

## CREDIT APPLICATION

**"Company"** means Simon Pty Ltd (ABN 36 009 667 725) trading as **Simon Home Timber & Hardware** and **Simon Home Frame & Truss**.

**Please Note:**

**This application form is an important document. The information you give and the attached Terms of Sale outline the basis upon which credit will be granted by the Company to you as a Customer.**

The procedure to be followed to complete this application form is:

1. Read the attached Terms and Conditions of Trade.
2. Complete all details in the relevant sections. If you have any questions with regard to the information we've requested, please contact the Credit Manager of the Company.
3. If the Applicant is a company, the Deed of Guarantee and Indemnity form on the last page must be completed by all directors of the company. Guarantors should not witness each other's signature and witnesses must be aged 18 years or older.
4. If you have any queries about what you are signing, particularly regarding the guarantee and indemnity, the Company suggests you obtain independent commercial, financial and/or legal advice.
5. Hand the completed form to the Credit Manager of the Company or post it to the head office at PO Box 37, Toowoomba Qld 4350. Email to sales@simonhome.com.au.

The form can also be completed by typing in the fields. Users with an Adobe account can sign it electronically, otherwise it can be completed, printed, signed and returned.

Whilst fax and email versions of the application and guarantee will be processed to establish your account, all original documents must be returned to the Company within 7 days of submitting those forms by email or fax. If you fail to do so, the Company may suspend supply.

6. Your application will be assessed by the Company and you will be advised of the result of your application for a credit account.

# APPLICANT'S DETAILS

Applicant/Company Name: \_\_\_\_\_ ACN: \_\_\_\_\_

Trading Name: \_\_\_\_\_ ABN: \_\_\_\_\_

Business Address: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Postal Address (if different from above): \_\_\_\_\_ Postal Code: \_\_\_\_\_

Business Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Mobile No.: \_\_\_\_\_ Email Address: \_\_\_\_\_

Business/Occupations: \_\_\_\_\_ QBCC No.: \_\_\_\_\_ State: \_\_\_\_\_

Employer's Name: \_\_\_\_\_ How long? \_\_\_\_\_

**Are you a?**  Sole Trader  Partnership  Company  Trust Company  Trustee of a Trust

**If Sole Trader/Partnership:** NAMES OF OWNERS / **If a Company:** NAMES OF DIRECTORS

1. Full Name:	POSITION:	DOB:
Home Address:		Phone:
2. Full Name:	POSITION:	DOB:
Home Address:		Phone:
3. Full Name:	POSITION:	DOB:
Home Address:		Phone:
4. Full Name:	POSITION:	DOB:
Home Address:		Phone:

How long have you operated this business? \_\_\_\_\_

Is trading address premises:  Owned  Leased  Rented For How long? \_\_\_\_\_

IF not owned, What name/s are premises in: \_\_\_\_\_

If owned, Value of your equity in Property: \$ \_\_\_\_\_ (Market Value Less Mortgages)

**Details of other Assets** including value of each item / property  
(N.B.: Please do not list personal effects, tools of trade, superannuation, vehicles, etc.)

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_

Contact details of closest relative not living with you: \_\_\_\_\_

CREDIT REFERENCES				
LIST THREE (3) CURRENT BUSINESS REFERENCES				
Business Name	Account Name/Number	Telephone No.	Fax No.	Contact Name

Credit Limit Requested: \$ \_\_\_\_\_ Order No. Required:  Yes  No

License Name:

License No.:

Nominee Name (if a Company):

Allowable Turnover:

Is there a Deed of Covenant & Assurance attached to the license?  Yes  No

Directors may be required to supply latest Financial Accounts. Please acknowledge willingness to do so  Yes

## Electronic Transmission of Invoices

We will automatically email your invoices / credits to your nominated email address on a daily basis.

## Access to your account online

Through our Trade Portal you can access your Simon Home account online. This allows you to look at or print past and current invoices, check on the status of orders or price up a quote for materials at a time of the date that suits you.

Would you like access to your account online?  Yes  No

## ACKNOWLEDGEMENT BY APPLICANT/S

1. The applicant has read and understood the Terms and Conditions of Trade of the Company and agrees to be bound by them.
2. The Applicant is aware that the granting of credit by the Company to the Applicant will require the Applicant (and/or Third Party Guarantors) to grant the Company a charge over all land held by the Applicant, including land held as trustee of a trust. If the Applicant fails to make payment in accordance with the attached Terms and Conditions, the Company may be entitled to lodge caveats over the property and potentially sell it to recover payment. The Applicant and Guarantors are hereby advised to seek independent legal and financial advice before submitting an application for credit.
3. It is the Applicant's intention to apply to the Company for a credit account.
4. Should this Application be accepted by the Company, the Applicant agrees that the credit account shall be issued by the Company subject to the Terms and Conditions of Trade, a copy of which is contained herein.
5. If the Customer is an individual or individuals, the Customer consents to the Company disclosing personal information about the Customer to credit reporting agencies for the purpose of conducting a credit reference check and further consents to the collection of personal information about the Customer from credit reporting agencies and other sources. The Customer also consents to the Company using the Customer's personal information for direct marketing in accordance with the Company's privacy policy on its website.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant(s)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Applicant(s)Name in full

\_\_\_\_\_  
Witness' Name in full

\_\_\_\_\_  
Signature of Applicant(s)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Applicant(s)Name in full

\_\_\_\_\_  
Witness' Name in full

\_\_\_\_\_  
Signature of Applicant(s)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Applicant(s)Name in full

\_\_\_\_\_  
Witness' Name in full

# TERMS AND CONDITIONS OF TRADE

## 1. Interpretation

- 1.1. Unless otherwise inconsistent with the context the word "person" shall include a corporation.
- 1.2. Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
- 1.3. "ACL" means Australia Consumer Law as that term is defined in the Competition and Consumer Act 2010.
- 1.4. "Consumer" has the same meaning as stated in the ACL
- 1.5. "Customer" shall mean the person named as "the Applicant" on the credit application annexed hereto.
- 1.6. "Default Event" means an event specified as a default event at clause 9.
- 1.7. "Due date" means thirty (30) days from the end of the month in which the Goods are invoiced to the Customer.
- 1.8. "Goods" means Goods supplied by the Company to the Customer and where the context so permits shall include any supply of Services as defined herein.
- 1.9. "GST" means Goods and Service Tax.
- 1.10. "Guarantor" means that person (or persons) or entity who agrees to be liable for the debts of the Customer on a principle debtor basis and who has signed the Deed of Guarantee.
- 1.11. "Notice(s)" means any and all documents that may be required to be served on the Customer and/or the Guarantor, including but not limited to correspondence, invoices and legal proceedings or documents brought into effect to enforce the Company's rights under the Terms & Conditions of Trade and/or the Guarantee.
- 1.12. The "Company" means Simon Pty Ltd ABN 36 009 667 725 trading as Simon Home Timber & Hardware, including all successors and assigns.
- 1.13. "Services" means all Services supplied by the Company to the Customer.

## 2. Offer and Acceptance

- 2.1. Any quotation provided to the Customer by the Company does not constitute an offer to provide Goods or Services to the Customer. The Company shall not be bound by any Customer order (given in response to a quotation or otherwise) until such order is accepted by the Company in writing or processed by the Company and delivered, or made available for collection. The supply of all Goods and Services by the Company to the Customer is subject to these Terms and Conditions of Trade. Any Terms and Conditions contained in any Customer's order, offer, acceptance or other document that are not contained herein or otherwise conflict with these Terms and Conditions of Trade are hereby expressly excluded to the fullest extent permitted by law.

## 3. Delivery

- 3.1. Any date quoted for delivery ("the quoted date") is an estimate only and unless a guarantee shall be given by the Company in writing the Company shall not be liable to the Customer for any loss or damage arising out of or related to delivery of Goods before or after the quoted date. The Customer shall not refuse to pay for Goods or Services because the Company has not delivered by the quoted date. Written advice to the Customer that Goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment contained herein shall apply.
- 3.2. The Company reserves the right to deliver by instalments. If delivery is made by instalments the Customer shall not be entitled:
  - a) to terminate or cancel the contract; or
  - b) to any claim for loss or damage, howsoever arising out of any failure by the Company to deliver on or before the quoted date.
- 3.3. Any quotation containing a provision to supply Goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the Customer's order.

## 4. Payment

- 4.1. Unless otherwise agreed in writing, payment terms are net cash thirty (30) days from the end of the month in which the Goods are invoiced to the Customer.
- 4.2. The Customer shall pay the price of any Goods supplied by the Company and any GST in addition to the price.
- 4.3. Payment for all Goods and Services must be made by the due date despite the date on which the Customer receives any invoice or statement in respect of the Goods and Services or any dispute in respect of same.
- 4.4. All terms herein relating to payment for Goods and Services provided by the Company:
  - a) are fundamental terms
  - b) must be strictly adhered to – that is, time is of the essence with respect to all payment obligations under these Terms and Conditions of Trade.

## 5. Title

- 5.1. Notwithstanding the delivery of the Goods or part thereof, the Goods remain the sole and absolute property of the Company as full legal and equitable owner until such time as the Customer has paid the Company the full price together with the full price of any Goods then the subject of any other contract with the Company.
- 5.2. The Customer acknowledges that he receives possession of and holds Goods delivered by the Company as bailee for the Company until such time as the full price including any GST is paid to the Company in full.

# TERMS AND CONDITIONS OF TRADE (cont.)

- 5.3. Until the Goods are paid for in full including any GST, the Company authorises the Customer to sell the Goods as its agent. However, the Customer shall not represent to any third parties that it is acting in any way for the Company. The Company will not be bound by any contracts with third parties to which the Customer is a party.
- 5.4. The Customer is entitled to a period of credit, but if prior to the expiration of the period of credit the Goods are sold and the proceeds of sale are received by the Customer then the Customer shall account to the Company for the price of the Goods including any GST.
- 5.5. If the Customer does not pay for any Goods by the Due Date then the Company is hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer in which the Goods are stored) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence, assault and battery or payment of any compensation to the Customer whatsoever.
- 5.6. On retaking possession of the Goods the Company may elect to refund the Customer any part payment that may have been made or to credit the Customer's account with the value of the Goods and/or Services less any charge for recovery same, damage to same and may proceed to resell the Goods at its option.

## 6. Risk, Liability and Warranty

- 6.1. Unless otherwise agreed in writing, risk in the Goods shall pass to the Customer upon delivery of the goods to the nominated delivery address or to the roadside or similar location that is adjacent to the delivery address or to the carrier nominated by the Customer.
- 6.2. The Company warrants that the Goods or Services supplied to the Customer are owned by the Company, are free from third party claims, undisclosed securities and are of acceptable quality as defined in the Australian Consumer Law. All other warranties, conditions and guarantees which may be otherwise implied into the Terms and Conditions are expressly excluded, except to the extent that it is forbidden by statute to do so.
- 6.3. The Company shall not be liable for any defects or damages caused in whole or in part by misuse, abuse, neglect, improper application, repair or alteration (other than by the Company) or accident.
- 6.4. The following clauses apply to the supply of goods and/or services that are not of the kind ordinarily acquired for personal, domestic or household purposes, provided that this clause will have no application if the Customer establishes that reliance on it would not be fair and reasonable.

## 7. Claims and Returns

- 7.1. To the extent that the following provisions do not offend or otherwise contradict the provisions of the Australian Consumer Law, the following shall apply in regards to the return of goods by the Customer to the Company:
  - a) Goods returned must have been purchased from the Company. The Company will issue the Customer with a credit return to be accepted.
  - b) The following information must be provided in the credit return system – invoice number, invoice date, date returned, reason for return and description of items returned (including quantity).
  - c) Cost of returning Goods to the Company will be the Customer's responsibility except for Goods incorrectly supplied by the Company.  
The invoice price for Goods returned will apply to credits and re-stocking fees.
  - d) Goods returned for credit must not have been fitted. Goods must be in original packaging and in a saleable condition.
  - e) Goods that the Company has specially ordered or otherwise procured at the Customer's request may not be accepted for return. Credit will be at either a price sold to a willing buyer or the amount credited by the supplier to the Company.
  - f) Goods returned within 30 days of invoice date will be credited in full less a processing fee which is determined by the company. Goods returned between 30 and 45 days of invoice date will incur a 10% restocking fee. Goods returned after 45 days may not be accepted for credit.
  - g) Shortages must be advised within 24 hours of delivery. Shortages must be advised by forwarding the relevant advice (credit returns and shortages book) to the Company.

SIMON HOME TIMBER & HARDWARE retain the right to reject returns which do not confirm with this policy.

## 8. Force Majeure

- 8.1. If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Company, the Company is unable to perform in whole or in part any obligation under this contract, the Company shall be relieved of that obligation under this contract to the extent and for the period that it is so unable to perform and shall not be liable to the Customer in respect of such inability.

## 9. Default

- 9.1. A default event occurs if:
  - a) any monies are unpaid and/or otherwise owing by the Customer to the Company after the due date;
  - b) the debit balance of the Customer's credit account exceeds its credit limit;
  - c) the Customer is unable to pay its debts as and when they fall due for payment;

# TERMS AND CONDITIONS OF TRADE (cont.)

- d) the Customer ceases or suspends its business activity or threatens to do so;
  - e) an administrator, liquidator, provisional liquidator, receiver and/or manager or any form of insolvency administrator or controller is appointed to the Customer's business or overall or part of the Customer's assets;
  - f) the Customer applies for or enters into bankruptcy (or takes the benefit of the Bankruptcy Act 1966 in any way), dies, or commits any act of bankruptcy or, if the Customer is a partnership, the partnership is dissolved;
  - g) execution is levied on any of the Customer's assets.
- 9.2. A default event occurs if:
- a) The Company may, at its sole discretion, suspend or terminate the supply of Goods and Services to the Customer on credit;
  - b) the balance of the Customer's credit account shall become immediately due and payable irrespective of whether the Company has rendered invoices to the Customer in accordance with these Terms and Conditions of Trade and irrespective of whether time for payment of invoices has fallen due;
  - c) The Company may exercise its right to retake possession of any Goods in accordance with clause 5 herein.
- 9.3. The Customer shall pay to the Company interest at the rate of 18% per annum in respect of any amounts as may from time to time be overdue until paid and such money together with all interest shall be recoverable from the Customer as a liquidated debt.
- 9.4. The Customer will pay to the Company and the Company may recover in full from the Customer all costs, expenses and disbursements incurred and/or payable by the Company associated with the Customer's account and/or these Terms and Conditions of Trade and any associated guarantee (including debt collection fees, commissions and all legal costs on a solicitor and own client basis) arising from or as a result of the Company exercising, enforcing or seeking to exercise or enforce a right under these Terms and Conditions of Trade and/or any associated guarantee and, in particular, in collecting or attempting to collect money. Such costs, expenses and disbursements may be collected as a liquidated debt.
- 9.5. The Company may apply payments received from the Customer firstly to any costs, expenses and disbursements it has incurred and then to interest on outstanding amounts and then to the balance or monies owing by the Customer to the Company.
- 9.6. If the Company is not satisfied that the Customer is able to pay for goods and/or services, the Company may terminate supply of goods and/or services and shall not be liable for any claim, damage, loss, expense or cost arising out of or connected with such suspension, and all monies then outstanding by the Customer to the Company will, upon demand, become immediately due and payable.
- 9.7. The Company will not be in default of the Terms & Conditions of Trade by supplying goods and/or services to the Customer of a value that exceeds the Customer's approved credit limit. In the event that this occurs, these Terms & Conditions of Trade remain in full force and effect.
- 9.8. In the event the Company is unable to effect service of Notices on the Customer by delivering them to the addresses(s) nominated by the Customer in the application form, the Customer hereby irrevocably authorises the Company to serve such Notices on the person identified by the Customer in the application as being the closest relative not living with the Customer (hereinafter referred to as "the third party").

The Customer accepts that valid service will be effected by delivering copies of the Notice(s) to the third party and warrants that all such Notices will be brought to the Customer's attention if service on the third party is effected.

## 10. Lien Charge

- 10.1. To secure payment of all amounts which the Customer is liable to pay the Company under these Terms and Conditions of Trade, the Customer, its successors and assigns hereby:
- a) charge as beneficial owner and/or as trustee of any trust, in favour of the Company, all the Customer's rights, title and interest in all property (whether real property or otherwise), held now or in the future, wherever located; and
  - b) irrevocably consents to the Company or its solicitors registering a caveat, whether by consent or otherwise, over any real property owned by the Customer at any time (whether as trustee or otherwise); and c) irrevocably appoints the Secretary and each of the Directors of the Company as its attorney for the purpose of doing all such acts, things and deeds in the name of the Customer, as the Company shall think necessary, to register a charge or caveat as contemplated in these Terms & Conditions of Trade.

## 11. Change of Ownership

- 11.1. The Customer agrees to notify the Company in writing of any change of ownership of the Customer or its business, or of directorships in the case of a corporate Customer, or of any other change whatsoever affecting this agreement within seven (7) days from the date of such change and indemnifies the Company against any loss or damage incurred by it as a result of the Customer's failure to notify the Company of any change.

# TERMS AND CONDITIONS OF TRADE (cont.)

## 12. Personal Properties Security Act 2009 ("PPSA")

- 12.1. In this clause the terms "financing Statement", "financing change statement", "security agreement", and "security interest" have the meaning given by the PPSA.
- 12.2. The Customer acknowledges and agrees:
  - a) that these terms:
    - i. constitute a security agreement for the purposes of the PPSA; and
    - ii. create a security interest in any Goods, inventory or equipment that has previously been supplied and that will be supplied in the future by the Company to the Customer.
  - b) The Company is the holder of a purchase money security interest ("PMSI") by virtue of this agreement and/or the PPSA; and consents to and appoints the Company to be an interested person, and the Customer's authorised representative for the purposes of PPSA Section 275(9).
- 12.3. The Customer undertakes to:
  - a) promptly undertake such acts and sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Company may reasonably require to:
    - i. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - ii. register any other document registrable under the PPSA; or
    - iii. correct a defect in a statement referred to in this sub-clause;
  - b) indemnify and upon demand reimburse the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA, or releasing any Goods and/or Equipment charged thereby;
  - c) not register any financing change statement in respect of a security interest which will or could complete with or affect any security interest created by an agreement between the Company and the Customer without the prior written consent of the Company.
  - d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or the Equipment in favour of a third party without the prior written consent of the Company.

## 13. Limitation of Liability for Breach of a Condition or Warranty

- 13.1. Pursuant to sections 64A and 276A of the Australian Consumer Law the following clause applies in respect of any of the Goods and/or Services supplied under this contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause will not apply if the Customer establishes that reliance on it would not be fair and reasonable.
- 13.2. The Company liability in respect of breaches of expressed or implied conditions, and warranties and guarantees, other than the warranty as to title, undisturbed possession and undisclosed securities, is limited to:
  - a) where the Customer is a consumer (as defined in the Australian Consumer Law – "consumer") any one of the following as determined by the Company; the replacement of the Goods or the supply of equivalent Goods; or the repair of the Goods; or the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or the payment of the costs of having the Goods repaired; or
  - b) where the Customer has supplied the Goods to a consumer; an amount equal to the lowest of the costs of the actions in paragraph (a). The Company will not be liable for any damage arising out of or in connection with, special, consequential, direct or indirect loss, damage, cost, expense, harm or injury suffered or incurred as a result of such a breach unless such liability is mandatorily imposed on the Company by statute, notably the Australian Consumer Law.
- 13.3. In addition to the Australian Consumer Law, the limitations of the Company's liability in respect of breaches of express or implied conditions and warranties as expressed in the previous clause shall be varied to the extent required to also limit the Company's liability to the extent permitted by relevant Statement Territory legislation covering sale of Goods and consumer protection.

## 14. Severability

- 14.1. Each clause or sub-clause of this Agreement is severable from the other and if any is invalid or unenforceable for any reason such invalidity or unenforceability shall not affect in any way the validity or enforceability of any other part.

## 15. Jurisdiction

- 15.1. These Terms and Conditions of Trade will be governed by and construed in accordance with the laws of Queensland. The Customer hereby submits to the jurisdiction of the Courts in Queensland.

**BY AGREEING TO THESE TERMS AND CONDITIONS OF TRADE, YOU ARE AGREEING TO ACCEPT LIABILITY TO PAY FOR GOODS AND SERVICES AND TO USE YOUR PROPERTY AS SECURITY FOR ALL MONIES OWING TO THE COMPANY. IF YOU ARE UNCERTAIN ABOUT THE CONTENT OF THIS DOCUMENT THE COMPANY STRONGLY URGES YOU TO OBTAIN INDEPENDENT LEGAL AND/OR FINANCIAL ADVICE BEFORE SUBMITTING THE APPLICATION FOR CREDIT.**

# DEED OF GUARANTEE AND INDEMNITY

TO: SIMON PTY LTD trading as Simon Home Timber & Hardware and Simon Home Frame & Truss (referred to as "the Company")

In consideration of the Company agreeing to supply Goods and/or Services from time to time to the person or entity named as "the Applicant" or "Customer" on the attached credit application and Terms & Conditions of Trade (hereinafter referred to as "the Customer"), I/We the undersigned (hereinafter referred to as "the Guarantor") hereby jointly and severally agree with the Company to guarantee the due and punctual payment of all monies which are now payable or may in the future become payable by the Customer to the Company, as a result of or arising out of the Customer's obligation to the Company, pursuant to the Terms and Conditions of Trade (copy annexed), as amended from time to time, and further agree:

1. To guarantee and indemnify and to be answerable to the Company for the due payment by the Customer of all monies now or from time to time hereafter owing to or unpaid to the Company on any account or any matter whatsoever by the Customer either directly or indirectly and either alone or jointly with any other person, firm and/or corporation, and including but without limiting the generality of the foregoing, any interest accruing on any monies owing or unpaid and any legal costs and disbursements incurred by the Company in enforcing payment by the Customer of any such monies.
2. This guarantee and indemnity shall constitute a continuing guarantee to the Company for all monies which are now or may from time to time be owing or remain unpaid and shall not be affected by:
  - 2.1. any variation or novation of the agreement between the Company and the Customer extending credit to the Customer or any other changes to the terms of such agreement, including any extension to the credit limit applied for by the Customer and approved by the Company from time to time (and whether or not such agreed credit limit is exceeded at any time without approval by the Company);
  - 2.2. the wind-up of the Customer or the entry by the Customer into a Deed of Company Arrangement whereby any debt due and owing by the Customer to the Company is extinguished or otherwise not recoverable;
  - 2.3. any time or other indulgence granted by the Company to the Customer or by any arrangement entered into whereby the Company's rights are in any way modified or abrogated and no notice of the granting of any time or indulgence or of the entering into any arrangement need be given to the Guarantor;
  - 2.4. termination of the agreement between the Company and the Customer for the provision of credit on account of the Customer failing to inform the Company of any change in ownership of the Customer's business, shareholding or control in which event the Guarantor agrees to guarantee all monies due and owing by any third party to the Company as a result of the continuance of supply of Goods and Services to the Customer or the third party under the Customer's account until notification of such change has been given to the Company and a new written agreement for the provision of credit has been entered into with the third party (including a guarantee and indemnity in the same terms as set out herein);
  - 2.5. the payment by the Customer of monies to the Company which are rendered void pursuant to the laws relating to bankruptcy, liquidation or administration of companies and no release, settlement or discharge which may have been given or made on the faith of such payment shall affect the Company right to recover such monies from the Guarantor;
  - 2.6. any legal limitation, disability or incapacity of the Customer or any other circumstances whatsoever and any monies may be recoverable from the Guarantor as principal debtor.
3. The Guarantor hereby indemnifies the Company in respect of all amounts payable by the Customer to the Company on account of Goods and/or Services supplied by the Company to the Customer, and all costs and interest which the Customer may be required to pay the Company, and the indemnity hereby given is a separate covenant and shall not be affected by the Customer (or another) appointing an administrator or by the Customer entering into a Deed of Company Arrangement.
4. The Guarantor shall be liable to the Company for all collection fees and legal costs incurred by the Company (on an indemnity basis) in connection with any default by the Customer or the Guarantor.
5. This Guarantee and Indemnity shall not be considered wholly or partially discharged by the payment at any time of any monies owing to the Company or by settlement of the Customer's account and shall apply to the present and future balance of monies owed by the Customer to the Company.
6. The Guarantor, in its own capacity and as trustee of any trust, hereby charges in the Company's favour all of its estate and interests in any land which the Guarantor now has or may later acquire and any other asset or trust asset with payment of all monies owed to the Company by the Customer or any Guarantor.
7. As an additional and separate obligation, the Guarantor(s) hereby agrees to pay the Company such monies as at any time have become payable but remain unpaid by the Customer. The Guarantor(s) will indemnify and keep indemnified the Company from all loss or damage suffered and all claims, costs and expenses made against or incurred by the Company arising out of any breach of any agreement between the Company and the Customer including the unenforceability of any part of such agreement against the Customer. No relaxation or waiver which the Company may extend to the Customer shall prejudice or act as any waiver of the Company's rights against the Guarantor(s) under this indemnity.
8. The Guarantor appoints the Company secretary and each of its directors (jointly and severally) to be the true and lawful attorney of the Guarantor and to sign all such documents as may be necessary to effect registration of any mortgage, consent caveat or other encumbrance that the Company may wish to register to perfect the charge granted in clause 10 of the Terms and Conditions of Trade and clause 6 hereof.



# DEED OF GUARANTEE AND INDEMNITY

9. As a further and separate obligation the Guarantor agrees to execute a mortgage in registrable form over any such real property now held or acquired by the Guarantor in the future and upon request by the Company and for the purpose of registering such a mortgage pursuant to this clause, the Company for and on behalf of itself together with its successors in title and assigns irreverently MAKES, NOMINATES CONSTITUTES AND APPOINTS SIMON HOME, the Company Secretary and each of its Directors, the Company's joint and several true and lawful attorney and attorneys for the purpose of doing all such acts and deeds in the name of the Guarantor as the Company shall think fit and necessary to give full effect to the powers rights and remedies of the Company herein contained and the substitutes therefore shall do or purport to do by virtue of this clause.
10. This guarantee and indemnity shall be governed by the laws of Queensland and the parties irrevocably submit to the jurisdiction of the Courts of Queensland.
11. In this guarantee, unless the context otherwise requires, the singular includes the plural and vice versa, any gender includes each of the other genders (including the neuter), and words importing persons include firms, unincorporated bodies and corporations.
12. The Guarantor(s) may revoke this guarantee at any time by sending to the Company at its registered address a written notice of revocation. Any notice of revocation shall only discharge the Guarantor(s) from liability as to future dealings by the Customer with the Company after the date that the Company acknowledges receipt of the notice of revocation.
13. If any payment to the Company of any monies is rescinded or refunded under any solvency law or otherwise, the obligation of the Guarantor(s) under this guarantee and indemnity for such payment shall be reinstated as though such payment or notice of revocation under clause 12 had not been made.
14. In the event that one or more clauses of this guarantee and indemnity are not enforceable, the remaining clauses shall still apply.
15. If the Customer is a company, the Guarantor(s) who are not directors certify that they have obtained independent, financial and legal advice before signing this deed.
16. The Guarantor will not prove against or claim any dividend out of the estate of the Customer in the event of the Customer being unable to pay its creditors in full.
17. If the Guarantor is an individual or individuals, the Guarantor(s) consents to the Company disclosing personal information about the Guarantor(s) to credit reporting agencies for the purpose of conducting a credit reference check and further consents to the collection of personal information about the Guarantor from credit reporting agencies and other sources. The Guarantor also consents to the Company using the Guarantor(s) personal information for direct marketing in accordance with the Company's privacy policy on its website. The Company uses and discloses the personal information collected from Guarantor to establish and, if necessary, enforce the guarantee, to exchange information as described above and to market its products and Services. If the information is not provided, we may not be able to establish or operate the Customer's account.

We may disclose this information to credit reporting agencies and other credit providers and as otherwise permitted by law. The Guarantor(s) may access personal information we hold about them in accordance with the Company's Privacy Policy on its website.

I have read and understood the Company's Terms and Conditions of Trade AND the above Deed of Guarantee & Indemnity.

**THIS DEED IS AN IMPORTANT LEGAL DOCUMENT. BY SIGNING BELOW, YOU ARE AGREEING TO ACCEPT LIABILITY TO PAY FOR GOODS AND SERVICES THAT YOU MAY NOT HAVE PERSONALLY REQUESTED. YOU ARE ALSO AGREEING TO USE YOUR PROPERTY AS SECURITY FOR ALL MONEY OWING TO THE COMPANY. IF YOU ARE UNCERTAIN ABOUT THE CONTENT OF THIS DOCUMENT THE COMPANY STRONGLY URGES YOU TO OBTAIN INDEPENDENT LEGAL AND/OR FINANCIAL ADVICE BEFORE SIGNING IT.**

EXECUTED AS A DEED THIS \_\_\_\_\_ day of \_\_\_\_\_ in the year 20 \_\_\_\_\_.

\_\_\_\_\_  
Signature of Guarantor  
Print Full Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness  
Print Full Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Guarantor  
Print Full Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness  
Print Full Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**IMPORTANT NOTE: YOU MAY WISH TO SEEK INDEPENDENT LEGAL ADVICE BEFORE SIGNING THIS DEED.**