

**CREDIT APPLICATION AND TERMS OF TRADING AGREEMENT**

THIS AGREEMENT made on the .....day of.....20.....BETWEEN **JAG TIMBER**

**PRODUCTS PTY LTD** of **4-10 ALFRED STREET ALBERTON SA 5014** (the Supplier)

AND.....(the Customer), of  
.....(Customers address)

The Customer and Supplier acknowledge and agree that:

- The Customer applies for a credit account and agrees that the attached Terms of Trading will govern all dealings between the Customer and the Supplier.
- The Customer warrants that it is solvent and has the future ability to pay all of its debts as and when they fall due.
- The Supplier will be deemed to have accepted this Application if it allows the Customer to trade with it on credit.
- The Customer declares and warrants that goods and services will be used for commercial purposes and not for the Customer's personal, domestic or household purposes.

**CUSTOMER APPLICATION DETAILS**

Business Details (circle whichever applies): .....COMPANY.....PARTNERSHIP.....SOLE TRADER .....TRUSTEE COMPANY.....

Registered Name of Business.....

Trading Name..... ABN.....

Business Address.....

Postal Address.....

Telephone Number..... Fax Number..... Email Address.....

Website.....

NAMES OF DIRECTORS/PROPRIETORS	PRIVATE ADDRESS	TELEPHONE NO.
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1. ....
2. ....
3. ....
4. ....

HAS THE CUSTOMER OR ANY OF ITS DIRECTORS OR PARTNERS BEEN INSOLVENT OR INVOLVED IN ANY WAY WITH AN INSOLVENT (LIQUIDATION, RECEIVER, ADMINISTRATOR, BANKRUPTCY ETC.)? **YES/NO**

AFFILIATED OR PARENT COMPANIES.....

BANK..... BRANCH..... ACCOUNT NUMBER.....

ARE BUSINESS PREMISES: OWNED/LEASED/MORTGAGED (circle whichever applies)

ESTIMATED MONTHLY PURCHASES \$.....

TRADE REFERENCES	ADDRESS	FAX NO.
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1. ....
2. ....
3. ....

## TERMS OF TRADING AGREEMENT

1. In these Terms and Conditions:  
“**Accession**” means any Goods which are installed in or affixed to other goods. “**Amount Payable**” means, at any time, all amounts payable by the Customer to the Supplier at that time (whether or not those amounts have become due for payment under clause 5 or any other provision of these Terms and Conditions) in connection with the Goods (including, without limitation, any invoiced amount, interest, fees, costs or expenses). “**Application**” means the Credit Application attached to these Terms and Conditions and these Terms and Conditions. “**Goods**” means any goods, products, services or materials supplied or to be supplied by the Supplier to the Customer at any time and from time to time including, without limitation, any goods specified in an order or invoice. “**Processed Goods**” means Goods which after their delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass. “**PPSA**” means the *Personal Property Securities Act 2009* (Cth). “**Terms and Conditions**” means the terms and conditions set out in this document, as amended or replaced from time to time. The terms “financing statement”, “proceeds”, “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. The Customer agrees that the information in the Application is true accurate and correct and is supplied for the purpose of obtaining credit.
3. The Customer agrees that the person’s signatures appearing on this Application are authorized by the Customer to apply for credit and execute this Agreement.
4. The Customer agrees to adhere to the terms and conditions of this Agreement.
5. An offer to purchase can be made by the Customer in writing or verbally. An order is accepted when the Customer receives from the Supplier an order acknowledgement or delivery of the relevant Goods, whichever first occurs. Acceptance of Goods by the Customer is conclusive evidence that these Terms and Conditions apply and are binding on the Customer. The amount payable for the Goods sold and services rendered to the Customer will be as agreed between the Supplier and the Customer from time to time.
6. **Jurisdiction:** Notwithstanding any implication to the contrary, all contracts between the Customer and the Supplier shall be deemed to be made and construed and to be enforceable in and according to the laws of the State of South Australia and by mutual consent to be subject to the jurisdiction of the Courts of that State.
7. **Claims:** To the extent permitted by law, any claim for non-delivery, shortage in supply or damage occurring during the course of delivery or any claim for rejects by a Customer must be in writing and given to the Supplier within 24 hours of delivery.
8. Unless agreed otherwise by the Supplier, accounts where there is no agreement to provide credit, or where such credit has been withdrawn, shall be payable at the time of delivery.
9. In the event of the Supplier granting credit facilities to the Customer then the following terms apply:
  - (a) All accounts are to be settled in full within 30 days from end of month in which goods/services are purchased.
  - (b) Should the Customer default in the payment of monies due under the Agreement, then all monies due to the Supplier shall immediately become due and payable and shall be paid by the Customer within seven (7) days of the date of demand and the Supplier shall be entitled to charge interest on all amounts not paid by the due date for payment and the Customer undertakes to pay any interest charged. Such interest shall be calculated on a daily basis from the due date for payment until the date the Supplier receives payment at such rate up to but not exceeding 2% per month.
  - (c) Any expenses, costs or disbursements incurred by the supplier in recovering any outstanding monies including debt collection agency fees and solicitors costs shall be paid by the Customer.
  - (d) The Supplier is entitled without notice to terminate any credit arrangement with the Customer in the event of the Customer defaulting in any of these terms and conditions.
  - (e) The Supplier is entitled at any stage to request such security or additional security it deems necessary, and to withhold supply of goods or credit until that security is obtained.
10. The Customer acknowledges that all Goods remain the property of the Supplier until the Supplier receives payment of the Amount Payable. The Supplier agrees to allow the Customer to deal, sell or trade with the Goods in the normal course of business and for the Customer to retain the sale proceeds provided that the Customer adheres to these Terms and Conditions. In the event of the Customer defaulting on any of its obligations pursuant to these Terms and Conditions, then the Supplier has the right to retake possession of the Goods supplied to the Customer. The Customer hereby authorizes and allows the Supplier or its representative to enter the premises upon which the Goods are housed or stored for the purposes of retaking possession. The Supplier shall not be liable for any costs, losses, damages or any other monies or losses suffered by the Customer as a result of the Supplier retaking possession of the Goods.
11. The Customer acknowledged that this Application constitutes a security agreement for the purposes of the PPSA.
12. The Customer grants to the Supplier a security interest in the Goods and in all of its present and after acquired property to secure payment of the Amount Payable. The security interest granted by the Customer to the Supplier pursuant to this clause 12:
  - (a) extends to and continues in all proceeds, Accessions and Processed 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 aggregate unpaid purchase price of Goods.
13. The Customer must not do or permit anything to be done that may result in the purchase money security interest granted to the Supplier ranking in priority behind any other security interest.
14. The Customer:
  - (a) waives the right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to a security interest created under these Terms and Conditions; and
  - (b) contracts out of its rights to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in clause 15 of these Terms and Conditions).
15. To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which sections (or parts of sections) shall not apply.
16. In addition to the security interests granted pursuant to clause 12 of these Terms and Conditions, the Customer charges in favour of the Supplier all of its interest in all present and future real property of the Customer to secure the performance of the Customer’s obligations under these Terms and Conditions, including payment of the Amount Payable. The Customer acknowledges that the Supplier has a caveat interest in any real property of the Customer under this clause and may lodge a caveat over that property. Upon demand by the Supplier, the Customer agrees to immediately execute a mortgage on terms satisfactory to the Supplier to more particularly describe the security interest conferred by this clause. Should the Customer fail within a reasonable time of such demand to execute that mortgage, then the Customer irrevocably appoints the Supplier as its attorney with authority to do on its behalf any thing that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Customer.
17. In the event that the Customer enters into this Application as trustee for a trust, the Customer acknowledges that it shall be liable in both its personal capacity and in its capacity as trustee for the trust for all Amounts Payable and that the assets of the trust shall be available to meet payment of the Amount Payable.
18. **Change of Ownership/Registered Particulars:** The Customer shall no later than 14 days prior to any proposed changes of ownership, change in registered particulars, or alteration or addition to the shareholding or directorship of the Customer, notify the Supplier in writing of the proposed change. The Customer shall be liable for any Goods supplied by the Supplier after such change, unless the Supplier has acknowledged in writing acceptance of the proposed change.
19. **Privacy Act – Acknowledgement** that credit information may be given to a credit reporting agency. The Customer understands that section 18E(8)(c) of the Privacy Act allows the Supplier to give a credit reporting agency certain personal information about the Customer.
20. **Authority for the Supplier to obtain certain credit information.** To enable the Supplier to assess this application for credit, the Customer authorizes the Supplier to obtain information about the creditworthiness of the Customer.
21. **Authority to exchange information with other credit providers.** The customer authorises the Supplier to give and receive from the credit providers named in the Application or that may be named in a credit report issued by a credit reporting agency, information in the Suppliers possession or the other credit providers possession about the creditworthiness, credit standing, credit history and credit capacity. The Customer understands the information may be used to (a) Assess this application for credit, (b) Assist the Supplier in avoiding default on the Customers credit obligations, (c) Notify other credit providers of a default by the Customer and (d) Assess the Customers creditworthiness.

22. Termination: The Supplier may at any time by written notice to the Customer terminate its obligation to supply goods to the Customer upon the happening of any of the following:
- any action is taken for, or with a view to, the liquidation (including provisional liquidation), winding up, official management, bankruptcy or insolvency (or equivalent) of the Customer and such action remains pending for a period of 21 days thereafter, unless the Customer satisfies the Supplier (in its absolute discretion) of the Customer's solvency;
  - the Customer becomes insolvent or is unable or deemed to be unable to pay its debts or ceases or threatens to cease to carry on its business or a major part of its business or the Customer enters into dealings with any of its creditors with a view to avoiding, or in expectation of, insolvency or stops or threatens to stop payments generally or a receiver or receiver and manager is appointed to, or an encumbrancee takes or proposes to take possession of, any material part of the assets of the Customer;
  - the Customer enters into any arrangement, assignment or composition with or for the benefit of its creditors or any class of them;
  - any distress, attachment or execution is issued, levied or enforced against the Customer which is not satisfied or challenged in good faith by appropriate means within 14 days;
  - a person is appointed under any applicable law to investigate any part of the Customer's business or affairs or an application is made for the appointment of such an inspector, or an administrator (or equivalent) is appointed to the Customer or any steps are taken for such an appointment; or
  - any other event occurs or circumstance arises, financial or otherwise, which, in the reasonable opinion of the Supplier, is likely materially and adversely to affect the ability of the Customer to observe any of its payment obligations to the Supplier,
- and in any such event the Customer shall be deemed to be in breach of its obligation to purchase those goods.
23. To the extent permitted by law the Supplier's liability to the Customer (and any party claiming through the Customer against the Supplier) for any claim for loss or damages (including legal expenses) made in connection with these Terms and Conditions (including the supply of Goods described in these Terms and Conditions) whether in contract, tort (including negligence), under statute, in equity or otherwise shall be strictly limited as follows:
- for any liability arising from Goods not meeting the specification or which are said to be otherwise defective or deficient, the Supplier's liability is limited to the cost of replacement of those Goods as soon as reasonably practicable, or the repair of those Goods, or the repayment (or allowance) of the invoice price of those Goods or payment of the cost of having the relevant goods provided (at the option of the Supplier);
  - for any liability arising from the services forming part of the Goods not meeting the scope or which are said to be otherwise defective or deficient, the Supplier's liability is limited to the provision of the services again or payment of the cost of having the relevant services provided (at the option of the Supplier); and
  - for any liability that does not fall within the scope of clauses 23(a) or (b), the Supplier's liability for any loss or damage arising from or caused in any way by the Supplier, the Goods it supplies or these Terms and Conditions is excluded.
24. The Supplier shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods it supplies (including negligence of the Supplier), where "indirect, special or consequential loss or damage" includes: (A) any loss of income, profit, production, contract, customers, business opportunity or business; (B) any loss of goodwill or reputation; (C) any loss of value of intellectual property; (D) any loss or damage resulting from the loss or damage to goods other than the Goods.
25. Any claim by the Customer in respect of defective, non-conforming or damaged Goods must be made in writing within 14 days of the delivery of the Goods, unless a longer period is expressly agreed to by the Supplier in writing.
26. Despite any other provision of these Terms and Conditions, the Supplier is not liable, to the maximum extent permitted by law, for:
- the cost of removal of Goods not meeting the specification or which are said to be otherwise defective or deficient, whether installed or otherwise;
  - the cost of installation of replacements for Goods not meeting the specification or which are said to be otherwise defective or deficient;
  - defects or deficiencies in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.
27. The terms of this Application may be amended or replaced from time to time by the Supplier by notice to the Customer or by publishing the amended or replaced terms on the Supplier's website. Any orders made by the Customer to the Supplier after it receives notice of the amended or replaced terms or after the Supplier publishes same on its website will be deemed to be made subject to the amended or replaced terms.
28. The terms of this Application shall prevail over any inconsistencies in any order, quote or invoice (unless the Supplier agrees otherwise in writing).
29. If a provision of these Terms and Conditions would, but for this clause, be unenforceable the provision must be read down to the extent necessary to avoid that result or, if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of these Terms and Conditions.

Having read the terms of this Application, The Customer and signatories appearing below agree to **the** terms and conditions of this Application and agree to be bound accordingly.

**IMPORTANT**

You should only sign this declaration if this loan is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

By signing this declaration you may **lose** your protection under the National Credit Code

I/We declare that the credit to be provided to me/us by the credit provider is to be applied wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

**PERSON COMPLETING THIS APPLICATION:**

Position: .....

Name: .....

Address (private) .....

Postcode:.....

**SIGNATURE:** ..... Date:...../...../.....

(Signed for and on behalf of the Customer)

The person completing this Application on behalf of the Customer **HEREBY REPRESENTS AND WARRANTS** that the information set out hereon is true and correct and he/she is duly authorised to sign this Application on behalf of the Customer and **ACKNOWLEDGES** that the Supplier will rely upon and be induced thereby to grant credit and/or to deal with the Customer.

**Office use only**

Reference 1.....  
 Reference 2.....  
 Reference 3.....  
 Credit Approved/Declined.....  
 Approval letter sent.....

# AGREEMENT TO GUARANTEE AND INDEMNIFY

DEED POLL made \_\_\_\_\_

BY: The Guarantors referred to below (**Guarantors**)

IN FAVOUR OF: JAG Timber Products Pty Ltd ACN 150 343 230 (**Supplier**).

1. **We Guarantee** payment to you of all monies and performance of all obligations including any past, present and future indebtedness or obligation by

\_\_\_\_\_ Pty Ltd ABN \_\_\_\_\_ (**Customer**)  
(insert) (insert)

or any of us arising from any past, present or future dealing with you.

2. **We Indemnify You** against all loss or damage arising from any past, present or future dealing with the Customer or any of us.
3. **We Agree:**
  - (a) to pay to a stakeholder nominated by you the amount you certify is payable before being entitled to dispute whether that amount is payable;
  - (b) that this Deed Poll shall remain effective notwithstanding any conduct or event (whether or not agreed to by you) which, but for this clause, may have released or varied any obligation of the Customer or any of us; and
  - (c) that any payment to you which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid.
4. **Consideration:** You granting financial accommodation or other credit from time to time at your discretion to the Customer.
5. **Proper Law:** We agree that this Deed and any claim or dispute between you and any of us shall be governed by the law applicable in South Australia and heard in the appropriate court nearest Adelaide.
6. **Several Guarantors:** If more than one Guarantor is named or intended to sign as guarantor, we each agree to be bound and liable for the full amount owed to you, even if we are the only one to sign and whether or not any amount is extinguished or compromised in any way. You may make any arrangement or compromise with any of us, obtain additional guarantees, indemnities or securities from any party or release or compromise with any Guarantor or party without affecting our liability to you.
7. **We Warrant** that the Guarantors are all the directors of the Customer.
8. **Credit Limit:** Any credit limit you grant or apply to the Customer is at your discretion and will not limit our liability to you.
9. **Privacy Act:** You may make any enquiries you deem necessary to investigate our creditworthiness including enquiry with our bankers, any other credit provider or any credit reporting agency (**the sources**). We authorise the sources to disclose anything concerning us which is in their possession. We agree that you may disclose any information you have concerning us to the sources.
10. **Severability:** Any part of anything herein shall be severable without affecting any other part hereof.
11. **Read and Understood:** We have each read and understood this document and have been advised by you to obtain independent professional advice before signing it.
12. **Definitions:** (a) "You" and "Your" means the Supplier and its successors and assigns; and (b) "We" and "us" means each of the Guarantors jointly and severally and their respective executors, administrators, successors and permitted assigns (as the case may be).

**EXECUTED** as a deed

## THE GUARANTORS:

.....  
Name of First Guarantor

.....  
Name of Second Guarantor

.....  
Name of Third Guarantor

.....  
Signature of First Guarantor

.....  
Signature of Second Guarantor

.....  
Signature of Third Guarantor

.....  
Name of Witness

.....  
Name of Witness

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Name of Witness

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Signature of Witness

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Signature of Witness

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Signature of Witness

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Address of Witness

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Address of Witness

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Address of Witness

**IMPORTANT NOTICE:** If you sign this Guarantee, you may be required to pay someone else's debts. You should ensure that you read and understand the terms of this Guarantee. If necessary, seek independent professional advice.