect loss or damage or loss of profits) however caused is expressly excluded.

10) SEVERABILITY

If any term of these Terms and Conditions or any part thereof is or becomes or is declared illegal, invalid or unenforceable for any reason whatsoever in any jurisdiction and such term or part is severable, it is deemed deleted from these Terms and Conditions in the relevant jurisdiction.

11) GST

Picone reserves the right to recover from the Customer all goods and services tax payable in respect of the supply of goods or services to the Customer.

12) NO WAIVER

The failure of Picone to exercise, or the delay in exercising, any right, power or privilege available to it under these Terms and Conditions will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.

IMAGE AND DATA LICENCE AGREEMENT

- A. Picone Group is a Propriety Limited company of Unit 14, 17 Indy Court, NERANG, Queensland. 4211 Australia (“the **Company**”)
- B. The Company has the right to grant licences to use certain images and data (“the **Information**”)
- C. The person identified as the Licensee in Item 1 of Appendix A to this agreement has requested a licence to the Information
- D. The Company will grant a licence in accordance with the terms of this Agreement.

1) INTERPRETATION

In this Agreement:

- a) **Information** means the information described in Item 2 of Appendix A, and includes reference to any part of the Information and any part of the documentation, in printed or electronic format, provided by the Company in relation to the Information.
- b) **Intellectual Property Rights** means all rights, titles and interests of a person (including the rights conferred upon that person by legislation) throughout the world as the creator or developer of or as the owner of any intellectual property, including (but not limited to) concepts, know-how, processes, patents, rights to have confidential information kept confidential, copyright, trademarks and designs which:
 - i) Are in existence at the date of this agreement; or
 - ii) Come into existence after the date of this agreement
- c) All references to this agreement include the Schedules to this agreement

2) LICENCE

For the consideration set out in Item 5 of Appendix A, the Company:

- a) Grants to Licensee a non-exclusive licence to use the Information:
 - i) Described in Item 2 of Appendix A;
 - ii) For the purposes set out in Item 3 of Appendix A; and
 - iii) In accordance with the terms of this Agreement;

and

- b) Will provide the Licensee with a copy of the Information in the formats specified in Appendix A within 14 days of the Licensee returning this Agreement to the Company duly executed.

3) TERM

This Agreement will commence on the date on which this Agreement is signed by the Licensee and will continue for the period set out in Item 7 of the Appendix A.

4) PROHIBITIONS

The Licensee must not:

- a) use the Information for any purpose other than the purpose set out in Item 3 of Appendix A;
- b) provide the Information or access to the Information to anyone other than to persons for whom it is reasonably necessary to provide access for the purposes of effectively using the Information as permitted under this Agreement (including officers or employees of the Licensee);
- c) use the information or provide the information on or to auction based web sites
- d) use the information for promotion, sales or marketing activities of products which are not sourced exclusively from the Company
- e) purport to assign, transfer, sub-licence or in any way deal with the rights granted to the licensee under this Agreement;
- f) reverse engineer, decompile or disassemble the information to create anything which could be used to reproduce or reverse engineer the Information **without the prior approval and express, additional, written permission of the Company**;
- g) copy, reproduce or duplicate the Information or convert it into any form other than the form in which it is provided to the Licensee (except for the Licensee’s legitimate use as permitted under this agreement including converting projections and scales, producing hard copy output and making back-up copies as are reasonably necessary)
- h) remove, obscure or in any way alter any copyright, proprietary or trademark notice or any notice acknowledging contribution to the Information; or

- i) use the Information for the production of banners, signs and brochures without the Company's prior written approval of the specific artwork
- j) rent, lease or loan the Information
- k) transfer the rights under this agreement as part of any sale of business
- l) permit or authorise any person to do any of the acts referred to in paragraphs a. to k.,

without the prior written consent of the Company, which may be withheld or made subject to conditions at the Company's discretion.

5) ACKNOWLEDGEMENTS

The Licensee must, in anything produced or published by the licensee using the Information as permitted under this Agreement, acknowledge the Licensor in accordance with Item 4 of the Appendix A.

6) ADDITIONAL TERMS

The Licensee must, in anything produced or published by the licensee using the Information as permitted under this Agreement, acknowledge the Licensor in accordance with Item 4 of the Appendix A

7) INFORMATION UPDATES

The Company is not obliged to provide to the Licensee any updated versions of or updated information relevant to the Information.

8) TERMINATION

- a) This Agreement will terminate immediately if the Licensee breaches clause 4.
- b) The Company may terminate this Agreement with immediate effect by giving notice to the Licensee if:
 - i) The Licensee breaches any provision of this Agreement and fails to remedy the breach within 30 days after receiving notice requiring it to do so; or
 - ii) The Company has reason to believe the Licensee has breached clause 4 and the Licensee fails to reasonably satisfy the Company that it has not within 30 days after receiving notice requiring it to do so.
- c) Upon termination of this Agreement, the licence granted under this Agreement will also terminate and the Licensee must immediately:
 - i) Cease using the Information in any way;
 - ii) If the Information was provided to the Licensee on any physical media, return the Information to the Company or destroy the Information at the Company's option; and
 - iii) Permanently delete the Information from any hard drives or servers or any other computer storage medium on which it is stored.

and the Licensee must not access or allow any other person to access any Information that may remain on any back-up media.

9) EXCLUSION OF LIABILITY

- a) The Company excludes all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any applicable statute (including the *Australian Trade Practices Act 1974*) or cause any part of this clause 9 to be void (**Non-excludable Condition**).
- b) The Company's liability to the Licensee for:
 - i) Breach of any Non-excludable Condition (other than an implied warranty of title); and
 - ii) Any expenses, losses, damages, claims or costs incurred by the Licensee or any other person directly or indirectly arising out of or relating to the supply or use of or any defect in the Information, whether under the law relating to contracts, torts or otherwise,
 is limited, at the Company's option, to refunding the price of the goods or services in respect of which the breach occurred or to providing, replacing or repairing those goods or providing those services again (except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, in respect of which the Company's liability is not limited under this Agreement).
- c) This clause 9 does not exclude or limit the application of any provision of any applicable statute (including the *Trade Practices Act 1974*) where to do so would contravene that statute or cause any part of this clause to be void.

10) INTELLECTUAL PROPERTY RIGHTS

The Licensee acknowledges that:

- a) All Intellectual Property Rights in the Information are owned or Licensed by the Company and/or persons from whom the Company obtained information incorporated in the Information; and
- b) Nothing in this Agreement has the effect of assigning any ownership of the Intellectual Property Rights in the Information to the Licensee.

11) SECURITY

- a) The Licensee must keep the Information under the Licensee's control and secure from use, copying or disclosure not authorised under this Agreement.
- b) If the Licensee becomes aware of any suspected or actual infringement of the Intellectual Property Rights in the Information or any suspected or actual use, copying or disclosure of the Information not authorised under this Agreement, the Licensee will, at its own expense, immediately:
 - i) Notify the Company;
 - ii) Take all steps to prevent or stop the suspected or actual conduct; and
 - iii) Provide the Company with any assistance reasonably requested by the Company in relation to any proceedings the Licensor may take against any person in relation to the conduct.

12) GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law applicable in Queensland, Australia and each party submits to the exclusive jurisdiction of the courts of Queensland, Australia.

13) RESOLUTION OF DISPUTES - ARBITRATION

- a) Any dispute arising out of this Agreement must be submitted to arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (the **Rules**).
- b) Unless the Rules require otherwise:
 - i) The appointing and administering body will be Australian Centre for International Commercial Arbitration;
 - ii) The language of the arbitration will be English; and
 - iii) The place of arbitration will be Brisbane, Australia.

14) WAIVER

The failure of the Company at any time to insist on performance of any obligation under this Agreement of the Licensee is not a waiver of its right to insist on performance of, or claim damages for breach of, that obligation, or at any other time to insist on performance of that or any other obligation of the Licensee.

15) ENTIRE AGREEMENT

This Agreement:

- a) Constitutes the entire Agreement between the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter; and
- b) May be altered only in writing executed by the parties.

16) PRIVACY ACT (1988)

The Applicant and, in the case of a corporate Applicant, its directors, hereby authorises and unconditionally grants its consent to Picone obtaining from a credit reporting agency or other person or company, information and/or reports concerning it from time to time during the continuance of its credit account so as to assist Picone in deciding whether to grant credit or to continue to grant credit to it or for collecting overdue payments in respect of commercial credit applied for or provided to it. The Applicant further authorises and consents to Picone obtaining and disclosing information about its credit worthiness to and from credit reporting agencies and credit providers (including identity particulars and details of overdue payments, who move or are or intend to enter into some commercial or business dealings with it and/or grant credit to it. For the purposes of this paragraph 'report' and 'information' include any credit report originating from a credit reporting agency or any other record or information that has any bearing on the Applicant's creditworthiness, credit standing, credit history, credit capacity and personal information.

Agreement that Picone may seek consumer credit information (section 18K(1)(b), Privacy Act 1988)

If Picone considers it relevant to assessing my/our application for commercial credit, I/we agree to Picone obtaining from a credit reporting agency a credit report containing personal credit information about me/us in relation to commercial credit provided by Picone.

Exchanging information with other credit providers (Section 18N(1)(b), Privacy Act 1988)

I/we agree to Picone obtaining personal information about me/us from other credit providers, whose names I/we may have provided for Picone or that may be named in a credit report, for the purpose of assessing my/our application for commercial credit made to Picone.

Agreement to a credit provider being given a consumer credit report to collect overdue payments on commercial credit (Section 18K(1)(h) Privacy Act 1988)

I/we agree that Picone may obtain a consumer credit report about me/us from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by me/us.

ACKNOWLEDGEMENT

The Applicant and signatories appearing below hereby acknowledge having read, understood and agree to be bound by Picone’s Terms and Conditions of Sale. The Applicant warrants the information given in this application to be true and correct and that the signature below has authority to sign this application for and on behalf of the business described in the Applicant details page. Where this application is signed by more than one person, each person is bound by it separately and also bound jointly.

I, the undersigned licensee or the authorised officer of a corporate Licensee, hereby attests that I have read and understood the previous four pages of the Picone Group, Image and Data Agreement, and that I agree to be bound or to bind my Corporation to abide by all of its provisions.

I also attest that I have read, understood, and filled out as appropriate the applicable Picone Group Information License Appendix A form and that I also agree to be bound or to bind my corporation to abide by all of the provisions as indicated on the copy I have initialled.

If the Licensee is as individual:

SIGNED by

.....
Printed name of Licensee in the presence of

.....
Printed Name of witness

.....
Signature of Licensee

.....
Signature of witness

...../...../20.....
Date of signing

...../...../20.....
Date of witnessing

If the Licensee is a corporation:

SIGNED for

.....
Printed name of Licensee by an authorised officer in the presence of

.....
Printed Name of witness

.....
Office held (eg. CEO, General Manager)

.....
Signature of officer

.....
Signature of witness

.....
Name of officer (print)

.....
Name of witness (print)

...../...../20.....
Date of signing

...../...../20.....
Date of witnessing

APPENDIX A

1. Licensee:

Name:.....

Company:.....

Address:.....

Suburb/Town..... State..... Post Code.....

2. Description of information provides:

- i. CD containing catalogue images and logos;
- ii. Price Lists, Price Files in printed and/or electronic format;
- iii. Promotional and Merchandising materials including posters, signage, images and displays;
- iv. Printed catalogues;

3. Purpose of Use

- i. Display the products for sales and marketing;
- ii. Use in sales and marketing promotions and materials;
- iii. Use in advertising, print and electronic media;
- iv. To assist with the sales of products sourced exclusively from the Company.

4. Licensors

- i. Leg Avenue Inc, California, USA
- ii. Skinny Dip, (Cammt Inc), California, USA
- iii. Bang Lingerie (Bang Inc) (Vertical Source Pharmacy), California, USA
- iv. Rasta Imposta , New Jersey, USA
- v. Picone Group Australasia Pty Ltd, Queensland, AUSTRALIA

5. Consideration - \$5.00 (five Dollars)

6. Format

- i. CD or downloadable images
- ii. Microsoft's Excel formatted data
- iii. Printed form
- iv. Electronic format
- v. Photographic format

7. Term and Termination

- i. The term of this Agreement will be for an initial one year term and additional periods of one year, unless cancelled by the Company prior to that end of period.
- ii. This Agreement will terminate immediately should the Licensee cease to conduct business with the Company.