

CREDIT APPLICATION

Completion of this application does not guarantee approval

Part A – Applicant and Billing details			
Applicant Name		ACN / ABN	
Trading Name		Contact Name	
Address		Phone No:	
Suburb		Fax No:	
State	Post Code	Email Address:	

Part B – Business details and credit terms			
Nature of Business		Date Business purchased / started	
Account Contact Name		Phone No:	
Purchasing Contact Name		Phone No:	

Part C – Trade References (Major Creditors only)				
No.	Company / Business	Contact name	Average Monthly Purchases	Phone
1.				
2.				
3.				
4.				

Part D – Applicant Signature
<p>1. The Applicant hereby applies for the opening of an account and provides the above information in support of the Application.</p> <p>2. I am/we are authorised to sign this credit application form on behalf of the Applicant and confirm that the warranties in the Terms and Condition together with the information provided in this Application are true and correct and that there are no other facts which would be material to the Supplier's decision in granting credit under this application.</p> <p>3. I/We agree on behalf of the Applicant that:</p> <ul style="list-style-type: none"> (a) the Supplier retains the sole and unfettered right to refuse credit to the Applicant; (b) I/we have read, understood and accepted the Terms and Conditions; (c) the Applicant will comply with and perform its obligations under the Terms and Conditions; (d) the Supplier may withdraw any credit facilities, which may be granted to the Applicant at its discretion at any time and without further notice to the Applicant.

Applicant Signature		Applicant Signature	
Client name		Name	
Position		Position	
Client Signature		Signature	
Date	/ /	Date	/ /

Part E – «BUSINESS_NAME» Office Use Only			
Invoice Terms	<input type="checkbox"/> 7 days <input type="checkbox"/> 14 days <input type="checkbox"/> 30 days	Payment Terms	<input type="checkbox"/> 7 days <input type="checkbox"/> 14 days <input type="checkbox"/> 30 days
Estimated Monthly Order Value	\$	Credit Limit	\$
Representative Signature		Date	/ /
Representative Name		Manager Approval	

TERMS AND CONDITIONS

1. In this document:

- 1.1. **"Agreement"** means the agreement between the Applicant and the Supplier comprising of these Terms and Conditions together with any Order Statement, invoice or application;
- 1.2. **"Amount Payable"** means, at any time, all amounts payable by the Applicant to the Supplier at that time (whether or not those amounts have become due for payment under clause 4 or any other provision of the Agreement) in connection with the Goods (including, without limitation, any invoiced amount, interest, fees, costs or expenses);
- 1.3. **"Application"** means the application for commercial credit to which these Terms and Conditions are annexed.
- 1.4. **"Applicant"** means the applicant specified in an Application (or if there is no application, the person placing the order for Goods and Services, or on whose behalf the Order is placed, with the Supplier);
- 1.5. **"Equipment"** means any and all equipment, tools and items, whether powered or otherwise, used in the provision of the Goods, including, without limitation, vehicles (including cranes, excavators, bulldozers and bobcats), compressors, formwork, scaffolding, demountable buildings and toilets, whether used by the Supplier or leased by the Supplier to the Applicant;
- 1.6. **"Goods"** means any goods, products, services, materials or labour supplied or to be supplied by the Supplier at any time and from time to time including, without limitation, any goods specified in an Order Statement or invoice;
- 1.7. **"Order"** means any order or offer to purchase Goods;
- 1.8. **"Order Statement"** means any statement which the Supplier provides to the Applicant on receiving the Order;
- 1.9. **"PPSA"** means the Personal Property Securities Act 2009 (Cth);
- 1.10. **"Price"** means the price payable for the Goods as specified in an Order Statement;
- 1.11. **"Supplier"** means «BUSINESS_NAME» «BUSINESS_ID» and its related bodies corporate (within the meaning of the *Corporations Act 2001* (Cth));
- 1.12. **Terms and Conditions** means the terms and conditions contained in this document; and
- 1.13. the terms **"accession"**, **"financing change statement"**, **"financing statement"**, **"perfected"**, **"personal property"**, **"PPS lease"**, **"proceeds"**, **"processed or commingled goods"**, **"purchase money security interest"**, **"security agreement"**, **"security interest"** and **"verification statement"** have the respective meanings given to them under, or in the context of, the PPSA.

2. Delivery

- 2.1. Delivery of the Goods ("**Delivery**") is taken to occur at the time that:
 - (a) the Applicant or the Applicant's nominated carrier takes possession of the Goods at the Supplier's address; or
 - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Applicant's nominated address even if the Applicant is not present at the address.
- 2.2. At the Supplier's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 2.3. Delivery of the Goods to a third party nominated by the Applicant is deemed to be delivery to the Applicant for the purposes of this Agreement.
- 2.4. The Applicant must take delivery by receipt or collection of the Goods whenever either is tendered for delivery. In the event that the Applicant is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery of the Goods and/or the storage of the Goods.
- 2.5. The Applicant shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
 - (a) such discrepancy in quantity shall not exceed five percent (5%); and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
- 2.6. The Supplier 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.
- 2.7. Any time or date given by the Supplier to the Applicant is an estimate only. The Applicant must still accept delivery of the Goods even if late and the Supplier will not be liable for any loss or damage incurred by the Applicant as a result of the delivery being late.

3. Risk

- 3.1. Risk of damage to or loss of the Goods passes to the Applicant on Delivery and the Applicant must insure the Goods on or before Delivery.
- 3.2. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Applicant, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

TERMS AND CONDITIONS

4. Payment terms

- 4.1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the Supplier in Part E of the Application) from the statement date. The Supplier may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
- 4.2. The Supplier will invoice the Applicant at the intervals noted as the Invoice Terms in Part E of the Application.
- 4.3. Should the Applicant not pay for the Goods supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to:
- (a) Charge interest in accordance with clause 21;
 - (b) charge an administration fee of «ADMIN_FEE» of the amount of the invoice payable per year, or part thereof, from the date the Goods were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant; and
 - (c) suspend or terminate supply of Goods at its sole discretion.
- 4.4. A processing fee of «PROCESSING_FEE» will be charged in the event of a dishonoured payment.
- 4.5. The Supplier may require the Applicant to pay a non-refundable deposit for the Goods by a date nominated by the Supplier. The amount of the deposit may be determined by the Supplier in its sole discretion.

5. Purpose of credit

- 5.1. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

6. Cancellation of terms of credit

- 6.1. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this Agreement or not.
- 6.2. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

7. Credit Limit and Cash accounts

- 7.1. If credit is granted, the Applicant agrees and acknowledges that the amount of credit granted will not exceed the credit limit noted in Part E of the Application and that should this credit limit be reached, the supplier is under no obligation to provide further Goods until all amounts outstanding are paid.
- 7.2. Unless credit is granted:
- (a) cleared payment must be received before dispatch or provision of Goods;

- (b) payment may only be made by direct deposits, cheques, credit card (Mastercard and Visa) or eftpos, the Supplier may accept cash on delivery by arrangement.

8. Limitation of liability

- 8.1. Except as provided below, all express and implied warranties and conditions under statute or general law as to description, quality, suitability, or fitness of any Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded. The Supplier shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, installation or operation of any Goods or arising out of contract or negligence or in any way whatsoever.
- 8.2. The Supplier's liability for trade and non-consumer sales for a breach of condition or warranty implied by the *Competition and Consumer Act 2010* (Cth) ("Act") is limited to any one or more of the following:
- (a) where the Goods are goods:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or acquiring equivalent goods; or
 - (iv) the payment or the cost of having the Goods repaired.
 - (b) where the Goods are services:
 - (i) supplying the Goods again; or
 - (ii) providing for the cost of having the Goods supplied again.
- 8.3. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.
- 8.4. **[If only Goods Supplied]** Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 8.5. **[If only Services Supplied]** Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
- (a) to cancel your service contract with us; and
 - (b) to a refund for the unused portion, or to compensation for its reduced value

TERMS AND CONDITIONS

You are also entitled to be compensated for any other reasonably foreseeable loss or damage.

If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

8.6. **[If both Goods and services supplied]** Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- (a) to cancel your service contract with us; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

8.7. As we retain ownership of the Goods until we are paid for them, we reserve our right to not honour any warranty unless and until we receive payment in full and may in our absolute discretion to the extent permitted by law elect to waive an amount owed to us by you (or part thereof) in lieu of honouring any warranty.

8.8. Nothing in these Terms and Conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by the law (including the Act) and which by law cannot be excluded, restricted or modified.

9. Equipment

9.1. The Applicant agrees and acknowledges that:

- (a) title to the Equipment will at all times remain with the Supplier;
- (b) the Supplier is irrevocably authorised to enter any premises where the Supplier believes the Equipment is located and recover possession of the Equipment;
- (c) the Supplier need not provide any notice to the Applicant prior to enforcing its rights under clause 9.1(b).

10. Retention of Title to Goods

10.1. The Supplier and the Applicant agree that ownership of the Goods shall not pass until:

- (a) the Applicant has paid the Supplier all amounts owing to the Supplier; and
- (b) the Applicant has met all of its other obligations to the Supplier.

10.2. Receipt by the Supplier 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.

10.3. The parties further agree that:

- (a) until ownership of the Goods passes to the Applicant in accordance with clause 12.1 the Applicant is only a bailee of the Goods and must return the Goods to the Supplier on request;
- (b) the Applicant holds the benefit of the Applicant's insurance over the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Applicant 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 Applicant sells, disposes or parts with possession of the Goods then the Applicant must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
- (d) the Applicant should not convert or process the Goods or intermix them with other Goods but if the Applicant does so then the Applicant holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
- (e) the Applicant irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
- (f) the Supplier may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Supplier 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 the Supplier;
- (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Applicant.

11. Security interest, charges and power of attorney

11.1. The Applicant grants to the Supplier a security interest in the Goods to secure payment of the Amount Payable. The security interest:

- (a) extends to and continues in all proceeds, accessions and processed or comingled goods; and
- (b) is a purchase money security interest to the extent to which it secures payment of that part of the Amount Payable which comprises the

TERMS AND CONDITIONS

- aggregate unpaid purchase price of the Goods.
- 11.2. Where any of the Equipment is leased or bailed from the Supplier to the Applicant, if any such lease or bailment is a PPS lease, the Applicant grants to the Supplier a purchase money security interest in the Equipment.
- 11.3. In addition to the security interests in clauses 11.1 and 11.2, the Applicant agrees that the Supplier may also register on the Personal Property Securities Register a security interest over all the Applicant's personal property. For the purposes of section 20(2)(b)(ii) of the PPSA, the Applicant acknowledges that this security interest is taken over all of the Applicant's present and after acquired property.
- 11.4. For the purposes of section 19(2) of the PPSA, the Applicant:
- (a) warrants that the Applicant has rights in the Goods and Equipment, or the power to transfer rights in the Goods and Equipment, to the Supplier;
 - (b) acknowledges that the purchase money security interest has arisen in the Goods and Equipment by the Applicant's acceptance of the Goods and Equipment; and
 - (c) acknowledges that the Supplier has given value for its security interests in the Goods and Equipment, including by its providing or continuing to make available any Goods and/or financial accommodation to the Applicant.
- 11.5. The Applicant must not do or permit anything to be done that may result in the security interests granted to the Supplier ranking in priority behind the security interest of any other entity.
- 11.6. The Applicant agrees that sections 95 (to the extent that it requires the Supplier to give notice to the Applicant), 118 (to the extent that it requires the Supplier to give notice to the Applicant), 121(4), 125, 129(2) and (3), 130 (to the extent that it requires the Supplier to give notice to the Applicant), 131, 132, 134(2), 135, 136(1), (3), (4) and (5), 137, 138B(2) (to the extent that the right of disposal or retention is subject to Divisions 2, 3, 4 and 5 of Part 4.3), 138B(4) (to the extent that the right of disposal or retention is subject to Divisions 2, 3, 4 and 5 of Part 4.3), 142(3) and 143 of the PPSA will have no application to this Agreement and the Applicant waives all its rights under section 157 of the PPSA to receive a notice under that section.
- 11.7. For the purposes of section 275(6)(a) of the PPSA, the Supplier and the Applicant agree that neither party will disclose information of the kind mentioned in section 275(1) of the PPSA. The Applicant waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the said information. The agreement in this clause 11.7 is made solely for the purpose of allowing to the Supplier the benefit of section 275(6)(a) and the parties agree that the Supplier shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this clause 11.7.
- 11.8. The Applicant expressly agrees to the rights granted to the Supplier under sections 123, 126, 128, 129 and 134 of the PPSA, subject to clause 11.6.
- 11.9. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged and grants the Supplier the right to place a caveat in favour of the Supplier over all such property.
- 11.10. The Applicant agrees to promptly execute all documents and do all acts, matters and things (including the obtaining of consents) which the Supplier reasonably requires to more effectively secure its rights pursuant to the security interests created under this Agreement, so that, in respect of any PPSA security interests, the Supplier may:
- (a) acquire, register and maintain perfected security interests; and
 - (b) register a financing statement or financing change statement.
- The Applicant agrees not to, without the Supplier's prior written consent:
- (c) register a financing change statement in respect of a PPSA security interest contemplated or constituted by this Agreement; or
 - (d) create or purport to create any security interest in the Goods, nor 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.
- 11.11. The Applicant appoints as its duly constituted attorney the Supplier's authorised representative from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage or consent to any caveat which the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.
- 11.12. Where the Applicant has previously entered into an Agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this Agreement. The Supplier may, at its election, vary the terms of such previous

TERMS AND CONDITIONS

charges, mortgages or other securities to reflect the terms herein.

12. Provision of further information

- 12.1. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
- 12.2. The Applicant must give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Applicant and/or any other change in the Applicant's details (including but not limited to, changes in the Applicant's name, address, contact phone or fax number/s, or business practice).
- 12.3. If the Applicant is a corporation (with the exception of a public listed company), it must give the Supplier not less than fourteen (14) days prior written notice of any proposed alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.
- 12.4. In addition, the Applicant must give the Supplier not less than fourteen (14) days prior written notice of any proposed change in the Applicant's details (including but not limited to, changes in the Applicant's name, address, contact phone or fax number/s, or business practice).
- 12.5. The Applicant is liable for any loss incurred by the Supplier as a result of the Applicant's failure to comply with this clause.

13. Corporations

- 13.1. If the Applicant is a corporation, the Applicant warrants that at least two (2) of its directors have signed this Agreement and that at least two (2) of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

14. Trustee capacity

- 14.1. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
 - (a) the Applicant enters into this Agreement in both its capacity as trustee and in its personal capacity;
 - (b) the Applicant has the right to be indemnified out of trust assets;
 - (c) the Applicant has the power under the trust deed to sign this Agreement; and
 - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
- 14.2. The Applicant must give the Supplier a copy of the trust deed upon request.

15. Partnership

- 15.1. If the Applicant enters into this Agreement as partners, the Applicant warrants that all of the partners have signed this Agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
- 15.2. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

16. Execution as Agent or Attorney

- 16.1. If an agent of the Applicant enters into this Agreement, they warrant and represent that they are a duly authorised agent in accordance with s 126(1) of the *Corporations Act (Cth) 2001*.
- 16.2. If the Applicant enters into this Agreement under power of attorney, the person signing under the power of attorney:
 - (a) must provide the Supplier with a copy of the power of attorney; and
 - (b) warrants, represents and agrees that it has had no notice of revocation of the power of attorney under which it is signing this Agreement.

17. Insolvency

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

18. Waiver

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

19. Costs and indemnity

- 19.1. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this Agreement (if any).
- 19.2. The Applicant must pay, and agrees to indemnify the Supplier and keep the Supplier indemnified against, the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements

TERMS AND CONDITIONS

will be due and payable by the Applicant to the Supplier, and the Applicant's indemnification of the Supplier against such costs will have effect, irrespective of whether pursuit of the recovery action, claim or remedy is successful.

- 19.3. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows.
- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 19.1 and 19.2.
 - (b) Secondly, in payment of any interest incurred in accordance with clause 21.
 - (c) Thirdly, in payment of the outstanding invoice(s).

20. Taxes and duty

- 20.1. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this Agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
- 20.2. If as a result of:
- (a) any legislation becoming applicable to the subject matter of this Agreement; or
 - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

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

21. Interest rates

- 21.1. The interest rate on any outstanding debts is a fixed rate of «DEFAULT_INTEREST» per annum.

22. Set-off

- 22.1. All payments required to be made by the Applicant under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
- 22.2. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

23. Miscellaneous

- 23.1. References to the singular form of a word include the plural form and vice versa.
- 23.2. A reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

24. Force Majeure

- 24.1. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots,

war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.

25. Jurisdiction

- 25.1. The Applicant acknowledges and agrees that this Agreement will be governed by the laws of «JURISDICTION», and the laws of the Commonwealth of Australia which are in force in «JURISDICTION».
- 25.2. The Applicant acknowledges and agrees that any contract for the supply of Goods between the Supplier and the Applicant is formed at the Supplier's registered address in the state of «JURISDICTION».
- 25.3. The Applicant submits to the non-exclusive jurisdiction of the courts of «JURISDICTION» and the relevant federal courts and courts competent to hear appeals from those courts.

26. Independent Advice

- 26.1. Each party has been given the opportunity to seek independent legal advice with respect to the content and effect of this Agreement and has sought such advice as it deems necessary.

27. No Adverse Construction

- 27.1. No rule of construction applies to the disadvantage of a party on the basis that the party put forward this Agreement or any part of it.

28. Severance

- 28.1. If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- 28.2. If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the Agreement remains effective.

29. Variation

- 29.1. The Applicant agrees that these Terms and Conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.
- 29.2. Any proposed variation to these Terms and Conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

30. Entire agreement

- 30.1. This Agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this

TERMS AND CONDITIONS

Agreement or constitutes any collateral agreement, warranty or understanding.

31. Privacy policy

- 31.1. The Applicant acknowledges that it has read, understood and agrees to the terms and conditions of the Supplier's privacy policy.
- 31.2. The Applicant agrees that the Supplier may report and provide the Applicant's personal information to credit reporting bodies in accordance with the Supplier's privacy policy.

32. Dispute Resolution

- 32.1. If a dispute arises between the parties to this Agreement 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.

33. Building and Construction Industry Payments Act 2004 (Qld)

- 33.1. At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods then the provisions of the *Building and Construction Industry Payment Act 2004* (Qld) may apply.

DEED OF GUARANTEE & INDEMNITY

Between

(Supplier)

and

Credit Account Customer	
Credit Account Customer Name	(Credit Account Customer)

and

Guarantors			
Full Name			
Address		Drivers Licence No. <small>(Copy required)</small>	
DOB	/ /	Mobile	
Full Name			
Address		Drivers Licence No. <small>(Copy required)</small>	
DOB	/ /	Mobile	
Full Name			
Address		Drivers Licence No. <small>(Copy required)</small>	
DOB	/ /	Mobile	
Full Name			
Address		Drivers Licence No. <small>(Copy required)</small>	
DOB	/ /	Mobile	

(the Guarantors)

The Guarantors hereby covenant and undertake and if more than one, jointly and severally, as follows:

1. Personal Guarantee

- 1.1. In consideration of the Supplier agreeing to provide the Services pursuant to the Agreement to the Credit Account Customer, the Guarantors jointly and severally, personally and unconditionally guarantee the:
 - (a) punctual payment of all monies owed by the Credit Account Customer to the Supplier pursuant to the Agreement; and
 - (b) performance and observance by the Credit Account Customer of all of the terms of the Agreement.
- 1.2. No extension of time or other indulgence granted to the Credit Account Customer by the Supplier or to any of the Guarantors will operate to affect or modify any of the Guarantors obligations or covenants under this guarantee and indemnity (**Guarantee**).
- 1.3. This Guarantee is a continuing guarantee for the whole of the Credit Account Customer's indebtedness or liability in respect of the Goods

provided to the Credit Account Customer by the Supplier pursuant to the Agreement.

2. Indemnity and liability

- 2.1. The Guarantors covenant and agree to indemnify and keep indemnified the Supplier from and against all and any loss, damage, cost, charge or expense or other liability, however incurred, by the Credit Account Customer in connection with or in consequence of or arising out of any breach or default or attempted breach or default by the Credit Account Customer of any of its obligations. The Guarantors acknowledge that this indemnity is a separate and distinct and principal obligation of us as guarantor and will not be construed otherwise.
- 2.2. The Guarantors will pay any money due to the Supplier by reason of the indemnity on demand, including all costs associated with collection of payments such as legal fees and any late fees.
- 2.3. The Guarantors liability under this Guarantee will not be affected by the Credit Account Customer's insolvency or bankruptcy.

DEED OF GUARANTEE & INDEMNITY

- 2.4. This Guarantee may be enforced against the Guarantors without the Supplier first being required to exhaust any remedy it may have against the Credit Account Customer or another guarantor in respect of monies owed pursuant to the Agreement.
- 2.5. This Guarantee is in addition to, and independent of, and will not affect, or be affected by, any other or further security or guarantee held, or taken by, the Supplier now, or after the commencement date of the Agreement (**Commencement Date**), or by any loss or release by the Supplier of any other collateral or other security or guarantee, or by the Supplier failing or neglecting to recover by the realisation of any collateral or other security or otherwise any of the money hereby guaranteed or by any mistake on the Supplier's part.
- 2.6. Until the Supplier has received in full all money now or after the Commence Date owing or payable to the Supplier by the Credit Account Customer, the Guarantors are not entitled on any ground to claim the benefit of any security held by the Supplier for the payment of the money or obligations guaranteed, or either directly or indirectly to claim or receive the benefit of any dividend or payment in the winding up or bankruptcy of the Credit Account Customer.
- 2.7. If the Credit Account Customer is bankrupt or is wound up, the Guarantors are not entitled to prove or claim in the bankruptcy or winding up in competition with the Supplier so as to diminish any dividend or payment which but for such proof the Supplier would be entitled to receive in such bankruptcy or winding up, and the receipt of any dividend or other payment which the Supplier may receive in such bankruptcy or winding up will not prejudice or affect the Supplier's right to recover from the Guarantors the money hereby guaranteed.
- 2.8. The Guarantors agree and declare that all or any sums of money which may not be recoverable from the Guarantors pursuant to the guarantee whether by reason of any legal limitation, disability or incapacity on or of the Credit Account Customer or any other fact or circumstance and whether known to the Supplier or not will nevertheless be recoverable from the Guarantors as sole or principal debtor in respect thereof and will be paid by the Guarantors on demand.

3. Security Interest

- 3.1. As security for each Guarantor's obligations under this Guarantee, each Guarantor grants the Supplier a Security Interest over all PPSA Property.
- 3.2. For the purposes of section 20(2)(b)(ii) of the PPSA, each Guarantor acknowledges that the Security Interest over all PPSA Property is taken in all of the Guarantors present and after acquired property.
- 3.3. For the purposes of section 19(2) of the PPSA, each Guarantor:

- (a) warrants that the Guarantor's rights in the Personal Property, or the power to transfer rights in the Personal Property, to the Supplier; and
- (b) acknowledges that the Supplier has given value for its security interest in the Personal Property, including by its providing or continuing to make available any financial accommodation to the Credit Account Customer.

- 3.4. The Guarantors agree to execute all documents and do all acts, and things which the Supplier requires to more effectively secure its rights pursuant to the security interest created under this Guarantee.
- 3.5. The Guarantors agree that sections 95, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA will have no application to this Guarantee and the Guarantors waive their rights under section 157 of the PPSA to receive a notice under that section.
- 3.6. As further security for payment to the Supplier of all monies payable by the Credit Account Customer, each Guarantor grants to the Supplier the right to place a caveat in favour of the Supplier over any and all of each Guarantor's interest in freehold and leasehold property both current and later acquired.

4. General Provisions

- 4.1. This guarantee shall bind each of the signatories notwithstanding that all of the listed signatories have not signed.
- 4.2. The Guarantors have obtained independent legal advice regarding the obligations imposed upon the Guarantor under this Guarantee.
- 4.3. The Guarantors freely and with full knowledge of the obligations imposed upon them agree to provide this personal guarantee.
- 4.4. The law applicable to this Guarantee is the law of the State of Queensland and the Guarantors submit themselves to the jurisdiction of the Courts of Queensland and any competent appellate courts.
- 4.5. The Guarantors are deemed to unconditionally sign, seal and deliver this Guarantee as a deed, with the intention of being immediately legally bound by its terms.
- 4.6. Agreement means the agreement dated on or about the date of this Guarantee between the Supplier and the Credit Account Customer and to which this Guarantee is annexed.
- 4.7. References to the singular form of a word include the plural form and vice versa.
- 4.8. A reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.
- 4.9. Terms not defined in this Guarantee have the same meaning as defined in the Agreement.

DEED OF GUARANTEE & INDEMNITY

Executed as a deed on _____ / _____ / _____

Signature:

Guarantor
Name:

Signature:

Guarantor
Name:

Signature:

Guarantor
Name:

Signature:

Guarantor
Name:

Witness

Signature:

Witness

Name:

Witness

Signature:

Witness

Name:

Witness

Signature:

Witness

Name:

Witness

Signature:

Witness

Name:

Executed by _____ in)
accordance with section 127 of the Corporations Act)
2001)

.....
Director

.....
Director/Secretary

.....
Name (please print)

.....
Name (please print)