

TO THE SUPPLIER

We request that you allow us credit (“**Credit Facilities**”) for all goods and services (“**Goods and Services**”), sold to us regardless of when, or whether or not the Goods and Services have been delivered and in consideration of your so doing and in order to induce you, in your discretion, to grant the Credit Facilities to us, we represent and warrant to you that the particulars set out in this Credit Application are true and correct in every particular and that we agree to be bound by the terms and conditions contained in this document and your terms and conditions of trade (if any) (together, “**Terms and Conditions**”). We acknowledge and agree that this Credit Application shall be deemed accepted and binding upon endorsement to that effect by the Supplier in the section herein labelled “OFFICE USE ONLY”, whether or not such endorsement is communicated to us.

Signature _____ Date _____
Print Name _____ Capacity or office held _____

PART 2 – CREDIT AGREEMENT

TO THE SUPPLIER

Should the Application for Credit be approved for Credit Facilities in favour of the Applicant, the Applicant agrees to the due and punctual payment and performance by the Applicant of all its obligations and other liabilities in accordance with the Terms and Conditions and in respect of all the contracts and agreements entered into with the Supplier and in addition agrees, undertakes and acknowledges as follows:-

- (a) To pay for all Goods and Services purchased from the Supplier in accordance with the Terms and Conditions.
- (b) Should the Applicant fail to pay for any Goods and Services in accordance with the Terms and Conditions, or in the event of any other non-compliance by the Applicant, then;
 - (i) interest shall accrue on all invoices then outstanding at the rate prescribed by the *Penalty Interests Rates Act (Vic) 1983* (or successor legislation);
 - (ii) the whole amount then owing by the Applicant to the Supplier in respect of the Goods and Services (including any amounts which would not otherwise be payable until a later date) shall become immediately due and payable at the option of the Supplier; and
 - (iii) the Credit Facilities may be suspended at the option of the Supplier with, or without notice to the Applicant.
- (c) Except as otherwise provided for in this Credit Agreement, all sales and provision of Goods and Services to the Applicant are subject to the Terms and Conditions of the Supplier as determined by the Supplier from time to time, provided that any change in the terms shall apply only to transactions taking place after any such change.
- (d) For the purpose of this Credit Agreement, a certificate signed by any authorised officer of the Supplier stating that any amount is the amount in which the Applicant is at that time in debt to the Supplier shall be conclusive evidence of the truth of its contents and shall be binding upon the Applicant. Unless there is a manifest error on the face of the certificate, or if in any circumstances the preceding provisions of this paragraph shall be ineffective at law, the certificate shall be prima facie evidence of the matters contained therein.
- (e) The Supplier may at any time and in its sole discretion, refuse to extend any credit to the Applicant.
- (f) Notwithstanding the provisions in clause (b) above, in event that the Applicant;
 - (i) shall become bankrupt; or
 - (ii) being a company, an application shall be made to wind up the Applicant, or a receiver, a receiver and manager, or an official manager shall be appointed in respect of the Applicant; or
 - (iii) shall make an arrangement or composition with the creditors of the Applicant, or attempt to make such an arrangement or composition; or
 - (iv) shall be unable to pay the debts of the Applicant as they fall due; or
 - (v) shall cease business; or
 - (vi) shall have execution levied against any of the assets of the Applicant,

then all monies then owing to the Supplier (including any amounts which would not otherwise be payable until a later date or dates, shall become immediately due and payable without any deduction or set off and the Supplier will be at liberty to take any action it considers necessary to enforce any Security Interest, or other rights it has in respect of any such amounts owing, including, but not limited to, suspension of the Credit Facilities.

- (g) All goods supplied by the Supplier shall remain the property of the Supplier as security for its purchase price until such time as the Supplier has received the full payment therefor, but subject to this limitation, the Supplier acknowledges that the Applicant may deal, sell or trade with the goods in the normal course of business providing that the Applicant shall pay to the Supplier the agreed price of the goods in accordance with the terms and conditions of this Credit Agreement and the trading terms and conditions. Pending payment to the Supplier, the Applicant shall set aside in a separate bank account the proceeds of sale obtained by the Applicant in respect of the goods and be taken to hold such proceeds on

trust for the Supplier. So long as the goods shall remain the property of the Supplier pursuant to this clause, the Applicant shall hold the goods separately from other goods held by the Applicant. Notwithstanding the foregoing provisions of this clause, so long as the goods shall remain the property of the Supplier pursuant to the provisions of this clause, the Applicant shall maintain the goods in the same order and condition as when supplied by the Supplier to the Applicant and the Applicant shall bear all risk in respect of the goods. Should any of the events specified in clause (f) above occur so that all monies owing by the Applicant to the Supplier shall become immediately due and payable, the Supplier shall have the immediate right of retaking possession of the goods wherever they may be without the necessity of giving any prior notice to the Applicant and the Applicant acknowledges and authorises the Supplier, or its servants or agents to enter the premises upon which the goods are situated and to retake possession of the goods and further acknowledges that the Supplier shall not be liable for any costs, losses, damages, or other expenses suffered by the Applicant, or any third party in respect of such taking of possession and all such costs, losses, damages, or other reasonable expenses incurred by the Supplier, or on its behalf, or by any third party shall be paid by the Applicant to the Supplier upon demand. The Applicant acknowledges and agrees that this clause grants to the Supplier a purchase money security interest to the extent that it secures payment of the amounts owing to it in relation to the purchase of the relevant goods pursuant to section 14 of the Personal Property Securities Act 2009 (Cth) ("**PPSA**").

- (h) No failure on the part of the Supplier to exercise any of its rights, powers, discretions and remedies pursuant to this Credit Agreement or at law, or any delay on the part of the Supplier in exercising any such rights, powers, discretions and remedies, shall operate as a waiver of any kind, nor shall any single or partial waiver of any such rights, powers, discretions and remedies preclude any further exercise of these or other rights. Any waiver or consent by the Supplier under this Credit Agreement is effective only if in writing signed by the Supplier, or by any manager or officer of the Supplier and then only to the extent expressly stated in such writing.
- (i) To indemnify the Supplier against all losses and expenses it may sustain as a result of any dealings with the Applicant and enforcing and/or attempting to enforce its rights against the Applicant including, but not limited to, legal costs incurred by the Supplier on a full indemnity basis.

THE APPLICANT hereby agrees to each and every provision of this Credit Application and the above Credit Agreement and agrees to be bound thereby. The Applicant acknowledges having read and understood all such provisions.

(if self-employed trader, sign here)

SIGNED BY THE APPLICANT

Signature

Print Name

(if partnership, company or trust, sign here)

SIGNED FOR AND ON BEHALF OF THE APPLICANT

Signature

Print Name

Capacity or office held

DATED the day of 20 .

PART 3 – DEED OF GUARANTEE, INDEMNITY AND CHARGE

TO THE SUPPLIER

We jointly and severally **GUARANTEE** to you payment of all monies and performance of all obligations by the Applicant or any of us arising from any dealing with you whatsoever.

We jointly and severally **INDEMNIFY** you against all losses and expenses you sustain as a result of any dealing you have with the Applicant, or any of us including, but not limited to, legal costs incurred by you, on a full indemnity basis.

We jointly and severally **AGREE**:

- (a) To pay to you any amount certified by you as payable before we become entitled to dispute whether or not that amount is payable.
- (b) This Guarantee shall remain effective notwithstanding any conduct or event which, but for this clause may have the effect of releasing the Applicant or any of us.
- (c) This Guarantee is signed by us both in our personal capacity and as Trustees of each and every trust of which we are Trustees.

We jointly and severally **CHARGE** in your favour all of our estate and interest in any land anywhere in Australia in which we now have any interest (or in which we later acquire any interest) with payment of all monies owed to you by the Applicant or any of us and all legal costs incurred by you, on a full indemnity basis, in the enforcement or attempted enforcement of the terms of this Guarantee, Indemnity and Charge, including the costs of registration and withdrawal of a Caveat.

We hereby jointly and severally grant you a security interest in, and **CHARGE** in your favour, all our present and after-acquired property to secure payment of all monies owed to you by the Applicant or any of us, and all legal costs incurred by you, on a full indemnity basis, in the enforcement or attempted enforcement of the terms of this Guarantee, Indemnity and Charge and grant of security interest, including the costs of registration on the Personal Property Securities Register and withdrawal of same, as may

be desired by you or required by law. For the avoidance of doubt the aforementioned security interest includes anything in respect of which we have at any time a sufficient right, interest or power to grant a security interest and all property we hold now or at any time in the future as trustee of any trust.

PPSA

In respect of Part 2 and Part 3 of this Credit Application, to the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA;
 - (i) you need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - (ii) we agree to the exclusion of sections 142 and 143 of the PPSA;
- (b) for the purposes of section 115(7) of the PPSA, you need not comply with sections 132 and 137(3)

In respect of Part 2 and Part 3 of this Credit Application, to the extent the law permits, we waive:

- (a) our rights to receive any notice that is required by:
 - (i) any provision of the PPSA (including a notice of a verification statement); or
 - (ii) any other law before you exercise a right, power or remedy; and
- (b) any time period that must otherwise lapse under any law before you exercise a right, power or remedy.

CONSIDERATION (WHERE APPLICABLE):

You grant credit from time to time to the Applicant, or any of us and refrain from taking any legal action for 30 days from the date hereof against the Applicant, or any of us in respect of any Goods and Services sold and/or provided both to date and in future.

PROPER LAW:

We agree that this Deed of Guarantee, Indemnity and Charge and any claim and/or dispute between the Supplier, the Applicant, or any of us at all shall be governed by Victorian law and subject to the jurisdiction of the appropriate Victorian Court.

DEFINITIONS:

- (a) "You" and "your" shall be a reference to each of the companies listed below as the Supplier jointly and severally.
- (b) "We" and "us" shall be a reference to each of the Guarantors and the Applicant jointly and severally.

DATED the _____ day of _____ 20

THE PARTIES:

SUPPLIER MYM TIMBER & HARDWARE PTY LTD COMPANY NAME
of 1 – 5 Slater Parade, East Keilor, Victoria 3033

APPLICANT _____
of _____

SIGNED SEALED AND DELIVERED BY THE GUARANTORS

- 1. Name _____ of _____
Signature _____
Witness _____ Print name of witness _____
- 2. Name _____ of _____
Signature _____
Witness _____ Print name of witness _____

ATTACH
Copy Drivers' Licences