

## CONSOLIDATED ENERGY APPLICATION FORM

PLEASE SEEK LEGAL ADVICE PRIOR TO EXECUTING THESE DOCUMENTS.

Consolidated Energy Representative:

### PART 1: APPLICANT DETAILS

The Applicant named in paragraph 1 below hereby applies for a 30 Day Credit Account.

**1. ENTITY NAME** ("the Applicant"):

ABN:

If the Applicant is a **COMPANY**:

ACN:

If the Applicant is a **PARTNERSHIP**  
Name of partnership

ABN:

**2. TRADING DETAILS**

Registered Business Name / Trading Name (if any):

Type of Business:

Est for  years

Trading Bank:

Branch

**3. BILLING INFORMATION**

Business Address:

Postcode:

Postal Address:

Postcode:

Phone No:

Mobile No:

Email address for billing:

**4. TRADING DETAILS: (If applicable)**

Does the Applicant act as a Trustee or Trustees for a Trust? If so, please complete the details below.

Name of Trustee (and ABN of Trustee if applicable):

Name of trust

Type of trust (*Discretionary Family Trust / Unit Trust*)

# CONSOLIDATED ENERGY CREDIT APPLICATION FORM

## 5. PROPRIETORS' FULL NAMES AND ADDRESSES

**Note:** Names of ALL directors (if the Applicant is a company), partners (if the Applicant is a Partnership), trustees or other proprietors (including ABN/ACN if applicable)

	Surname	Christian Name	Street/Residential Address (not a PO Box)	Date of Birth
1				
2				
3				
4				

## 6. HAVE ANY OF THE PERSONS REFERRED TO IN SECTION 5.ABOVE:

- (i) Had any of their property or assets attached as a result of a court order, had bankruptcy proceedings instituted against them, or entered into bankruptcy voluntarily? YES  NO
- (ii) Been refused credit individually, as a partner in a partnership or as a director or shareholder of a company? YES  NO

## 7. LAND OWNED BY THE APPLICANT

	Address of Real Property	Current Value (\$)	Value of Encumbrances (\$)
1			
2			
3			
4			

## 8. STATEMENT OF APPLICANT'S ASSETS AND LIABILITIES

(only applicable if Application is for \$100k credit or greater)

Attach a copy of your current Balance Sheet and Profit & Loss Statement **or**:

Contact for Financial Statements:

Telephone Number

Mobile Number

Contact Email Address

### NOTES:

It is important that all information is supplied, as an incomplete form may delay a decision. If preferred, certain confidential information can be submitted direct to the AGI Credit Manager.

Please ensure that the Application and the Guarantee (if applicable) have been completed, signed and dated and then send by email a copy of the completed forms, to [agireceivables@consolidatedenergy.com](mailto:agireceivables@consolidatedenergy.com). auto enable processing to commence. Please then mail the originals to the postal address specified in Part 1 of the Application as originals will be required to complete the application process.

### Personal Guarantee

If you are a company you are required to provide a Personal Guarantee by each Director of your company. If you are a Sole Trader or a Partner in a Partnership a Personal Guarantee is not required.

- Each guarantor must sign the Personal Guarantee in the presence of an independent, individual witness.
- The witness must not be a family member or a person with a fiduciary interest in your company, such as a co Director. The independent witness is required to identify themselves by adding their name and residential, street address. Do not put down the business address or a post office box.
- Remember to Date it and ensure home addresses are provided by Guarantor and Witness.

If you have any questions concerning this Application Form please do not hesitate to phone us on 08 6270 6416.

# PART 2: TERMS AND CONDITIONS

## 1. DEFINITIONS

In these Terms and Conditions and this Application:

“**ACL**” means The Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

“**Applicant**” means the party or parties defined as the Applicant in this Application.

“**Application**” means this entire document which comprises Part 1 - Applicant's Details, Part - 2 Terms and Conditions and Part 3 – Deed of Guarantee and Indemnity

“**Agreement**” means the agreement constituted by the acceptance of this Application by AGI along with any additional Terms and Conditions imposed by AGI in their absolute discretion.

“**Authorised Representative**” means AGI's Manager or such other person as may be authorised by the Manager from time to time.

“**AGI**” means Australian Gypsum Industries Pty Ltd (ACN 064 338 076).

“**Change of Circumstance**” includes but is not limited to:

- (i) A change in the Applicant's or a Guarantor's financial position up and until an Insolvency Event occurs;
- (ii) The Applicant restructures, transfers, sells, or assigns all or part of its business (either without the prior written consent of AGI) or, if AGI has consented, the Applicant fails to provide AGI with a Deed of Novation signed by the Applicant, the Transferee and the new guarantor within 14 days of receiving the same from AGI, and in any case, prior to the effective date of the relevant restructure, transfer, sale or assignment.
- (iii) The Applicant or a Guarantor is factoring its debts; or
- (iv) The Applicant or a Guarantor becoming party to a litigation, arbitration or other administrative proceeding.

“**Change of Control**” means any change which materially affects the management of ownership (beneficial or otherwise) of the Applicant or Guarantor (as the context requires), and includes:

- (i) where the Applicant or Guarantor is a company:
  - a. A person or entity acquiring or disposing of more than 10% of the shares in that Company;
  - b. Any change to the composition of the board of directors of the company;
- (ii) where the Applicant or Guarantor is a partnership, any change to the composition of the partnership; or
- (iii) where the Applicant or Guarantor is a sole trader, the entry into any partnership or other change in the operation of the Applicant's or Guarantor's business as a sole trader.

“**Credit Limit**” means that sum referred to in paragraph 3.1 of the Terms and Conditions which is the credit limit to be extended to the Applicant by AGI.

“**Consequential Loss**” means loss of revenue, profits, anticipated savings or business opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages.

“**Consumer**” has the meaning prescribed to it in the ACL.

“**Deed of Novation**” means a deed of novation on terms required by AGI, including a term in which the Transferee agrees to assume the obligations of the Applicant under the Agreement and a new guarantor agrees to assume the obligations of the Guarantor under the Agreement, in each case, whether arising before or after the effective date of the transfer, assignment or novation.

“**Terms and Conditions**” means these Terms and Conditions.

“**Guarantee**” means the deed of guarantee and indemnity provided by the Guarantors in favour of AGI regarding the Agreement.

“**Guarantor**” means the party or parties defined as Guarantors in the beginning of the Guarantee.

“**Insolvency Event**” means the happening of any of the following events:

- (i) Where the Applicant or any Guarantor enters into a compromise or an arrangement (or announces one) under section 411 of the Corporations Act;
- (ii) Where a managing controller is appointed over the whole (or substantially the whole) of the Applicant's or Guarantor's property; or
- (iii) Where the Applicant or any Guarantor enter into voluntary administration.

“**Goods**” means goods ordered by the Applicant from AGI pursuant to this Agreement.

“**Notification**” means the written notification given by the Authorised Representative that the Application is accepted by AGI.

“**Services**” means services ordered by the Applicant from AGI pursuant to this Agreement.

“**Transferee**” means the transferee, assignee or novatee of the Applicant's business or the Applicant's rights and obligations under the Agreement.

“**Rebate**” means any rebate or other amount receivable from the Federal or any state government or any other institution which has been taken account of by AGI in reducing the sales price of goods and/or services to the Applicant.

“**Warranty Document**” means any document provided with the Goods in which AGI gives a warranty in relation to the Goods.

## 2. ACCEPTANCE OF THE APPLICATION

2.1 The Application is accepted by AGI upon receipt of the Notification.

2.2 In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

## 3. CREDIT LIMIT

3.1 The Notification, at AGI's sole discretion, may state the Credit Limit AGI will extend to the Applicant.

3.2 If AGI accepts this Application, it is not obliged to extend credit to the Applicant in excess of the Credit Limit.

3.3 AGI may reduce the Credit Limit upon notice to the Applicant in its absolute discretion.

3.4 AGI may extend credit to the Applicant in excess of the Credit Limit, in its absolute discretion. Use by the Applicant of such extended credit will be taken as acceptance by the Applicant that such facility falls within all Terms and Conditions of this Agreement.

## 4. PAYMENT OF AMOUNT OUTSTANDING

4.1 Upon AGI supplying Goods and/or Services to the Applicant, AGI must provide the Applicant with a monthly statement in respect thereof (the “Statement”).

4.2 The Statement will set out:

4.2.1 the invoices and adjustment notes in relation to all Goods and/or Services purchased by the Applicant from AGI pursuant to the credit facility provided herein for that month; less

4.2.2 amounts paid by or credited to the Applicant relating to the previous Statement (**Amount Outstanding**)

4.3 Goods and/or Services purchased by the Applicant during a month must be paid for by the last business day of the following month (the **Due Date**).

4.4 Any payments made by the Applicant of less than the net amount shown on the Statement is deemed to be payment of the price of the Goods and/or Services which were supplied first in time, equivalent to the amount of such payment.

4.5 Time for the payment of the Amount Outstanding is a fundamental term of the Agreement and if the Applicant fails to pay the Amount Outstanding in full by the Due Date in respect of the Statement, AGI may:

4.5.1 treat the Agreement as repudiated by the Applicant; or

4.5.2 suspend the delivery or provision of Goods and/or Services the subject of this Agreement or any goods or services the subject of any other contract with the Applicant without incurring any liability whatsoever to the Applicant and without prejudice to any other remedies allowed by law to AGI.

4.6 **If the Applicant fails to pay the Amount Outstanding by the Due Date, but without prejudice to the rights of AGI as provided in paragraph 4.5, the Applicant must (if required) pay interest to AGI on the Amount Outstanding (or part thereof) at a rate of 12% per annum, calculated from the Due Date to the last day of the month of actual payment of the Amount Outstanding.**

## 5. PRICING

The Applicant agrees that, where any pricing on goods and/or services is offered to the Applicant from time to time where the price has been reduced (“Net Price”) on the basis of Rebates being collected by AGI, should the Rebates not be received, in whole or in part, by AGI for any reason whatsoever, then the Net Price will increase by an amount equal to the Rebate not collected and the revised Net Price will be payable in accordance with clause 4.

## 6. PASSING OF RISK

The Goods are at the Applicant's risk from the time the Goods leave AGI's premises, or the premises of AGI's supplier if the goods are supplied direct from that supplier to the Applicant, for delivery to the Applicant.

## 7. PASSING OF PROPERTY

7.1 Ownership of the Goods remains with AGI until the Applicant has paid in full the price of the Goods and Services.

7.2 The Applicant agrees with AGI that upon delivery of the Goods the Applicant:

(a) must store the Goods separately from property belonging to the Applicant; and

(b) if the Applicant:

(i) makes, produces or manufactures a new object from the Goods whether finished or not;

(ii) incorporates or mixes the Goods with other goods; or

(iii) allows the Goods to become part of other goods (the “New Goods”) the ownership of the New Goods immediately passes to AGI at the moment of the event or single operation by which the Goods are : converted into; incorporated or mixed with, or become part of, the New Goods and the Applicant must keep the New Goods as fiduciary owner for AGI and must store the New Goods separately from property belonging to the Applicant unless the New Goods are part of a building, whether completed or under construction.

- 7.3 Notwithstanding clause 7.2 prior to paying in full the monies owing to AGI the Applicant may sell the Goods or the New Goods to a third party (the "Third Party") in the ordinary course of its business and deliver the Goods or the New Goods to the Third Party provided that:
- where the Applicant is paid by the Third Party, the Applicant holds the whole of the proceeds of sale on trust for AGI and must forthwith pay to AGI the proceeds, or such part thereof necessary to pay in full the moneys owing to AGI; and
  - where the Applicant is not paid by the Third Party the Applicant must assign his claim against the Third Party, in respect of the sale of the Goods or the New Goods to the Third Party, over to AGI upon notice in writing being given to the Applicant by AGI requesting such assignment.
- 7.4 AGI and any of its employees or agents, is hereby irrevocably authorised to enter upon any premises occupied by the Applicant in order to retake possession of any Goods for which payment has not been made pursuant to paragraph 4.3.
- 8. INSPECTION OF GOODS**
- 8.1 The Applicant shall inspect the Goods on delivery or installation and must notify AGI of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote within seven (7) days of delivery or installation. If the Applicant does not give AGI an opportunity to inspect the goods or installation within a reasonable time following delivery, the goods or installation shall be conclusively presumed to be in accordance with the Terms and Conditions and free from any defect or damage.
- 9. WARRANTY AND LIMITATION OF LIABILITY**
- 9.1 AGI warrants that the Goods comply with the warranties included in any Warranty Document and any guarantees that cannot be excluded under the ACL or any other law.
- 9.2 To the extent permitted by law, all other guarantees, warranties, undertakings, and representations expressed or implied, whether arising by statute or otherwise, which are not given in these Terms and Conditions or any Warranty Document are expressly excluded.
- 9.3 If the Applicant is a Consumer and any Goods supplied by AGI are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the Applicant agrees that AGI's liability for a failure to comply with a consumer guarantee under the ACL in relation to those Goods (other than sections 51,52 and 53 of the ACL) is limited, at the option of AGI to the following:
- the replacement of the Goods or supply of equivalent goods;
  - the repair of the Goods;
  - the payment of the cost of replacing of the Goods or of acquiring equivalent goods; or
  - the payment of the cost of having the Goods repaired.
- 9.4 If the Applicant is not a Consumer, to the extent permitted by law, AGI will not be liable in any circumstances for any:
- Loss or damage to any property or person whatsoever resulting from provision of the Goods; or
  - Consequential Loss.
- 10. RETURN OF GOODS**
- 10.1 Except where prohibited by the ACL or any other law:
- AGI may refuse to accept Goods presented for return by the Applicant because the Applicant has changed their mind unless, within seven (7) days of purchase such Goods are presented to AGI in their original packaging, unsoiled, undamaged and in an immediate resalable condition.
  - A minimum 15% restocking fee will apply to all returned Goods.
- 11. APPLICATION OF THE PPSA**
- 11.1 The Applicant acknowledges and agrees that:
- all Goods ordered by the Applicant from AGI, and all proceeds from the sale or other disposal of such Goods, are subject to a security interest (as that term is defined in the Personal Property Securities Act 2009 (CTH) ("PPSA") until the Applicant has paid the full price outstanding of all such goods and has met all other obligations due by the Applicant to AGI in respect of all contracts between AGI and the Applicant;
  - AGI may register a financing statement in the Personal Property Securities Register against the Applicant and all goods ordered by the Applicant from AGI to perfect the security interest and otherwise comply with the PPSA;
  - AGI's interest in the Goods and New Goods is a purchase moneys security interest for the purpose of the PPSA; and
  - The subject matter referred to in s 275(1) of the PPSA is confidential.
  - AGI's interest in the Goods and the New Goods extends to the proceeds of the Goods and the New Goods;
- 11.2 At AGI's request, the Applicant agrees to do everything that AGI requires in order to obtain a more effective security interest or the priority that AGI requires over the goods or proceeds from the sale or other disposal of such goods, including, without limitation, providing details about the Applicant or the property subject to AGI's security interest.
- 11.3 The Applicant waives any right to receive any notices under the PPSA unless they are required to be given and cannot be excluded, including the right to receive notice of a verification statement under section 157 of the PPSA.
- 11.4 The Applicant must give AGI immediate notice before it changes its name, if any ABN, ACN, ARBN or ARSN allocated to it changes, is cancelled or ceases to apply to it or if any ABN, ACN, ARBN or ARSN is allocated to it where it did not previously have one.
- 11.5 To the extent permitted by s 115(1) and s 115(7) of the PPSA, the Applicant and AGI agree to contract out of the following provisions of the PPSA: s 95 (Secured party must give notice of removal of accession), 96 (when a person with an interest in the whole may retain an accession), 121(4) (enforcement of liquid asset security – notice); s 125 (obligation to dispose of or retain collateral); s130 (notice of disposal) s 132 (obligation to give statement of account); s135(notice of retention) s 142 (redemption of collateral); and s 143 (reinstatement of security agreement).
- 11.5.1 To the extent permitted under the PPSA, including section 275(6) of the PPSA, the parties must not disclose information, including the existence of and content of any documents relating to the security interest, to or at the request of an interested person as defined in section 275(9) of the PPSA.
- 12. EXCLUSION**
- 12.1 AGI is not under any circumstances liable to the Applicant for any =Consequential Loss, damage or other expenses whatsoever suffered by the Applicant arising out of or in consequence of any fault or defect in the Goods and/or Services (whether or not such fault or defect was caused by the negligence of AGI).
- 12.2 To the extent that they are capable of being excluded, any warranties or guarantees established by legislation, common law or equity and deemed to form part of this Agreement are hereby excluded.
- 12.3 The Terms and Conditions shall be read in conjunction with the terms and conditions of any invoice, statement or other document provided to the Applicant by AGI upon the delivery of the Goods or in providing the Services, and in the case of a conflict of interpretation, the Terms and Conditions prevail.
- 13. EVENT OF DEFAULT**
- 13.1 If:
- The Applicant fails to pay the Amount Outstanding by the Due Date;
  - the Applicant commits a breach of its obligations to AGI under the Agreement and does not remedy the default or breach within seven (7) days of receiving notice of such breach from AGI;
  - a judgment, order or encumbrance is enforced, or becomes enforceable upon any of the Applicant's Property;
  - any bankruptcy proceedings are instituted against the Applicant (if applicable);
  - a Change of Control occurs (either without the prior written consent of AGI) or, if AGI has consented, the Applicant has failed to provide AGI with a Deed of Novation signed by the Applicant, the Transferee and the new guarantor within 14 days of receiving the same from AGI, and in any case, prior to the effective date of the relevant restructure, transfer, sale or assignment;
  - to the extent permitted by law, the Applicant becomes subject to an Insolvency Event; or
  - a Change of Circumstance which is represented under the Agreement to exist which in the reasonable opinion of the Authorised Representative may have a material adverse affect on the ability of the Applicant to observe its obligations under the Agreement, then AGI may, without prejudice to any rights or remedies which it might have, and acting through the Authorised Representative, cancel the provision of credit to the Applicant without notice and is entitled to immediate payment of the sum equal to the price of all Goods and/or Services then unpaid, together with other costs and expenses as provided in the Terms and Conditions. A document signed by the Authorised Representative as to the amount owing by the Applicant is conclusive evidence of that amount, except in the case of manifest error.
- 14. REPRESENTATIONS**
- 14.1 The Applicant (and the Directors and Partners of the Applicant, if applicable) warrants as to the correctness of the information which it/they have furnished to AGI in the Application, and acknowledges that AGI has relied upon that information in determining whether or not to grant credit, and the extent thereof, to the Applicant.
- 14.2 If the Applicant is at any time acting in the capacity of trustee of any trust ("Trust") whether or not AGI has notice of the Trust, the Applicant covenants that:
- The Applicant is liable for the performance of all covenants contained in the Agreement in its own right and in its capacity as Trustee;
  - The Applicant is entering into this Agreement for the benefit of the Trust. Has full power and authority pursuant to the Trust deed to enter into the Agreement, and the provisions of the Trust deed not to purport to exclude or limit the right of indemnity of the Applicant against the Trust or the trust fund; and
  - AGI's right of recourse under the Agreement is not limited to the Applicant's assets but extends to the assets of any Trust;
- 14.3 The Applicant enters into the Agreement and places orders for Goods or Services for the purpose of its ordinary business and its commercial benefit and not for personal, domestic or household use or consumption.
- 15. COSTS**
- If an Event of Default occurs then in addition to any other right or remedy of AGI, the Applicant must pay all of the costs and expenses which AGI reasonably incurs in connection with that Event of Default on demand, including all debt collection fees, cartage, commissions, and legal expenses on a solicitor own client or full indemnity basis, whichever is higher.

## CONSOLIDATED ENERGY CREDIT APPLICATION FORM

PLEASE CHOOSE TO SIGN OPTION A OR OPTION B

**OPTION A - IF THE APPLICANT IS A COMPANY**

EXECUTED as a deed by

ACN:



in accordance with section 127  
of the Corporations Act 2001

X

Signature of Director

Print Name

Date

X

Signature of Director/Secretary

Print Name

Date

**OPTION B – IF THE APPLICANT IS AN PARTNERSHIP, SOLE TRADER OR TRUST\* OPTION A - IF THE APPLICANT IS A COMPANY**

EXECUTED as a deed by



in accordance with section 127  
of the Corporations Act 2001

X

Signature of Witness

Print Name of Witness

Address of Witness

Occupation of Witness

Date

X

Signature of Partner/Individual

Print Name

# DEED OF GUARANTEE AND INDEMNITY FORM

PLEASE SEEK LEGAL ADVICE PRIOR TO EXECUTING THESE DOCUMENTS.

## FOR INDIVIDUALS AS GUARANTOR

TO: AGI as defined in the Application  
This Deed of Guarantee is made by:

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Full Name of Guarantor:

As Trustee of a Trust?      Yes       No

Name of Trust:

Email Address:

Street/registered address of guarantor (not a PO Box):

Date

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Full Name of Guarantor:

As Trustee of a Trust?      Yes       No

Name of Trust:

Email Address:

Street/registered address of guarantor (not a PO Box):

Date

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Full Name of Guarantor:

As Trustee of a Trust?      Yes       No

Name of Trust:

Email Address:

Street/registered address of guarantor (not a PO Box):

Date

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*(hereinafter referred to jointly and severally as "the Guarantor")*

# DEED OF GUARANTEE AND INDEMNITY FORM

**IMPORTANT:**

In signing this document you are agreeing to become liable for any amount which may become owing to AGI by the Applicant pursuant to the Agreement. Amongst other rights AGI may seek to recover such amounts from you or take a charge over any land owned or in the future acquired by you. You should further NOTE that:

- Goods and Services may be provided to the Applicant on credit, and the amount owing to AGI may increase substantially, without notice to you;
- the terms of the Agreement may change at any time without notice to you;
- the guarantee you are giving may only be terminated in limited circumstances, and is otherwise irrevocable and continues despite any intervening payment, settlement or similar event; and
- if the Applicant breaches the Agreement or makes a misleading representation in connection with the Agreement, you must indemnify AGI for its loss.

This Guarantee must be completed and signed by: (a) all directors, partners or other proprietors of the Applicant; and (b) the husbands, wives, or de facto spouses of any directors, partners or other proprietors of the Applicant is property if jointly owned. Each Guarantor must execute this document in the presence of an independent witness (i.e., not a husband, wife, de facto spouse, family member or other Guarantor)

X

Signature of Guarantor

Date

SIGNITURE of Witness

FULL NAME & STREET ADDRESS of witness

X

Signature of Guarantor

Date

SIGNITURE of Witness

FULL NAME & STREET ADDRESS of witness

X

Signature of Guarantor

Date

SIGNITURE of Witness

FULL NAME & STREET ADDRESS of witness

X

Signature of Guarantor

Date

SIGNITURE of Witness

FULL NAME & STREET ADDRESS of witness

## RECITALS

- A. The Applicant has submitted the Application to AGI seeking the supply of Goods and/or Services on credit by AGI on the terms and conditions
- B. Each Guarantor jointly and severally, unconditionally guarantees the performance of the terms and conditions of the Agreement by the Applicant to AGI, including the Applicant's obligations to pay money to AGI. If on any one or more occasions the Applicant does not pay any amount to AGI when due, any Guarantor must pay that amount on demand by AGI. If the Guarantor does not pay any amount when demanded, the Guarantor must pay interest on that amount at the rate provided for under the Agreement.

## IT IS AGREED THAT:

1. The definitions in the Agreement apply to this Guarantee.
2. If AGI accepts the Application ("the Agreement") then the Guarantor agrees jointly and severally with AGI to guarantee the performance of the Terms and Conditions of the Agreement by the Applicant in respect of goods and services supplied by AGI to the Applicant from time to time.
3. The credit limit (if any) provided in the Application and/or the Agreement shall not affect the scope of this Guarantee.
4. Subject to the terms of this Guarantee, this Guarantee is irrevocable and continuing despite any intervening payment, settlement or similar event.
5. Without limiting a Guarantor's rights at law, if:
  - (i) there are no amounts for which the Applicant is, or will become liable to pay to AGI; or
  - (ii) there is a Change of Control of the Applicant,  
a Guarantor may seek to terminate its future liability under this Guarantee by Providing 30 days' notice in writing to the Authorised Representative. Any termination will only take effect from the date on which the Authorised Representative, acting reasonably, provides the Guarantor with a written acceptance of that notice
6. The liability of the Guarantor under this Guarantee is not limited or affected, and the rights of AGI under this Guarantee remain fully enforceable, notwithstanding the occurrence of any one or more of the following circumstances:
  - (i) the granting of any indulgence or concession at any time by AGI to the Debtor;
  - (ii) any variation of the Agreement, with or without the Guarantor's prior knowledge;
  - (iii) any compromise, release, discharge, waiver or variation of any right by AGI;
  - (iv) the fact that monies payable by the Applicant to AGI may not be recoverable or may cease to be recoverable in whole or in part;
  - (v) the existence now or at any future time of any legal disability in the Applicant or the Guarantor or any person named as a Guarantor;
  - (vi) the death of a person named as a Guarantor (in which case his or her estate shall have continuing liability under this Deed);
  - (vii) the bankruptcy of a person named as a Guarantor, or any Guarantee of Arrangement, assignment or composition entered into for the benefit of creditors of such a person;
  - (viii) the fact that a Guarantor's future liability under this Guarantee has been terminated; or
  - (ix) the fact that one or more of the persons named as a Guarantor may never execute this Guarantee or that the execution of this Guarantee by any one or more of such Guarantors (other than the persons sought to be made liable hereunder) is or may become unenforceable.
7. The Guarantor must indemnify and keep indemnified AGI against all costs and expenses incurred by AGI in respect of any breach by the Applicant in performing in accordance with the Terms and Conditions of the Agreement, and must pay all costs and expenses incurred by AGI in respect of any breach by the Applicant of the Terms and Conditions of the Agreement, including all loss, costs and expenses including loss of interest, all debt collection fees, commissions, and legal expenses on a solicitor/client basis or full indemnity whichever is higher, incurred by AGI. This indemnity is payable on demand.
8. If any payment made to AGI and later avoided by any statutory provisions is deemed not to have discharged the Guarantor's liability, then AGI, the Applicant and the Guarantor are restored to the rights and liabilities which each respectively would have had if the payment had not been made.
9. The Guarantor must not prove or claim in any bankruptcy, liquidation, composition, arrangement or assignment or in respect of the appointment of any liquidator, administrator, receiver or trustee until AGI has received 100 cents in the dollar in respect of the monies owing by the Applicant to AGI and the Guarantor must hold in trust for AGI such proof and claim and any dividend received thereon.
10. AGI may:
  - (a) seek from a credit reporting agency reports containing personal information about the Guarantor in order to assess whether to accept the Guarantor as a guarantor in respect of the credit applied for by or provided to the Applicant and for that purpose, may disclose personal information about the Guarantor (as prescribed in the Privacy Act) to that agency; and
  - (b) give to and seek from any credit providers named in a credit report issued by a credit reporting agency information about the Guarantor's credit arrangements as allowed in the Privacy Act.
11. Each Guarantor hereby charges in favour of AGI all land owned or in the future acquired by that Guarantor to secure payment of all amounts which are, or may become owing under the Guarantee or any other agreement, arrangement or transaction between AGI and the Applicant and irrevocably consents to AGI registering an absolute caveat (or the equivalent in any relevant jurisdiction which may exist from time to time) at any time in respect of such land to protect its charge, and will do all things necessary to ensure that registration is properly effected.
12. AGI may at any time assign, novate or otherwise transfer this Guarantee or all or any of the benefits and advantages of this Guarantee to any person as it thinks fit without prior notice to any Guarantor, provided that any such assignment will not be to the material detriment of the Guarantor. The Guarantor must do all things reasonably required by AGI in relation to any assignment, novation or transfer, including acting in good faith and not unreasonably withholding its agreement to any document required by AGI to give effect to the assignment, novation or transfer contemplated by this clause, and must execute and return such document to AGI within 28 days of receiving the same from AGI.
13. AGI is not obliged to take any action or give notice to the Applicant or to make demand against the Applicant before claiming against the Guarantor.
14. This Guarantee binds the personal representatives, assigns, transferees, or successors of the Guarantor.
15. The Guarantor shall pay all duties, fees and expenses associated with the granting of this Guarantee, and the registration of any caveats, withdrawals of caveats, and stamp duty.
16. The Guarantor acknowledges that each person named as a Guarantor has had full and ample opportunity prior to the execution of this Guarantee to obtain independent legal advice as to the extent of this Deed and has otherwise read and understood the Agreement and the Guarantee. Each Guarantor agrees to make payments under this Guarantee in full without set-off or counterclaim, and without any deduction in respect of taxes unless required by law, in Australian dollars, in immediately available funds.
17. A statement in writing signed by any officer, employee or agent of AGI as to any matter or as to any amount payable to AGI pursuant to this Guarantee as at the Date set out in the Statement is conclusive evidence of that amount, except in the case of manifest error.
18. This Guarantee continues to bind the Guarantor notwithstanding any changes which may from time to time take place in the composition, shareholders or partners of the Applicant.
19. AGI may at any time in its absolute discretion and without giving any notice whatsoever to the Guarantor refuse credit or supply of goods and/or services to the Applicant.
20. Any demand note or document to be served on the Guarantor may be served by delivering or posting it to the Guarantor at the address or at each address stated above provided however that the making of such a demand is not a condition precedent to any liability hereunder.
21. This Guarantee shall be construed according to the laws of Western Australia.
22. The Guarantor agrees to submit to the exclusive jurisdiction of the courts of Western Australia.
23. The Guarantor irrevocably waives any objection to the venue of any legal process selected by AGI.
24. This Guarantee does not merge with or adversely affect, and is not adversely affected by, any other guarantee, indemnity, charge or other security, or any judgment obtained by AGI against any person in connection with the Agreement, or the Guarantee including the Applicant or the Guarantor.
25. The Guarantor irrevocably waives any immunity in respect of its obligations under this Guarantee that it may acquire from the Jurisdiction of any court or any legal process for any reason including, but not limited to, the service notice, attachment prior to judgement, attachment in aid of execution.
26. If any of the persons named as Guarantor executes this Guarantee as the trustee of any trust (the "Trust"), such Guarantor is liable for the performance of all covenants contained in this Guarantee and agrees that AGI's right of recourse under this Guarantee is not to be limited to that person's assets, but extend to the assets of the Trust.
27. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.
28. Each person signing this Guarantee warrants by their execution of this document that they are duly authorized to bind themselves, or the relevant entity, to this Guarantee and that they have complied with all necessary rules and formalities prescribed by any law or other instrument.
29. The Guarantor acknowledges and agrees that AGI, without limiting AGI's other rights under this Guarantee (or otherwise in respect of confidential information) may disclose any confidential information to any related body corporate, any professional advisor of AGI, (including financial advisers, insurers, valuers, rating agencies and auditors) and any bona fide prospective assignee, purchaser of the whole (or any part) of AGI's business of all (or some of) the shares issued by AGI or any direct or indirect holding company of AGI, provided that, in each case, prior to such disclosure, that person has agreed to be bound by obligations of confidentiality in respect of such information or is otherwise bound by professional duties of confidentiality.



## 16. CHARGE

The Applicant hereby charges in favour of AGI all land owned or in the future acquired by it to secure payment of all monies which are or may become owing under this Agreement and irrevocably consents to AGI registering an absolute caveat (or the equivalent in any relevant jurisdiction or which may exist from time to time) at any time in respect of such land to protect its charge and will do all things necessary to ensure that such registration is properly effected.

## 17. SET OFF

The Applicant agrees and irrevocably authorises AGI to set off against any sums which may be due to AGI under this Agreement any other sums which may be owed by any of AGI's fellow subsidiary companies or its holding companies to the Applicant.

## 18. GENERAL

- 18.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect. Any subsequent agreement, arrangement or transaction between AGI and the Applicant (including any subsequent Application) does not terminate or discharge this Agreement, or any liability or obligation under this Agreement, except to the extent expressed to do so.
- 18.2 Notwithstanding clause 18.1, where the Applicant and AGI have entered into a prior agreement ("Prior Agreement") for the provision of credit by AGI to the Applicant pursuant to which the Applicant has granted AGI a security interest in any property (present or future) (including any caveat, charge, or other similar interest), that security interest shall continue in accordance with the terms of the Prior Agreement (in addition to any security interest granted by or under this Agreement) and for the purpose of that security interest and any registration of it under the PPSR, the Prior Agreement is hereby varied to provide that the security interest secures all amounts due under this Agreement (in addition to those due under the Prior Agreement) as if they were due under the Prior Agreement.
- 18.3 The Agreement supersedes all prior agreements, understandings and negotiations. No terms and Conditions at variance with the Terms and Conditions apply to the provision of credit, unless expressly accepted by the Authorised Representative in writing.
- 18.4 No waiver by AGI of any provisions of the Terms and Conditions is effective unless in writing and signed by the Authorised Representative.
- 18.5 If any of the Terms and Conditions is or becomes for any reason wholly or partly invalid, that condition is, to the extent of the invalidity, severed, without prejudice to the continuing force and validity of the remainder of the Terms and Conditions.
- 18.6 The Applicant is not entitled to make any deduction from amounts owing to AGI in respect of any set off or counterclaim to be held back for retention.
- 18.7 The Applicant must not assign or transfer any of their rights or obligations in connection herewith to any other person(s) whatsoever.
- 18.8 Any notice to be given to the Applicant is deemed to be received by the Applicant upon it being posted to the trading or registered address of the Applicant, or sent by Facsimile or email to the Facsimile number or email address set out in the Application (or such other address or Facsimile number or email address as the Applicant may advise in writing from time to time to the Authorised Representative).
- 18.9 This Agreement is governed by and construed in accordance with the laws of Western Australia, and the Applicant agrees to submit to the exclusive jurisdiction of the Courts of Western Australia. The Applicant irrevocably waives any objection to the venue of any legal process selected by AGI.
- 18.10 If the Application is made by more than one Applicant, each Applicant is jointly and severally liable under this Agreement.

- 18.11 The Applicant must advise the Authorised Representative in writing not later than fourteen (14) days before a change in effective control of the Applicant or any change or alteration of any particulars contained in this Application (if applicable). AGI (upon receipt of such advice) is entitled to review the Agreement, and in its sole discretion, to terminate the Applicant's credit facilities upon seven (7) days written notice (the "Notice Period") to the Applicant. In such circumstances, AGI is entitled to payment by the Applicant of a sum equal to the cost of Goods and/or Services then unpaid by the Applicant upon expiry of the Notice Period. The Applicant shall indemnify AGI in respect of any loss arising from the Applicant's failure to so notify.
- 18.12 If the Applicant signs the Application as the trustee of any trust (the "Trust"), the Applicant is personally liable for the performance of all covenants contained in the Agreement and agrees that AGI's right of recourse pursuant to this Agreement shall not be limited to the Applicant's assets but shall extend to the assets of the Trust.
- 18.13 The Applicant shall pay all duties, fees and expenses associated with the Application and the Agreement, and the registration of any caveats and withdrawal of caveats.
- 18.14 Any variation or changes to this Agreement must be:
- 18.14.1 In writing;
- 18.14.2 signed by the Authorised Representative and an authorised manager of the Applicant; and
- 18.14.3 expressly state that it is a variation to this Agreement.
- 18.15 The Agreement does not merge with or adversely affect, and is not adversely affected by the any other guarantee, indemnity, charge, or other security or any judgment obtained by AGI against any person in connection with the Agreement, including any Guarantor.

### NOTES: THESE ARE IMPORTANT AND SHOULD BE READ.

- (i) The Terms and Conditions form part of this Application and if this Application is accepted, an order placed by the Applicant or delivery of the Goods and/or provision of the Services to the Applicant will constitute unqualified acceptance by the Applicant of the Terms and Conditions including any Credit Limit in terms of (ii).
- (ii) The Credit Limit (if any) extended to the Applicant will be solely at the discretion of AGI.
- (iii) The Directors of the Applicant (or some other party) may be required by AGI to sign guarantees to support this Application. The Directors agree that AGI may seek a credit report from a credit reporting agency containing personal credit information about the Directors to assess whether to accept the Directors as guarantors. For that purpose, AGI may disclose personal information about the Directors as prescribed in the Privacy Act to that agency. The Directors also agree that AGI may give to and seek from any credit providers named as references in this Application and any credit providers named in a credit report issued by a credit reporting agency personal information about the Directors' credit arrangements as prescribed in the Privacy Act.

Please contact AGI if you have any difficulty executing this Application.

AGI may rely on this Application as if it is binding and enforceable notwithstanding that it has not been executed in accordance with the execution options below.

The Applicant confirms that I/we have read, understand and accept AGI's terms and Terms and Conditions set out in this Application and agree to be bound by them.