**AUSTRALIA BUILDING MATERIALS SUPPLY PTY LTD**

**trading as AWESOME HOME CENTRE**
**APPLICATION** **FOR CREDIT**

**(DISTRIBUTORS – PRODUCTS ONLY)**

Including Deed of Guarantee and Indemnity and Terms and Conditions

**Applicant Details**

|  |
| --- |
| **ALL COMPANY APPLICANTS PLEASE COMPLETE** |
| Registered Name of Entity: |  |
| Trading / Business Name(s) (if applicable): |  |
| ACN: | ABN:  |
| **ALL PARTNERSHIP / SOLE TRADER / TRUST APPLICANTS PLEASE COMPLETE (Delete as applicable)** |
| Partnership / Sole Trader / Trustee Name: |  |
| Trading / Business Name(s) (if applicable): |  | ABN:  |
| Does the Applicant trade as a Trading Trust? [ ]  Yes [ ]  No Type of Trust:[ ]  Unit [ ]  Discretionary  |
| **ALL APPLICANTS PLEASE COMPLETE** |
| Date Business Commenced: / / | How long in this business: |
| Nature of Business: | No. of Employees: |
| Postal Address: |  |
| Business Address: |  |
| Telephone: | Facsimile: |
| Email address: |  |
| Credit limit requested: Per Month |
| **ACCOUNT / ORDER CONTACT DETAILS**  |
| Contact Name (accounts):  | Contact Name (orders): |
| Contact telephone (accounts): | Contact telephone (orders): |
| Contact email (accounts): | Contact email (orders): |

|  |
| --- |
| DETAILS OF Applicant [ ]  APPLICANT (if individual or sole trader) [ ]  PARTNERS (if partnership) [ ]  DIRECTOR/S (if company) |
| 1: | Full name: | Date of birth: / / |
|  | Residential Address: [ ]  Owned [ ]  Renting |
|  | Role: | Driver’s Licence No.: | Expiry: / / |
|  | Telephone:  | Email: |
| 2: | Full name: | Date of birth: / / |
|  | Residential Address: [ ]  Owned [ ]  Renting |
|  | Role: | Driver’s Licence No.: | Expiry: / / |
|  | Telephone:  | Email: |
| **PROVIDE AT LEAST 2 tRADE REFERENCES**  |
| 1: | Business Name: | ACN/ABN: |
|  | Address or Account No.: | Telephone: |
|  | Email Address: |
| 2: | Business Name: | ACN/ABN: |
|  | Address or Account No.: | Telephone: |
|  | Email Address:  |
| PROVIDE APPLICANT’S FINANCIALS FOR THE PAST TWO YEARS  |
| Enclosed:  | Yes [ ]  No [ ]  |
| If no, please give a reason: |  |
| Annual Sales Turnover value: | Net assets value: | Premises (owned/rented/leased): |
| **ALL APPLICANT/S MUST COMPLETE THE DECLARATION AND AGREEMENT BELOW** |
| **The Applicant/s:**1. Warrants that all information supplied in this Credit Application to Australia Building Materials Supply Pty Ltd (ACN 660 824 573) trading as Awesome Home Centre (“**AHC**”) is true and correct.
2. Agrees that the Terms and Conditions of Trade will apply to the supply of all products from AHC to the Applicant.
3. Agrees that the payment term is the first day of the second month after the date of invoice issued by AHC (eg. an invoice dated 15 January 2023 is payable on or prior to 1 March 2023).
4. Acknowledges that any product purchased under a sales promotion cannot be exchanged or refunded unless it is faulty.
5. Acknowledge that:
	1. AHC may change the Terms and Conditions of Trade upon written notice to the Applicant; and
	2. subject to the Terms and Conditions of Trade, the Applicant is bound by such changed terms in respect of all subsequent transactions.
6. Agrees that AHC may cancel any credit facilities granted to the Applicant without notice and without giving any reason.
7. Undertakes to inform AHC immediately of any change in details set out in this form or any change in the proprietors, partners or directors of the Applicant.
 |
| Signed on behalf of the Applicant by:[ ] Sole Trader [ ] PARTNERS [ ] Director/S [ ] authorised officer/s |
| 1: | Name: | Signature: |
|  | Position: | Date: |
| 2: | Name and Title: | Signature: |
|  | Position: | Date: |
| 3: | Name and Title: | Signature: |
|  | Position: | Date: |

**IMPORTANT: If the Applicant is a company, its directors must sign the attached Deed of Personal Guarantee and Indemnity**

In considerationof AHC and its successors and assigns (“**AHC**”) at the request of the Guarantor/s (as is now acknowledged) supplying and continuing to supply goods to the Applicant (as defined in the Terms and Conditions of Trade):

I/We, the **Guarantor(s)**,

\*Insert Guarantor(s) name as applicable

have requested AHC to supply

Insert Applicant’s Company Name/Partnership/Sole Trader

Trading as (if applicable) -----

Insert Applicant’s Registered Business Name

(the **“Buyer”**) of

Insert Applicant’s Street Address (not a PO Box) State Postcode

With goods on credit

\* Guarantor(s) names should agree with those on Certificate of Guarantee - Executed as Deed on page 2 of 2.

**I/We (also referred to as the “Guarantor/s”) unconditionally and irrevocably agree with AHC** **as follows:**

1. **Guarantee** the due and punctual payment to AHC of all moneys which are now owing to AHC by the Applicant and all further sums of money from time to time owing to AHC by the Applicant in respect of goods supplied or to be supplied by AHC to the Applicant or any other liability of the Applicant to AHC, and the due observance and performance by the Applicant of all its obligations contained or implied in any contract with AHC, including but not limited to the Terms and Conditions of Trade agreed to by the Applicant. If for any reason the Applicant does not pay any amount owing to AHC the Guarantor will immediately pay the relevant amount to AHC.
2. **Hold Harmless And Indemnify** AHC as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, AHC in connection with:
	1. the supply of goods to the Applicant; or
	2. the recovery of moneys owing to AHC by the Applicant including the enforcement of this Guarantee and Indemnity, and including but not limited to AHC’s costs of collection and legal costs; or
	3. moneys paid by AHC with the Applicant’s consent in settlement of a dispute that arises or results from a dispute between AHC, the Applicant, and a third party or any combination thereof, over the supply of goods by AHC to the Applicant.
3. I/We have received, read and understood AHC’s Terms and Conditions of Trade prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions of Trade.
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to AHC by the Applicant and all obligations herein have been fully paid, satisfied and performed.
5. No granting of credit, extension of further credit, increase of the credit limit, or granting of time and no waiver, indulgence or neglect to sue on AHC’s part (whether in respect of the Applicant or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Applicant’s obligations to AHC, each Guarantor shall be a principal debtor and liable to AHC accordingly.
6. If any payment received or recovered by AHC is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and AHC shall each be restored to the position in which they would have been had no such payment been made.
7. The term “Guarantor” whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Applicant to AHC.
9. I/We irrevocably authorise AHC to obtain from any person or company any information which AHC may require for credit reference purposes. I/We further irrevocably authorise AHC to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee, and Indemnity and any subsequent dealings that I/we may have with AHC as a result of this Guarantee and Indemnity being actioned by AHC**.**
10. The above information is to be used by AHC for all purposes in connection with AHC considering this Guarantee and Indemnity and the subsequent enforcement of the same.

**Acknowledgment**

 **CERTIFICATE OF GUARANTEE - EXECUTED AS A DEED**

**IMPORTANT: Spouses of all Directors, Sole Traders and Business Partners must not be witnesses to the Guarantor signatures**

By signing below as Guarantor(s), I/we certify that I/we understand the terms of this Guarantee and Indemnity. In particular, I/we understand that if the Applicant fails to make any required payments to AHC, AHC may recover the amount of these payments from me/us personally.

**I/We certify that I/We have had the opportunity of taking independent legal advice in relation to the meaning and effect of this Guarantee.**

All Directors, Sole Traders, Business Partners and any other Guarantors complete, print and sign below as Guarantors in the presence of independent witnesses (not spouses or family members).

**Guarantor 1**

|  |
| --- |
| Full Name: |
| Home Address: |
| Date of Birth: |
| Date:  |
| Signed, sealed and delivered as a Deed:…………………………………………………………….. |

**Guarantor 2**

|  |
| --- |
| Full Name: |
| Home Address: |
| Date of Birth: |
| Date:  |
| Signed, sealed and delivered as a Deed:………………………………………………………….. |

**Witness to Guarantor 1 signature**

|  |
| --- |
| Full Name: |
| Occupation: |
| Address: |
| Date: |
| Signed:……………………………………………………….. |

**Witness to Guarantor 2 signature**

|  |
| --- |
| Full Name: |
| Occupation: |
| Address: |
| Date: |
| Signed:……………………………………………………… |

**TERMS AND CONDITIONS OF TRADE**

**1. DEFINITIONS**

* 1. “AHC” means Australia Building Materials Supply Pty Ltd ACN 660 824 573 trading as Awesome Home Centre.
	2. “Customer” means the entity that has contracted with AHC to buy Goods.
	3. “Goods” means any goods supplied by AHC to the Customer (or ordered by the Customer but not yet supplied) including, and in no way limited to, stock.
	4. “PPSA” means Personal Property Securities Act 2009.
	5. “Price” means the price of the Goods to be supplied by AHC to the Customer as set out in the quotation accepted by the Customer.
	6. “Security Interest” has the meaning given to it in the PPSA.

1. **GENERAL**
	1. The Customer acknowledges that these Terms and Conditions of Trade take precedence over any terms and conditions contained in any document provided by the Customer.
2. **QUOTATION**
	1. Where a quotation is given by AHC for Goods:
		1. unless otherwise agreed, the quotation shall be valid for 7 days from date of issue;
		2. the quotation shall be exclusive of GST unless specifically stated to the contrary.
	2. Where Goods are required in addition to the quotation, the Customer agrees to pay for the additional price for such Goods.
3. **ACCEPTANCE**
	1. Once a quotation has been accepted by the Customer, it will constitute a binding contract between AHC and the Customer and acceptance of these Terms and Conditions of Trade.
4. **PAYMENT**
	1. The Customer must pay the Price for the Goods ordered in the manner specified in the quotation or as set out in the credit application.
	2. If AHC requires the payment of a deposit for the supply of Goods, the parties acknowledge and agree that such deposit paid by the Customer to AHC is not refundable unless AHC fails to supply the Goods.
	3. Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:
		1. there is non payment of any sum by the due date;
		2. the Customer is bankrupted or enters administration, liquidation or receivership;
		3. a Court judgment is entered against the Customer and remains unsatisfied for seven (7) days;
		4. any material adverse change in the financial position of the Customer.
	4. Interest accrues on any amount owing after the due date at the rate of 1.0% per month, calculated daily from the first day overdue until payment.
	5. All expenses, disbursements, collection and legal costs incurred by AHC in connection with the enforcement of any rights and/or preservation of any rights contained in these Terms and Conditions of Trade shall be paid by the Customer on a full indemnity basis.
	6. Receipt of a cheque shall not constitute payment until it results in AHC receiving cleared funds for the entire amount.
5. **DELIVERY**
	1. AHC will use commercially reasonable endeavours to:
		1. deliver the Goods to the Customer’s nominated delivery address. AHC reserves the right to charge a delivery fee if the delivery address is outside of Adelaide’s metropolitan area;
		2. advise the Customer in advance if it is unable to make full and timely supply and/or delivery of the ordered Goods.
	2. If the Customer requests that AHC delay delivery of the Goods, AHC may in its absolute discretion grant the delay in which case the Goods shall be held by AHC at the Customer’s sole risk and expense and if required by AHC, the Customer shall pay to AHC any out of pocket expenses incurred by AHC in respect of such delay.
	3. If AHC is unable to deliver all of the Goods to the Customer in a single delivery, AHC may in its absolute discretion supply the Goods to the Customer by instalments.
	4. AHC will not be liable in any way for any loss of trade, revenue or profit incurred or suffered by the Customer in the event of AHC’s non-delivery or late delivery of the Goods.
6. **RISK TO GOODS AND DELIVERY**
	1. Risk in any Goods shall pass when the Goods are delivered to the Customer at the Customer’s nominated delivery address. It is the Customer’s obligation to insure the Goods from the point of delivery.
	2. The Customer is responsible for unloading the Goods at the point of delivery and checking all Goods upon receipt of the Goods.
7. **AMENDMENT OR CANCELLATION**

Orders placed with AHC cannot be varied or cancelled without the written approval of AHC. In the event that AHC accepts the variation or cancellation of any order placed, it shall be entitled to charge a reasonable fee in respect of the cancellation or variation, including but not limited to handling and restocking fee, fee for the processing and acceptance of the Customer’s order and request for cancellation or variation.

1. **TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)**

**Goods**

* 1. Whilst risk in the Goods passes on delivery, legal and equitable title in the Goods shall remain with AHC until it has received payment in full for all monies owed by the Customer to AHC for the Goods.
	2. Until AHC has received payment in full for all monies owed by the Customer for the Goods, AHC reserves the following rights:
		1. legal and equitable ownership of the Goods;
		2. the right to enter the Customer’s premises and retake possession of the Goods;
		3. the right to keep or resell any Goods repossessed under sub-clause 9.2.2; and
		4. any other rights it may have at law or under the PPSA.
	3. Where, pursuant to sub-clause 9.2.3:
		1. AHC resells the Goods repossessed, it is agreed that AHC may credit the Customer’s account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
		2. AHC retains possession of the repossessed Goods, it is agreed that AHC may credit the Customer’s account with the invoice value less such sum as AHC reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
	4. AHC shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Goods.
	5. Until AHC receives payment for Goods in full, the Customer acknowledges that AHC has a Purchase Money Security Interest (PMSI) which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to AHC.

**General**

* 1. Upon assenting to these Terms and Conditions of Trade, the Customer acknowledges and agrees that these Terms and Conditions of Trade constitute a security agreement for the purposes of the PPSA.
	2. The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which AHC asks and considers reasonably necessary for the purposes of:
		1. ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
		2. enabling AHC to apply for any registration, or give any notification, in connection with the Security Interest created under these Terms and Conditions of Trade so that the PMSI and/or Security Interest has the priority required by AHC.
	3. To the extent permitted by law, the Customer irrevocably waives its right to:
		1. receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
		2. redeem the Goods under section 142 of the PPSA;
		3. reinstate the Agreement under section 143 of the PPSA;
		4. receive a Verification Statement.
	4. Nothing in this clause 9 prevents AHC from taking collection or legal action against the Customer to recover any monies owed from time to time.
1. **ALTERATION**
	1. Any alteration to an order requested by the customer needs to be provided to AHC in writing as soon as reasonably practical. AHC may, but will not be obligated to, alter the order if in the opinion of AHC the alterations cannot be accommodated.
	2. Where AHC agrees to alter the order, AHC may delay the delivery of the Goods.
2. **OTHER CONDITIONS OF SUPPLY**
	1. Any typographical, clerical or other error or omission in any sales literature, quotation pricelist, acceptance of offer, confirmation of order, invoice or other document or information issued by AHC will be subject to correction without any liability on the part of AHC.
	2. Goods cannot be returned and the Services cannot be cancelled for change of mind. Any claim relating to Goods (including defective goods or shortage of goods) and/or Services must strictly comply with clause 13.
3. **DISPUTES**
	1. If a dispute arises out of or in relation to the Terms and Conditions of Trade, the parties to the dispute expressly agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Dispute Centre (ACDC) before having recourse to arbitration or litigation. In the event of such a dispute:
		1. a party claiming that a dispute has arisen must give written notice to the other party to the dispute specifying the nature of the dispute;
		2. on receipt of the notice specified in 12.1.1, the parties to the dispute must within seven (7) days of receipt of the notice seek to resolve the dispute;
		3. if the dispute is not resolved within seven (7) days or within such further period as the parties agree then the dispute is to be referred to ACDC;
		4. a mediation shall be conducted in accordance with ACDC mediation guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and which terms are hereby deemed incorporated;
		5. each party agrees to bear one half of the costs of the mediation;
		6. all discussions for the purpose of mediation are without prejudice; and
		7. no document brought into existence specifically for the purpose of mediation can be evidence in any subsequent litigation by a party.
4. **PRODUCT LIABILITY**
	1. Subject to the Customer’s rights under Schedule 2 of the Competition and Consumer Act 2010 (if applicable), no claim relating to Goods (including defective goods or shortage of goods) will be accepted by AHC unless made in writing within 72 hours of delivery. In notifying AHC, the Customer will provide sufficient details of the claim, including:
		1. details of the claim;
		2. quantity of affected Goods;
		3. quotation/purchase order number;
		4. location and condition of the affected Goods;
		5. an estimate of the quantum of the claim; and
		6. dated photographic evidence where necessary and available.
	2. If the Customer fails to comply with clause 13.1, AHC will have no liability under any such claim and the Customer agrees to waive and release AHC from any such claim and the Customer grees not to bring any claim against AHC in relation to a defect, damage or shortage of the Goods.
	3. AHC will not be liable for damage or defect to the Goods which arises from:
		1. inadequate or improper handling, storage or maintenance of the Goods by the Customer or a third party;
		2. any contamination or leakages caused or induced by the Customer or a third party;
		3. any modification to the Goods by the Customer or a third party;
		4. any misuse of the Goods by the Customer or a third party.
	4. All implied conditions, warranties and undertakings other than the statutory guarantees set out in Schedule 2 of the Competition and Consumer Act 2010 (if applicable) are expressly excluded to the extent permitted by law.
	5. Where the Goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then AHC’s liability is limited, at its option, to anyone or more of the following:
		1. the replacement of the Goods or the supply of equivalent goods;
		2. the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
		3. the refund of that part of the Price relating to the defective Goods.
	6. Subject to the Customer’s rights under Schedule 2 of the Competition and Consumer Act 2010 (if applicable), to the fullest extent permitted by law, AHC’s liability to the Customer, whether for breach of contract, tort (including negligence), strict liability or otherwise under or in connection with the supply of Goods shall not in any event exceed an amount equal to the Price paid by the Customer for the relevant defective Goods and AHC will have no liability for any indirect or consequential loss and/or expense suffered or incurred by the Customer or any liability to third parties suffered or incurred by the Customer.
	7. Should AHC wish to recall any Goods as a result of proper action by a regulatory authority or otherwise, the Customer must take such action as AHC reasonably requires in assisting AHC with product recall. The Customer must not make any public or private statement about the recall without the prior written approval of AHC.
5. **JURISDICTION**
	1. These Terms and Conditions of Trade and all matters concerning the business relationship between AHC and the Customer shall be governed by the law of the State of South Australia and the parties submit to the exclusive jurisdiction of the Courts of South Australia for the conduct of any litigation.
6. **MISCELLANEOUS**
	1. The Customer must not assign its rights or obligations under these Terms and Conditions of Trade without the prior written consent of AHC which consent may be withheld by AHC in its absolute discretion. AHC may assign its rights or obligations under Terms and Conditions of Trade in its absolute discretion.
	2. AHC shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
	3. Failure by AHC to enforce any of the terms and conditions contained in these Terms and Conditions of Trade shall not be deemed to be a waiver of any of its rights or obligations under these Terms and Conditions of Trade.
	4. If any provision of these Terms and Conditions of Trade shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.
	5. Any variation of the terms and conditions contained in these Terms and Conditions of Trade must be agreed to in writing by AHC for it to have any legal effect.