



## APPLICATION FOR COMMERCIAL CREDIT

Name of commercial credit applicant (the "customer")

Acting in its own right and or as a trustee for the  Trust

Trading as

Legal Entity (if different)

Date started  ACN  ABN

Type of entity  Public company  Private company  Trustee  Partnership  Sole trader  Government

Parent Company  Parent ACN

Estimated Monthly Trade \$

Delivery Address

Phone  Mobile  Email

Website  Accounts Email

Accounts Contact Name  Phone

Bank Account Name

BSB  Account Number

Trade References  Phone   
 Phone   
 Phone

### Details of directors, partners, proprietors

Full Name	Date of Birth	Residential Address
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
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- That the information in this Application and any attachments is true and accurate.
- To be bound by the Standard Terms and Conditions of Sale enclosed with this form as varied from time to time without notice to the Customer.
- This Application may be signed only by the person(s), directors, or officers authorised to sign on behalf of the Customer.

Signed for the Customer by:  Date

Print Name  Signature

Title



## **GUARANTEE AND INDEMNITY**

In consideration of the Supplier agreeing to supply or continuing to supply, goods and services on credit to the Customer named below, each guarantor named below (the "Guarantor") agrees with Supplier as follows:

### **Definitions**

1. In this document the following terms and expressions have the following meanings:

"Assurances" means the guarantee provided by the Guarantor under clause 3 and the indemnity provided by the Guarantor under clause 4;

"Assured Moneys" means all sums payable by the Customer to the Supplier on any account and in any capacity;

"Business Day" means a day other than a Saturday, Sunday or public holiday in Western Australia;

"Costs" means all the costs and fees, including legal fees on a solicitor on an own client basis, which the Supplier pays or which the Supplier is liable to pay in connection with or incidental to:

(a) any breach of the Guarantor's Obligations;

(b) the exercise or purported or attempted exercise of the Supplier's Rights; and

(c) obtaining or attempting to obtain payment of the Assured Moneys;

"Customer" means the person or entity identified as the Customer on the Application for Commercial Credit;

"Debt Collector" means a person or body that carries on a business or undertaking that involves the collection of debts on behalf of others;

"Guarantor's Obligations" means the covenants, agreements and obligations of the Guarantor as set out in this document;

"Insolvency Event" means:

(a) a liquidator or administrator being appointed;

(b) a receiver or receiver and manager or controller or administrator of any of the property of being appointed;

(c) a compromise or arrangement being made between with a creditor;

(d) an application being made to a court for an order summoning a meeting of any class of creditors;

(e) becoming insolvent;

(f) admitting in writing the inability to pay debts;

(g) being deemed to be insolvent;

(h) execution being levied on, or other lawful process is issued against, any property;

(i) an Encumbrance over any property becoming enforceable or being enforced;

(j) judgment being obtained against in any court which remains unsatisfied for twenty-eight (28) days from its date and without lodgment of notice of appeal having been made within the proper time;

(k) being a natural person and:

(i) committing an act of bankruptcy as specified in the Bankruptcy Act;

(ii) becoming bankrupt;

(iii) entering into a personal insolvency agreement under Part X of the Bankruptcy Act;

(iv) entering into a debt agreement under Part IX of the Bankruptcy Act; or

(v) becoming incapable of managing his or her affairs; or

(l) anything analogous, or having substantially similar effect, to anything referred to in this definition occurring.

"Related Body Corporate" has the meaning of that expression in the Corporations Act 2001 (Cth) and includes and all of its subsidiaries;

"Supplier" means Calibre Steel Pty Ltd ACN 613 770 700;

"Supplier's Rights" means the rights and powers of the Supplier pursuant to this document and at law;

"Supplier's Terms" means the terms and conditions applicable to the supply of goods by the Supplier to the Customer.

### **Interpretation**

2. In this document the following rules of interpretation apply unless the context otherwise requires:

(a) words denoting the singular number include the plural (and vice versa);

(b) words denoting natural persons include bodies corporate and unincorporated and their permitted assigns (and vice versa);

(c) references to the Supplier, the Customer and the Guarantor include the party's successors and permitted assigns;

(d) reference to the Supplier includes any Related Body Corporate;

(e) reference to the Guarantor means each person who is the Guarantor jointly and severally;

(e) where the Guarantor is a trustee of a trust or trusts, any covenant given by the Guarantor is given by the Guarantor in the Guarantor's own right and as trustee of that trust or those trusts.

### **Guarantee**

3. The Guarantor unconditionally and irrevocably guarantees to the Supplier payment of the Assured Moneys.

### **Indemnity**

4. As a separate and independent obligation, the Guarantor agrees to indemnify and keep the Supplier indemnified from and against:

(a) the Assured Moneys;

(b) any and all claims, actions, losses, damage, liabilities, costs, expenses, outgoing and payments made, suffered, paid or incurred by the Supplier by reason of or in relation to the non-payment or non-recovery of the Assured Moneys or as a result of any breach by the Customer of the Supplier's Terms.

### **Costs**

5. The Guarantor agrees to pay the Costs to the Supplier on demand.

### **Grant of Security**

6. To secure payment of the Assured Moneys and the Costs the Guarantor hereby:

(a) charges with due payment of the Assured Moneys and the Costs any interest that the Guarantor has or may have in any real property;

(b) consents to the Supplier lodging a caveat or caveats to against that interest or those interests based on that charge;

(c) agrees within fifteen (15) Business Days of demand by the Supplier to:

(i) execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure the Supplier's interest under that charge; and

(ii) do whatever may reasonably be required by the Supplier to register the mortgage or other instrument;

(d) in the event that the Guarantor fails to comply with a demand by the Supplier under sub-cause (c), irrevocably appoints the Supplier and every officer and legal practitioner of the Supplier jointly and each of them severally, as the Guarantor's lawful attorney to do what is required of the Guarantor under sub-cause (c) and ratifies everything so done.

### **Payment to be Made Without Set-Off or Deduction**

7. All payments which the Guarantor is required to make under the Assurances and for the Costs must be made without any set off, counterclaim, condition or deduction and are payable on demand by the Supplier.

### **Obligations Continuing**

8. The Assurances shall be continuing obligations of the Guarantor.

### **No Release of Assurances**

9. The Guarantor's Obligations are principal obligations and are not released, discharged or otherwise affected by anything which but for this provision might have that effect, including but not limited to:

(a) the payment of money to the Supplier;

(b) the performance and observance of any of the Guarantor's Obligations;

(c) the granting of any time, waiver, credit, indulgence, concession to, composition with, release or discharge by novation of any person whatsoever by the Supplier;

(d) any act, omission, laches or default on the part of the Supplier which would affect the liability of any person to the Supplier but for this provision;

(e) any act or omission by the Supplier which may result in prejudice to the Guarantor;

(f) a subsequent transaction or arrangement between the Supplier and any other person;

(g) the assent of the Supplier to any composition, arrangement or scheme in



respect of the Customer or the acceptance by the Supplier of any dividend or sum of money thereunder;

[h] the Supplier failing or neglecting to recover any money owing to the Supplier from the Customer;

[i] the Supplier failing or neglecting to exercise any of the Supplier Right's;

[j] any variation of the terms upon which goods or services are supplied to, or paid for by, the Customer;

[k] the death of the Customer or the Guarantor;

[l] an Insolvency Event occurring to, against or in respect of the Customer or the Guarantor;

[m] any change in the membership, or termination of, any partnership or firm of which the Customer or Guarantor is a member;

[n] any arrangement with, or release of, the Customer or any other guarantor or person by the Supplier or by operation of law;

[o] an agreement or arrangement between the Supplier or the Guarantor and any other person being illegal, invalid, void, voidable or unenforceable for any reason;

[p] any other guarantee or any security or instrument which the Supplier may hold in respect of any of the Assured Moneys or any judgment obtained by the Supplier, or any release, discharge, surrender or modification of, or dealing with, any such guarantee, security, instrument or judgment;

[q] any of the Assured Moneys not being recoverable for any reason;

[r] the failure of any other person named as Guarantor to execute this document;

[s] any claim the Customer may have against the Supplier;

[t] an increase in the amount of the Assured Moneys;

[u] the fact that any credit was provided by the Supplier before the Guarantor executed this document;

[v] the assignment, novation, transfer or assumption of, or other dealing with, any rights or obligations under this document or any other document or agreement;

[w] any other act, omission, matter or thing whatsoever.

#### **Competition for Money**

10. Until the Supplier has received all of the Assured Moneys and the Costs, the Guarantor agrees that if an Insolvency Event occurs in respect of the Customer, the Guarantor will not, without the prior consent of the Supplier:

[a] lodge any proof of debt or similar claim in respect of any debt or liability of the Customer to the Guarantor on any account whatsoever; or

[b] enforce any security held by the Guarantor in respect of the obligations of the Customer to the Guarantor

in competition with the Supplier so as to diminish distribution, dividend or payment which, but for that proof, claim or enforcement, the Supplier would have been entitled to receive.

11. If requested by the Supplier if an Insolvency Event occurs in respect of the Customer, the Guarantor must:

[a] lodge a proof of debt or similar claim any the administration; and/or

[b] enforce any security held by the Guarantor; and

[d] execute all such documents and do all such things as the Supplier may require so as to enable the Supplier to have and receive the benefit of, or arising from, any such proof, claim or security.

12. If the Guarantor receives a distribution, dividend or payment referred to in clause 11, that distribution, dividend or payment will be held by the Guarantor on trust for the Supplier until the Guarantor is released by the Supplier from the Assurances.

#### **Power of Attorney**

13. The Guarantor irrevocably appoints the Supplier as the Guarantor's attorney with authority to do on behalf of the Guarantor anything the Guarantor may lawfully authorise an attorney to do, including without limitation the following:

[a] to make, sign, execute, seal and deliver any document; and

[b] to take possession of, use, sell or otherwise dispose of any asset of the Guarantor

for the purpose of the Supplier exercising the Supplier's Rights and obtaining the benefit of the Assurances.

#### **Assurances Provided Freely and With Full Knowledge**

14. The Guarantor further agrees that:

[a] the Guarantor has signed this document voluntarily;

[b] before giving the Assurances, the Guarantor was advised by the Supplier to consult and receive advice as to the purport, effect and consequences of, and obligations created by, the giving of the Assurances from a legal adviser independent of the Supplier;

[c] the Guarantor understands the nature and effect of the Assurances in particular that the Guarantor has agreed to guarantee all amounts that the Customer may owe to the Supplier and has also agreed, as a separate and independent obligation, to provide an indemnity to the Supplier if any of the Assured Moneys is not paid to, or recovered by, the Supplier; and

[d] the Guarantor has not signed this document in reliance on any representation, warranty, promise or statement of the Supplier or any person on behalf of the Supplier.

#### **Certificate as to Amount Outstanding**

15. The Guarantor agrees that a certificate issued by the Supplier stating the amount of any moneys owed by the Customer or Guarantor to the Supplier shall be conclusive evidence of such amounts owing by the Customer or the Guarantor.

#### **Increase in Credit**

16. The Supplier may give the Customer more credit than the Customer has asked for [in this Application for Consumer Credit] in which case the Supplier is not required to advise the Guarantor of the increase or the amount of the increase.

#### **No Discharge of Liability if Clawback**

17. A payment will not operate to discharge or reduce a liability of the Guarantor to the Supplier if the payment is or becomes void or voidable under any law relating to an Insolvency Event, and no discharge or release consequent upon the payment shall discharge the liability of the Guarantor to the Supplier.

#### **Assurances are Separate Obligations**

18. The Assurances are separate and independent obligations of the Guarantor and neither limits the generality of the other.

#### **GST**

19. The Guarantor agrees to pay the GST inclusive amount of any taxable supply made under or in connection with this Guarantee.

#### **Notices**

20. Any demand or notice to be made or given by the Supplier may be served on the Guarantor by delivering it to the Guarantor personally or by sending it by post to the Guarantor's address as shown on this form.

#### **Applicable Law**

21. The agreement between the Supplier and the Guarantee is governed by the laws of the State of Western Australia.

#### **Applicable Courts**

22. The Guarantor irrevocably submits to the exclusive jurisdiction of the courts of the state of Western Australia.

#### **Severance**

23. If any part of this document is, or becomes, void or unenforceable, that part is, or will be, severed from this document so that all provisions that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

#### **PRIVACY ACT**

24. Terms used that are defined in the Privacy Act 1988 [Cth] have the same meaning that those terms have in the Privacy Act 1988 [Cth].

25. The Guarantor consents to the Supplier obtaining from a credit reporting body any credit reporting information about the Guarantor for the purposes of:

[a] assessing an application for commercial credit made by the Guarantor to the Supplier; and

[b] collecting payments that are overdue in relation to commercial credit provided by the Supplier to the Guarantor.

26. The Guarantor consents to the Supplier disclosing the credit eligibility information of the Guarantor to:



26.1 a credit provider for the purposes of:

- [a] assessing an application for credit by the Guarantor;
- [b] assessing the credit worthiness of the Guarantor;
- [c] notifying other credit providers of a default by the Guarantor;
- [d] exchanging information with other credit providers as to the status of the credit account where the Guarantor is in default with other credit providers;
- [e] undertaking debt recovery and enforcement activities; and/or
- [f] the ongoing review and management of the Guarantor's account with the Supplier, including to assist the Guarantor to avoid defaulting on the Guarantor's credit obligations;

26.2 A Debt Collector for the primary purpose of the Debt Collector collecting payments that are overdue in relation to commercial credit provided by the Supplier to the Guarantor, provided that the information is limited to:

- [a] the Guarantor's full name;
- [b] an alias or previous name of the Guarantor;
- [c] the Guarantor's date of birth;
- [d] the Guarantor's sex;
- [e] the Guarantor's current or last known address, and 2 previous addresses (if any);

[f] the name of the Guarantor's current or last known employer;

[g] the Guarantor's driver's licence number;

[h] information about a judgment of an Australian court:

[i] that is made, or given, against the Guarantor in proceedings (other than criminal proceedings); and

[ii] that relates to any credit that has been provided to, or applied for by, the Guarantor;

[l] information that:

[A] is entered or recorded in the National Personal Insolvency Index; and

[B] relates to:

[1] a bankruptcy of the Guarantor;

[2] a debt agreement proposal given by the Guarantor;

[3] a debt agreement made by the Guarantor;

[4] a personal insolvency agreement executed by the Guarantor;

[5] a direction given, or an order made, under section 50 of the Bankruptcy Act that relates to the property of the Guarantor; or

[6] an authority signed under section 188 of the Bankruptcy Act that relates to the property of the Guarantor.

**IF YOU DO NOT UNDERSTAND YOUR LIABILITY UNDER THIS GUARANTEE YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE PRIOR TO SIGNING**

**Executed as an agreement**

	1	2	3	4
Signature				
Name				
Position				
Address				
Date				

**GUARANTEE SHOULD BE WITNESSED BY AN INDEPENDENT THIRD PARTY**

	1	2	3	4
Witness Signature				
Name				
Date				