

**APEX BUILDING PRODUCTS (NSW)**

ABN 141 398 441

11-13 Yato Road  
PRESTONS NSW 2170

Tel: 02 8796 0333

Fax: 02 8796 0334

**APPLICATION FOR COMMERCIAL CREDIT**

Salesperson	
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**Applicant**

Trading name			
Name of company, trust and trustee, person(s) or partnership operating business			
ACN		ABN	
Business street address			
Business postal address			
Contact person		Tel (b/h)	
Fax (b/h)		Email	
Name of bank		Branch	
Account no.		BSB	

**Contact details****Credit Limit Request**

Purchasing contact person		Accounts payable contact person		
Details of partner/director	Name		DOB	
	Address		Drivers licence	
	Title		Mobile	
	Name		DOB	
	Address		Drivers licence	
	Title		Mobile	

**Business history****Credit Limit Requested**

Date business commenced		Expected monthly value of account	
Nature of business			

**Trade references**

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

# TERMS AND CONDITIONS

## Payment terms

1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the end of month of date of invoice and payment is due and payable by that date. Apex Building Products (NSW) ABN 141398441 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.
2. 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 shall be entitled to charge an administration fee of 10% of the amount of the invoice payable per year, or part thereof, from the date the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant.

## Jurisdiction

3. The Applicant acknowledges and agrees that this agreement shall be governed by the laws of NSW and the laws of the Commonwealth of Australia which are in force in NSW
4. 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.
5. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of South Australia and the relevant federal courts and courts competent to hear appeals from those courts.

## Security/charges

6. 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.
7. 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.
8. 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.

## Purpose of credit

9. 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

10. Quotations made by the Supplier shall 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 shall complete a contract.
11. Placement of an order, either verbally or in writing, shall imply acceptance of the Supplier's offer and of these terms and conditions.

## Retention of title

12. 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 shall not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
13. 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 shall not mix the goods with other similar goods.
14. The Applicant shall 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 shall sell as agent and bailee for the Supplier and the proceeds of sale of the goods shall be held by the Applicant on trust for the Supplier absolutely.
15. The Applicant's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 14 hereof unless and until the funds held on trust are remitted to the Supplier.
16. 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.
17. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 16. 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.
18. 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.
19. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

## Cancellation of terms of credit

20. 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.
21. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

## Indemnity

22. 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

23. 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.
24. 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

25. 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

26. 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.
27. The Applicant must give the Supplier a copy of the trust deed upon request.

## Partnership

28. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
29. 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

30. 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

31. 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.

## Costs

32. 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).
33. 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 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.
34. 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 16 and 33.
  - (b) Secondly, in payment of any interest incurred in accordance with clause 37.
  - (c) Thirdly, in payment of the outstanding invoice(s).

## Taxes and duty

35. 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.
36. 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.

## Interest rates

37. The interest rate on any outstanding debts is a fixed rate of 15% per annum.

## Set-off

38. 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.
39. 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

40. 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.
41. In relation to the supply of goods, the Supplier's liability is limited to:
- replacing the goods or supplying similar goods;
  - repairing the goods;
  - providing the cost for replacing the goods or for acquiring equivalent goods; and
  - providing the cost for having the goods repaired.
42. In relation to the supply of services, the Supplier's liability is limited to:
- supplying the service again; or
  - providing for the cost of having the services supplied again.
43. 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.

## Severance

44. 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.
45. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

## Variation

46. 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.
47. 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.

## Consent to register

48. 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.

## Entire agreement

49. 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.

## Privacy Act

50. 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.

Director Signature		Witness Signature	
Director Name (print)		Witness name (print)	
Position		Date	
Date			
Director Signature		Witness Signature	
Director Name (print)		Witness name (print)	
Position		Date	
Date			

## FOR COMPLETION BY THE SUPPLIER

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

Signature		Position	
Name (print)		Date	

**ACCOUNT APPROVED FOR CASH ON DELIVERY / 7 DAYS / 14 DAYS / 30 DAYS**  
(supplier to nominate)

## 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:

- 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*);
- 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
- 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:

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

- payments which become overdue more than 60 days;
- advice that payments are no longer overdue;
- cheques drawn by the Applicant in excess of \$100 that have been dishonoured more than once;
- in specified circumstances, that in the opinion of the Supplier the Applicant has committed a serious credit infringement;
- 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 Apex Building Products (NSW) ABN 141 398 441

(Supplier)

Directors Name	Address
Directors 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 NSW and the laws of the Commonwealth of Australia which are in force in NSW.
- The parties to this Guarantee and Indemnity submit to the non-exclusive jurisdiction of the courts of NSW 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 shall be a continuing Guarantee and Indemnity and shall 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 shall 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 indemnify the guarantees, covenants and obligations in this Guarantee and Indemnity given or undertaken by the Guarantors shall be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier shall be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
- The Supplier shall 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 shall 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 shall 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 shall not be affected by nor shall 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.

Dated

Signed, sealed and delivered by the guarantor	Director Signature		Directors Name	
	Directors ID #		Position	
	Witness signature		Name	
Signed, sealed and delivered by the guarantor	Director Signature		Directors Name	
	Directors ID #		Position	
	Witness signature		Name	

## 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 shall 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 shall 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 shall, for the purpose of this Guarantee and Indemnity, be considered as discharging or diminishing the Guarantor's liability and this Guarantee and Indemnity shall 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 shall 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 shall 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.

## Privacy Act

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