

**J. L. STEWART & SON PTY LTD ABN 15 000 664 826**

176 Power Street  
GLENDENNING NSW 2761

PO Box 419  
DOONSIDO NSW 2767

Phone: 02 8805 1400  
Fax: 02 9677 2623

## APPLICATION FOR COMMERCIAL CREDIT

### Applicant

Trading name			
Name of company, trust, person(s) or partnership operating business			
ACN		ABN	
Business street address			
Business postal address			
Tel (business/home)		Fax (business/home)	
Email			
Name of bank		Branch	
Account no.		BSB	
Date business commenced		Nature of business	
Purchasing contact		Accounts contact	
Expected monthly purchases			

### Details of partner/director

Name		DOB	
Address		Drivers licence	
Title		Mobile	
Name		DOB	
Address		Drivers licence	
Title		Mobile	
Name		DOB	
Address		Drivers licence	
Title		Mobile	

### Trade references

Name		Telephone	
Address		Fax	
Name		Telephone	
Address		Fax	
Name		Telephone	
Address		Fax	

# TERMS AND CONDITIONS

## Payment terms

1. The terms of payment are strictly:
  - (a) payment prior to dispatch of goods;
  - (b) cash on delivery;
  - (c) payment within seven (7) days of receipt of goods;
  - (d) payment within fourteen (14) days of receipt of goods;
  - (e) payment within fifteen (15) days of statement date; or
  - (f) such other period as nominated by the supplier herein.
2. J. L. Stewart & Son Pty Ltd ABN 15 000 664 826 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (**Supplier**) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
3. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.
4. Should the Applicant not pay for the goods or services 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 charge an administration fee of:
  - (a) 10 percent of the amount of the invoice payable; and
  - (b) a further 10 percent per annum payable per year, or part thereof, until payment by the Applicant.
5. Should the account be in arrears at any time, the Supplier may at its discretion cancel or delay the delivery of orders.
6. Bill of exchange is accepted as payment subject to clearance.
7. All previous discounts, rebates or sale on freight allowances retrospectively come inoperative if payment of an account is in arrears, or if legal proceedings are necessary to recover the debt or if bankruptcy or liquidation proceedings are commenced by any person against the Applicant.
8. All payments must be forwarded to the Supplier direct, or where prior arrangements have been made to the Supplier's nominated bank account.

## Fees

9. All orders from the Supplier that are cancelled by the Applicant after dispatch are liable to a fee of 20 percent of the order value.
10. The Supplier accepts payment by cash, cheque, credit card (1.5 percent surcharge applies to each transaction value), direct deposit into the Suppliers nominated bank account and direct debit from the Applicant's nominated bank account.
11. The Supplier reserves the right to charge a delivery fee for orders with an invoice value of \$300.00 or less together with a fuel levy as set by the Supplier on invoices.

## Delivery

12. The Supplier will make every effort to effect delivery as quoted, however will not be liable for loss or damage caused by delay in delivery.
13. If delivery cannot be affected for an extended period of time due to circumstances beyond the Supplier's control, the Supplier may terminate this agreement without being liable for compensation. This right applies notwithstanding if the Supplier may have delivered a portion of a larger consignment at the relevant time.
14. Unless otherwise agreed in writing, the Supplier is authorised to make part deliveries of goods which are to be treated as separate deliveries for the purpose of payment and compensation.
15. The Applicant shall inspect the goods immediately on arrival thereof and shall within twenty four (24) hours from the time of arrival give notice to the Supplier if they believe the goods are not in accordance with this agreement.
16. If the Applicant fails to give such notice as detailed in clause 15 the goods shall be deemed to be, in all respects, in accordance with this agreement and the Applicant shall be bound to accept and pay for the goods.
17. It is the Applicant's responsibility to ensure that an authorised representative is present to accept delivery of the goods. The Supplier will not be liable in any circumstances for the goods being left at the nominated place of delivery if no one is present to accept delivery.

## Jurisdiction

18. The Applicant acknowledges and agrees that this agreement will be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
19. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
20. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

## Security/charges

21. 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.
22. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
23. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat 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.
24. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009* (**PPSA**)) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Applicant under this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## Purpose of credit

25. 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.

## Formation of contract

26. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer will complete a contract.
27. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.

## Retention of title

28. Title in the goods does not pass to the Applicant until the Applicant has made payment in full for the goods and, further, until the Applicant has made payment in full of all the other money owing by the Applicant to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
  - (a) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
  - (b) under section 130 to receive a notice to dispose of goods;
  - (c) under section 132(2) to receive a statement of account following disposal of goods;

29. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
30. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
31. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
32. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 31 hereof unless and until the funds held on trust are remitted to the Supplier.
33. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
34. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 33. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
35. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
36. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

## Claims

37. Any claim made in accordance with clauses 15-17 arising from shortage, loss or damage must be made to the Supplier within seven (7) days of receipt of the goods.
38. Any claim made for incorrect charges must be made within thirty (30) days of receipt of the goods.

## Returns

39. No returns will be accepted without prior approval from the Supplier.
40. Any goods must be adequately packed for transport.
41. The supplier accepts no responsibility for goods returned without authorisation, or which are inadequately packed for transport.
42. The Supplier will not under any circumstances accept any returns which have been altered or made defective in any way or upon which any additional alterations have been performed.
43. Authorised rejects shall be duly credited however, the Supplier shall not be obligated to replace such rejects.
44. No claims for returns or refunds whatsoever shall be entertained once the goods are used in any way by the Applicant.
45. All returned goods must be received by the Supplier within thirty (30) days of purchase or delivery in the original packaging.

## Cancellation of terms of credit

46. 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.
47. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

## Indemnity

48. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

## Provision of further information

49. 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.
50. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any 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.

## Corporations

51. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

## Trustee capacity

52. 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.
53. The Applicant must give the Supplier a copy of the trust deed upon request.
54. 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.

## Insolvency

55. 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.

## Waiver

56. 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.
57. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA:
  - (a) under section 95 to receive notice of intention to remove an accession;
  - (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
  - (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
  - (d) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
  - (e) under section 135 to receive notice of any proposal of the Supplier to retain goods;
  - (f) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;

- (g) under section 142 to redeem the goods;
- (h) under section 143 to reinstate the security agreement; and
- (i) under section 157(1) and 157(3) to receive a notice of any verification statement.

#### Costs

58. 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).
59. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
60. 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 33 and 59.
  - (b) Secondly, in payment of any interest incurred in accordance with clause 3.
  - (c) Thirdly, in payment of the outstanding invoice(s).
61. In circumstances where the Supplier seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Applicant will be allocated in a manner at the Suppliers absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which the Supplier seeks to enforce its purchase money security interest.
62. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 61 herein.
63. Payments allocated (and/or reallocated) under clause 61 and/or 62 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

#### Taxes and duty

64. 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.
65. 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.

#### Set-off

66. 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.
67. 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.

#### Miscellaneous

68. 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.
69. In relation to the supply of goods, the Supplier's liability is limited to:
  - (a) replacing the goods or supplying similar goods;
  - (b) repairing the goods;
  - (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
  - (d) providing the cost for having the goods repaired.
70. In relation to the supply of services, the Supplier's liability is limited to:
  - (a) supplying the service again; or
  - (b) providing for the cost of having the services supplied again.

71. 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.
72. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.
73. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.
74. The Applicant further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
75. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
76. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

#### Severance

77. 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.
78. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

#### Variation

79. 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.
80. 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.
81. Variations requested by the Applicant will only be binding upon the Supplier if they are accepted in writing.

#### Consent to register

82. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
83. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

#### Entire agreement

84. 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 agreement or constitutes any collateral agreement, warranty or understanding.
85. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Applicant and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

#### Privacy Act

86. The Applicant agrees to the terms of the *Privacy Act 1988* authorisation contained in this document.

The Applicant hereby applies for the opening of an account and provides the above information in support thereof.

I am/We are authorised to sign this credit application form on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge.

<b>Signature (Director/Owner)</b>		<b>Signature (Witness)</b>	
<b>Name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			
<b>Signature (Director/Owner)</b>		<b>Signature (Witness)</b>	
<b>Name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			
<b>Signature (Director/Owner)</b>		<b>Signature (Witness)</b>	
<b>Name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			

## FOR COMPLETION BY SUPPLIER

The Applicant's credit application is accepted. Signed for and on behalf of the Supplier.

Signature		Position	
Name (print)		Date	

### ACCOUNT APPROVED FOR PAYMENT (supplier to nominate)

The terms of payment are strictly:

Payment prior to dispatch of goods

Cash on delivery

Payment within seven (7) days of receipt of goods

Payment within fourteen (14) days of receipt of goods

Payment within fifteen (15) days of statement date

<input checked="" type="checkbox"/>

### PRIVACY ACT 1988 AUTHORISATION

To enable the Supplier to assess the credit application or to review any existing credit, the Applicant and Guarantors authorise the Supplier to obtain:

1. from a credit reporting agency a credit report containing personal information about the Applicant and Guarantors in relation to credit provided by the Supplier (section 18K(1)(a) of the *Privacy Act 1988*);
2. a report from a credit reporting agency containing personal information about the Applicant and the Guarantors (section 18K(1)(b) of the *Privacy Act 1988*); and
3. a report containing information about the Applicant's and the Guarantors' commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of a person or an entity in relation to credit provided by the Supplier (section 18L (4) of the *Privacy Act 1988*).

The Applicant authorises the Supplier to provide certain personal information about the Applicant under section 18E(8)(c) of the *Privacy Act 1988*. The information which may be given to an agency is covered by section 18E(1) of the *Privacy Act 1988* and includes:

1. the fact that application for credit has been made;
2. the fact that the Supplier is a credit provider to the Applicant;

3. payments which become overdue more than 60 days;
4. advice that payments are no longer overdue;
5. cheques drawn by the Applicant in excess of \$100 that have been dishonoured more than once;
6. in specified circumstances, that in the opinion of the Supplier the Applicant has committed a serious credit infringement;
7. that the credit provided to the Applicant by the Supplier has been discharged.

In accordance with section 18N(1)(b) of the *Privacy Act 1988*, the Applicant authorises the Supplier to give and obtain from credit providers named in this credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Applicant's credit arrangement. The Applicant acknowledges that the information can include any information about the Applicant'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 1988*.

# DEED OF GUARANTEE & INDEMNITY

To J. L. Stewart & Son Pty Ltd ABN 15 000 664 826

(Supplier)

Name		Address	
Name		Address	

(Guarantors) hereby covenant and undertake and if more than one, jointly and severally, as follows.

## Jurisdiction

- The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of New South Wales, and the laws of the commonwealth of Australia which are in force in New South Wales.
- The parties to this guarantee and indemnity submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

## Consideration

- In consideration of the Supplier extending or agreeing to extend credit or further credit to the Applicant at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold or to be sold from time to time, the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Applicant on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Applicant to the Supplier arising out of a relationship of trustee and beneficiary.

## Guarantee and indemnity

- The Guarantors agree to guarantee and indemnify the Supplier against all losses damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Applicant to make due payment of any money owing to the Supplier whether for goods sold or otherwise or to observe the terms of any agreement between the Applicant and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Applicant or any Guarantor and whether successful or not or whether frustrated by the Applicant or Guarantor or by operation of law and including costs ordered by a court to be paid by the Supplier to the Applicant or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier.
- This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier to the credit of any account of the Applicant or the Guarantors, or deemed to be held on trust by the Applicant for the Supplier, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 3 and 4 of this guarantee and indemnity.
- Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
- The Supplier will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Applicant to pay and with or without notice to the Applicant, as if the primary liability for any money owing was the Guarantors' own. Further, the Suppliers will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
- This guarantee and indemnity will continue in force until such time as the Supplier releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Applicant.
- This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
  - any other security taken by the Supplier from the Applicant or from any other person;
  - any waiver or indulgence, whether as to time or otherwise, given to the Applicant or to the Guarantors or any one or more of the Guarantors;
  - by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
  - any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

## Right of subrogation

- In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Applicant whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Applicant unless and until the Supplier has been paid in full.
- In the event of the Applicant going into liquidation, the Guarantors will be prohibited from proving in competition with the Applicant unless and until the Supplier has been paid in full.

## Insolvency of Applicant

- No sum of money which the Applicant pays to the Supplier and the Supplier later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Applicant by reason of the *Corporations Act 2001*, *Bankruptcy Act 1966* or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Applicant.

## Costs

- The Supplier is at liberty from time to time to charge the account of the Applicant with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:
  - the account of the Applicant;
  - this guarantee and indemnity;
  - any other security in respect of the indebtedness of the Applicant to the Supplier;
  - the preparation, completion and stamping of this deed; or
  - the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this deed;and the same will be part of the monies secured by this deed.
- The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.
- The Guarantors appoint as their duly constituted attorney the Supplier's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

## Variation

- The Guarantors authorise the Supplier to give time or any other indulgence or consideration to the Applicant in respect of compliance with its obligations to the Supplier, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
- The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Supplier making any variation or alteration in the terms of its agreement(s) with the Applicant, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

## Severance

- If any provision of this guarantee and indemnity 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.

## Security/charge

- The Guarantors charge in favour of the Supplier all of their estate and interest in any real property that the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
- The Guarantors charge in favour of the Supplier all of their estate and interest in any personal property that the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
- This guarantee and indemnity secures the repayment of all monies owed by the Applicant whatsoever, and this deed constitutes the entire guarantee.
- Where the Guarantors have previously entered into an agreement with the Supplier by which the Guarantors have granted a charge, mortgage or other security interests will continue and co-exist with the obligations and security interests created in this deed and will secure all indebtedness and obligations of the Guarantors under this deed. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## Personal Property Securities Act

- For the avoidance of any doubt, the security interest(s) created by this instrument in favour of the Supplier constitutes security interests pursuant to the *Personal Property Securities Act 2009*.
- The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

## Service of notices

- The Guarantors agree to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Guarantors or the Guarantors' authorised representative.

## Privacy Act

- The Guarantors agree to the terms of the *Privacy Act 1988* authorisation contained in this document.

Dated			
Signed, sealed and delivered by the guarantor/director/owner	Signature		
	Name		
	Position		
	Witness signature		
	Name		
Signed, sealed and delivered by the guarantor/director/owner	Signature		
	Name		
	Position		
	Witness signature		
	Name		