

**COMMERCIAL CREDIT ACCOUNT APPLICATION**  
**E-STEEL (AUST) PTY LTD ABN 65 075 706 713**

**1. CUSTOMER DETAILS**

1.1	Company Name:	Telephone: ( )
1.2	Trading Name:	Facsimile: ( )
1.3	Trading Address:	Post Code
1.4	Postal Address:	Post Code
1.5	Purchasing Contact:	Accounts Payable Contact:
	Email Address:	Email Address:

**2. BUSINESS DETAILS**

2.1	Nature of Business:	
2.2	Date of Incorporation:	State of Incorporation: A C N:
2.3	How long has business been trading:	A B N:
2.4	Number of Branches:	No. of Employees:
2.5	Are business premises owned / leased / rented:	
2.6	If leased / rented supply lessee / landlords name:	
2.7	Special Delivery Instructions:	
2.8	Products Used:	

**3. PROPRIETORS / DIRECTORS DETAILS**

Full Name(s) and address(es) of sole trader, partners, directors

3.1	Position:
	Telephone:
	Drivers licence No : D.O.B :
3.2	Position:
	Telephone:
	Drivers licence No : D.O.B
3.3	Position:
	Telephone:
	Drivers licence No : D.O.B
3.4	Position:
	Telephone:
	Drivers licence No : D.O.B
3.5	Has any proprietor / director been registered under any part of the Bankruptcy Act or under any special financial arrangement or involved in Company or Business which has been liquidated or under external administration?
	YES / NO
	If yes, give details:

**4. TRADE REFERENCES**

	Company:	Suburb / State:	Avg. Monthly Value:	Telephone:	Fax:
4.1			( )	( )	
4.2			( )	( )	
4.3			( )	( )	
4.4			( )	( )	
4.5			( )	( )	

**5. FINANCIAL DETAILS OF THE APPLICANT**

<b>EXPECTED PURCHASE PER MONTH:</b>		\$
5.1	Bank:	Branch: (BSB) Account No.
5.3	If Company: Nominal Capital:	\$ Paid Up Capital: \$

## E-STEEL (AUST) PTY LTD – TERMS AND CONDITIONS OF SALE

By submitting a credit application and/or ordering goods and services (“**goods**”) from E-Steel, you (“**Customer**”) agree that the following terms and conditions of sale shall apply to the supply. These terms and conditions replace any previous terms and conditions of sale. These terms and conditions create a security interest in favour of E-Steel for the purposes of the Personal Property Securities Act 2009.

### 1. INTERPRETATION

In these terms and conditions and the following sections of this document entitled “Personal Guarantee, Indemnity & Charge (“**Guarantee**”)” and “Deed of Agreement and Charge” and any other associated or collateral documents (unless a contrary intention is stated):

- 1.1 ‘E-Steel’ shall mean E-STEEL (AUST) PTY LTD (ACN 075 706 713) or its successors;
- 1.2 “Customer” shall mean a person whose order for the purchase of goods is accepted by E-Steel.
- 1.3 “Consumer” means a consumer as that term is defined in the Australian Consumer Law;
- 1.4 “Guarantor” means each of the persons who execute this document as guarantor;
- 1.5 “PPSA” means the Personal Property Securities Act 2009;
- 1.6 “Purchase Monies Securities Interest” or “PMSI” has the meaning given in section 14 of the PPSA as amended from time to time.
- 1.7 “Supplier” means E-Steel (Aust) Pty Ltd ACN 075 706 713 or their assigns
- 1.8 The headings used do not form part of these terms and conditions and are for convenience only.
- 1.9 Where the context admits or requires words importing, the singular number shall include the plural number, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations.
- 1.10 “Including” is not a term of limitation.

### 2. PRICING/PAYMENT

- 2.1 Prices contained in quotations for the supply of goods are exclusive of GST unless such quoted prices state that GST is included. The Customer shall be responsible for the payment of any GST or like tax payable in respect of goods supplied to the Customer and any such tax shall be in addition to any quoted prices unless such quoted prices state that GST is included.
- 2.2 Notwithstanding any prior acknowledgment by E-Steel of the price of goods, the prices specified for goods may at E-Steel’s option be subject to alteration to reflect E-Steel’s prices and charges in effect at the time of delivery.
- 2.3 Any variations in the invoice or contract price as a consequence of currency fluctuations, taxes, customs duty or other imposts shall be to the Customer’s account.
- 2.4 E-Steel will be entitled to set off against any money owing to the Customer amounts owed to E-Steel by the Customer on any account whatsoever. However the Customer shall not set off any amounts allegedly owing by E-Steel to it against any amount due by it to E-Steel.
- 2.5 Unless otherwise agreed to by the Supplier, the only accepted means of paying accounts will be by cash, bank cheque, COD or electronic funds transfer, all without any deduction.

### 3. ACCOUNT TERMS

- 3.1 Payment for goods is to be made in cash not later than the end of the month following the month in which goods are delivered or are made available for delivery.
- 3.2 E-Steel reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery if in the sole opinion of E-Steel this is warranted.
- 3.3 E-Steel shall be entitled to charge interest on all accounts not satisfied in accordance with clause 3.1 at 16% charged on a daily basis and which shall be calculated from the date upon which moneys become due and payable up to the date of payment in full at the sole discretion of E-Steel. E-Steel may debit the Customer’s account monthly or at such other times it chooses for such interest.
- 3.4 E-Steel shall be entitled to charge the Customer an administration fee for the costs of recovery of overdue accounts.
- 3.5 The Customer shall pay any stamp duties, any bank charges or merchant fees or like charges levied on the Supplier by any banker or other credit provider whose banking or credit card facilities are utilised by the Customer for paying the Supplier any amounts on any account and legal costs on an indemnity basis, including any other expenses payable of and incidental to the performance or enforcement of or any litigation on these terms and conditions or Guarantee, Indemnity and Charge or Agreement or any credit application or any security documents signed by the Customer or any guarantor together with any other collection costs.
- 3.6 Credit extended to the Customer for all goods sold will be made in accordance with the terms of credit as agreed by E-Steel at the time the Customer’s account was established or as subsequently altered by E-Steel. In all other respects these terms and conditions will apply. Provided always E-Steel may withdraw the Customer’s credit facilities at any time without notice or at its discretion alter the Customer’s credit limit for any reason (including to meet the Customer’s then buying needs). Any credit approval limit noted in this form, any monthly statement or otherwise is for E-Steel’s convenience only and does not reflect what may actually be the credit limit of the account at any one time.
- 3.7 The Customer is liable for all purchases made under account. It is not the responsibility of E-Steel to confirm authority for the purposes of supplying or delivering goods to the Customer, its agent(s) or those who E-Steel deems to be its agents. It is the sole responsibility of the Customer to ensure there is no unauthorised use of their account number or name.

### 4. DEFAULT

- 4.1 If the Customer makes default in payment or otherwise fails to carry out the terms of or repudiates the contract created by acceptance of a quotation by the Customer or by the acceptance of an order by E-Steel or if the Customer stops payment or calls a meeting of its creditors or

becomes insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of going or goes into liquidation or has a winding up petition presented against it or a Receiver appointed, E-Steel may at its option and notwithstanding its waiver of such default or failure and without prejudice to its other rights under the contract so created suspend or cancel such contract or require payment in cash before or on delivery of goods notwithstanding the terms of payment specified or may take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for any loss resulting from such resale. E-Steel may exercise any of such rights as to the whole or part of the goods.

## **5. DELIVERY**

- 5.1 If at any time before delivery of goods or performance of any work by reason of war, strike, lockout, cessation or shortened hours of labour, transport delays, delay in delivery by Supplier's suppliers, accidents, destruction of or damage to E-Steel's works or business or those of its suppliers, Government interference with or control of the operation of the works or business of E-Steel or its suppliers, or any cause whatsoever beyond the control of E-Steel, E-Steel is prevented from making delivery or performance at the time stipulated E-Steel shall be entitled at its option either to extend the time for delivery or performance for a reasonable period or to determine the contract and the Customer shall in consequence have no claim for damages, but without prejudice to E-Steel's rights to recover all sums owing to it in respect of deliveries made or services performed prior to the date of such determination and to recover all payments made or expenses incurred by E-Steel in connection with the contract.
- 5.2 All goods supplied will be at the Customer's risk if delivered to a requested point of delivery and to leave the goods at such place whether or not any person is present to accept delivery, unless the Customer requests any other arrangements which are agreed to by E-Steel in writing.
- 5.3 The Customer shall be liable for payment of any charges for the delivery of the goods unless otherwise agreed to in writing between E-Steel and the Customer before the goods are despatched.

## **6. PROPERTY AND RISK**

- 6.1 Legal and equitable title in goods shall not pass to the Customer until the purchase price for those goods and all other amounts owed to E-Steel have been paid in full to E-Steel by the Customer but risk in the products shall pass to the Customer upon delivery.
- 6.2 Until such time as title passes in accordance with paragraph (a) above the Customer shall hold the goods as fiduciary and bailee for and agent of E-Steel on the terms set out below.
- 6.3 Pending transfer of title, the Customer may use the goods as agent of E-Steel and as authorised by E-Steel to manufacture new products. The products resulting from such manufacture will be the property of E-Steel.
- 6.4 The Customer is authorised to sell, or agree to sell, the goods or any manufactured products as agent of E-Steel until such time as title passes to the Customer PROVIDED THAT the Customer shall not represent or hold out to any third parties that it is acting as agent of E-Steel and E-Steel shall not be bound as principal by any contracts between third parties and the Customer.
- 6.5 Without prejudice to any other rights which E-Steel may have under this contract or at law, the Customer expressly and irrevocably agrees that E-Steel shall be entitled to enter upon the Customer's premises and repossess, remove and sell the goods or any manufactured products in which the goods have been used without notice upon the occurrence of any of the following events:
- (a) the Customer, being a natural person, commits an act of bankruptcy, or is declared insolvent;
  - (b) where the Customer is a corporation, proceedings are commenced to wind up the Customer or the Customer is placed under official management or a receiver is appointed over the Customer's undertaking or property or any part thereof or the Customer is placed under any other form of insolvent administration;
  - (c) the Customer enters into some arrangement or assignment for the benefit of its Creditors;
  - (d) the Customer disposes of or parts with possession of the goods otherwise than as expressly authorised by this contract;
  - (e) the Customer, in the opinion of E-Steel, is in breach of any terms of this contract.

## **7. SPECIFICATIONS OR SPECIAL ORDERS**

- 7.1 It is the responsibility of the Customer to notify E-Steel in writing of the nature, standard and specifications of the goods required to be supplied. Subject to any limitation expressed or implied by statute E-Steel does not give any advice, make any recommendation or provide any warranty in relation to the suitability of goods ordered by the Customer for the purpose or use to which the goods are to be put by the Customer or any third party.

## **8. CLAIMS ON E-STEEL**

- 8.1 Unless agreed in writing by E-Steel, E-Steel will not accept the return of goods. The proof of purchase from the Customer must accompany all goods returned to the Supplier.
- 8.2 Goods proved to be defective as a result of action or inaction on the part of E-Steel or its supplier will be replaced at the place of original delivery provided written notification of the defect be given to E-Steel within seven (7) days from the date of delivery and the goods are returned, except if destroyed, by the Customer to E-Steel's works, warehouse or depot from which they were purchased. In no circumstances will any other allowance be made or compensation or damages paid in respect of defective goods or for non-delivery where goods delivered are claimed to be defective. For the purpose of this clause the word 'defective' means 'not in accordance with the express or implied terms, conditions or warranties of the contract'.
- 8.3 Notwithstanding these terms and conditions E-Steel does not accept any responsibility whatsoever for errors in dimensions, quantities, specifications or otherwise where orders for any of those goods are placed with E-Steel by the Customer otherwise than in writing.

- 8.4 If material is supplied to E-Steel by the Customer for cutting or any other treatment and such material is lost, damaged or destroyed by E-Steel, E-Steel's liability to the Customer shall be limited to replacement of any material so lost, damaged or destroyed or at the discretion of E-Steel, payment by E-Steel to the Customer of the replacement cost of such material, subject to any limitation expressed or implied by statute.
- 8.5 The Customer shall be responsible for immediate examination of goods after arrival at the place of delivery and E-Steel shall not be liable for any claim to which it would otherwise be liable in respect of damaged goods including goods, damaged in course of transit unless particulars of such claim are notified to E-Steel in writing within seven (7) days after arrival of the goods into the custody of the Customer or its carrier. Shortages other than those noted on E-Steel's Delivery Receipt by or on behalf of the Customer or by or on behalf of his carrier at the time of passing of the goods from the custody of E-Steel or its carrier shall not be recognised by E-Steel.
- 8.6 E-Steel's liability for damages for any breach of this contract and terms and conditions shall, subject to any limitations expressed or implied by statute, be limited to general damages and E-Steel shall not be responsible for any special damage suffered by the Customer whether on the grounds of consequential loss howsoever caused, loss on resale, delays in the Customer's factory or otherwise.
- 8.7 Unless a required delivery date is notified by the Customer to E-Steel in writing and is confirmed in writing by E-Steel the goods will be made available or delivered by E-Steel (as the case may be) as soon as reasonably practicable by E-Steel and E-Steel shall not be liable for any loss or penalty for late delivery whether such loss is actual or consequential.

## 9. FITNESS FOR PURPOSE

- 9.1 To the maximum extent permitted by law, the Customer agrees that it does not rely on the skill or judgement of the Supplier in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.

## 10. LAWS TO GOVERN

- 10.1 All matters arising in connection with the agreement for the sale of goods by E-Steel to the Customer shall be governed by the law of the State of Victoria and the parties submit to the jurisdiction of the courts of that State. The Sale of Goods (Vienna Convention) Act 1987 Vic (or its corresponding legislation in other States or Territories) shall not apply.

## 11. SEVERANCE

- 11.1 In the event that the whole or any part or parts of any provisions in this agreement should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these terms and conditions but the validity and enforceability of the remainder of these terms and conditions shall not be affected.

## 12. PERSONAL PROPERTY SECURITIES ACT

- 12.1 The Customer agrees that these terms and conditions create a PMSI in the goods (and their proceeds) supplied presently and in the future by E-Steel to the Customer.
- 12.2 The Customer agrees to do all things necessary and execute all documents reasonably required to register the PMSI granted by the Customer under these terms and conditions and to ensure that E-Steel acquires a perfected security interest in the goods under the PPSA.
- 12.3 The Customer will, upon demand, pay all of the Supplier's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of the Supplier's security interest and all other costs associated with protection and enforcement of the Supplier's security interest created by these terms and conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the goods the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that E-Steel has with the Customer.
- 12.4 This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations.
- 12.5 Until ownership of the goods passes to the Customer, the Customer waives its rights under the following provisions of the PPSA, to the extent that it is permitted by law to:
- (a) receive a notice of intention of removal of an accession (s.95);
  - (b) receive a notice that E-Steel has determined to enforce its security interest in accordance with land law (s118);
  - (c) receive a notice of enforcement action against liquid assets;
  - (d) receive a notice of disposal of goods by E-Steel purchasing the goods (s129);
  - (e) receive a notice to dispose of the goods (s130);
  - (f) receive a statement of account following disposal of the goods (s132(2));
  - (g) receive a statement of account if no disposal of the goods, six monthly (s132(4));
  - (h) receive notice of any proposal by E-Steel to retain the goods (s135(2));
  - (i) object to any proposal by E-Steel to either retain and dispose of the goods (s137(3));
  - (j) redeem the goods (s142);
  - (k) reinstate the security agreement (a143); and
  - (l) receive a notice of any verification statement (s157(1) and 157(3)).
- 12.6 To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in the Supplier's discretion and which would otherwise confer rights on the Customer.
- 12.7 The Customer further agrees that where E-Steel has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- 12.8 The Customer's right to possession of goods still owned by E-Steel under these terms and conditions shall cease if:

- (a) the Customer being an individual, commits an act of bankruptcy,
- (b) the Customer being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Customer entering into a Deed of Company Arrangement,
- (c) the Customer ceasing or threatening to cease conducting business in the normal manner or applying for deregistration or receives a deregistration notice,
- (d) any cheque the Customer provides to E-Steel or any Group Company is dishonoured for payment,
- (e) the Customer failing to comply with any demand for payment issued by E-Steel or any Group Company, or
- (f) the Customer breaching any of the terms and conditions contained herein and/or are in default of any other agreement between E-Steel or any other Group Company and the Customer.

12.9 The Customer expressly and irrevocably agrees that E-Steel is entitled to enter any premises where the goods supplied by E-Steel are located to repossess, remove and sell such goods. The Customer (its successors and assigns, including any external manager or administrator) shall not object to the Supplier, or its agents, entering any premises for the purpose of this clause and agrees to indemnify and keep E-Steel indemnified in respect of any claims, actions and costs that may arise against E-Steel in relation to the removal, repossession and sale of the goods pursuant to these terms and conditions including any claims brought by third parties.

12.10 The Customer agrees that repossession and retention of the goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to E-Steel by the Customer, as is equivalent to the Supplier's estimation of the market value of the goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest E-Steel has on the value of the goods recovered.

12.11 Until ownership of the goods passes, the Customer must not give E-Steel a written demand or allow any other person to give E-Steel a written demand requiring E-Steel to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.

12.12 The Customer agrees not to change the Customer name or undertake any changes to any documents that E-Steel has registered, requires to be registered or are capable of being registered without our prior written consent of the Supplier. For avoidance of doubt, these terms regarding the PPSA apply even where the customer is a Consumer.

### 13. CERTIFICATE

13.1 A statement in writing signed by E-Steel's duly authorised officer ("the certificate") stating all or any of the following matters, facts or things:

- (a) The amount due at any date for all goods provided;
- (b) The amount due at any date for interest on the monies due.
- (c) The amount due at any time for legal costs and/or other amounts due on the account.
- (d) The date of making default in performing or observing any terms and conditions, covenant or agreement to be performed or observed by the Customer, and whether such default has continued between specified dates.
- (e) Anything else relevant to the establishment of any right or remedy of E-Steel or of the liability of the Customer. Shall be conclusive evidence of such matter(s), fact(s) or thing(s) stated in the certificate.

### 14. MISCELLANEOUS

14.1 Unless otherwise specifically agreed in writing by E-Steel, where any terms and conditions of the Customer's order are inconsistent with these terms and conditions, then these terms and conditions will prevail. Any variations or additions to these terms and conditions not expressly agreed to in writing by E-Steel are expressly rejected by the Supplier.

14.2 These terms and conditions and all obligations hereunder shall be binding on the Customer's personal representatives, successors and permitted assigns and shall be for the benefit of E-Steel's successors and assigns.

14.3 Notwithstanding any prior acknowledgment by E-Steel of the price of goods, the prices specified for goods may at E-Steel's option be subject to alteration to reflect E-Steel's prices and charges in effect at the time of delivery.

14.4 Payments received by the Supplier shall be applied first in payment of interest and any costs of and incidental to debt recovery and then in reduction of principal.

14.5 Payments received without remittance advice will be applied first to the oldest balance owing by the Customer.

14.6 E-Steel and the Customer hereby exclude the application of the United Nations Convention on Contracts for the International Sale of Goods with respect to international sale of goods.

## DEED OF AGREEMENT AND CHARGE

In consideration of E-Steel's acceptance of this application and/or in consideration of the E-Steel providing and/or continuing to provide goods to the Customer and as an essential condition of the terms of supply:

1. Each of us acknowledges the information provided in this application is the basis for E-Steel determining the financial standing and credit worthiness of each of us (and the incorporated body) and do hereby:
  - (a) authorise E-Steel to make such enquiries and receive such information from the bankers and business referees mentioned in this application and otherwise from anyone as E-Steel may reasonably consider necessary;
  - (b) certify that the information provided in this application is true and correct;
  - (c) acknowledge that the Supplier has informed me/us, in accordance with Section 18E(8) (c) of the Privacy Act 1988 as amended, that certain items of personal information about me/us contained in the application are permitted to be kept on a credit information file and might be disclosed to credit reporting agencies;
  - (d) in accordance with Sections 18H and or 18K and or Section 18L(4) of the Privacy Act 1988 as amended:
    - (i) agree to reports being given to E-Steel for the purpose of assessing the application for credit or commercial credit or assessing whether to accept us as Customer as the case may be;
    - (ii) agree that E-Steel may use, for the purpose of assessing an application for credit or assessing whether to accept us as customer, information concerning my/our commercial activities or commercial credit worthiness obtained from a person or body carrying on business or undertaking involving the provision of information about the commercial credit worthiness of person;
    - (iii) authorise E-Steel to exercise my/our rights of access to my/our credit information files and credit reports;
  - (e) agree E-Steel may give to and seek from any credit providers (whether or not named in this application) reports and information that has any bearing my/our credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:
    - (i) to assess an application by me/us for credit or commercial credit;
    - (ii) to notify other credit providers of a default by me/us;
    - (iii) to exchange information with other credit providers as to the status of my/ our account where I am/we are in default with E-Steel or with another creditor provider;
    - (iv) to assess my/our credit worthiness or commercial credit worthiness at any time;
    - (v) to assess whether to accept me/us as Customer or to continue supplying credit to the Customer;
  - (f) agree E-Steel may seek from a credit reporting agency, a credit report containing personal information about me/us to assess whether to accept me/us as a Customer for credit applied for, or provided to the Customer;
  - (g) agree that these authorisations shall continue to have effect for the duration of the period during which credit or commercial credit is provided or sought by me/us from E-Steel or, while any moneys are owned on any account by me/us or any guarantor of mine/ours to E-Steel.
2. Whether or not credit facilities are approved, future supply of products to the Customer shall be on the terms and conditions of this document the "Agreement". If credit is refused or withdrawn, then payment shall be in accordance with E-Steel's requirements (for supply to the Customer) from time to time instead of any credit period which may otherwise have applied.
3. In consideration of the acceptance of this application by E-Steel and as an essential condition of the terms of supply, we jointly and each of us severally charge all of my, our, and its real property both present and future and wheresoever situated with the amount of my, our and its (as the case may be) indebtedness to E-Steel on any account whatsoever, from time to time and each person shall immediately upon demand being made on he, she or it by E-Steel, sign all documents and do all things that E-Steel may reasonably require to be signed and done to further secure to E-Steel the amount of such indebtedness to E-Steel including but not limited to such guarantee and or indemnity instruments in such terms as are required by E-Steel and such mortgage or mortgages (including, without limitation, a mortgage in the terms contained in the approved Form "M" published by the Law Institute of Victoria or any revision or replacement of that form) over any real property (whether acquired before or after the date of this agreement) containing such covenants as are required by E-Steel and each of us hereby irrevocably appoints E-Steel, each manager and each credit manager from time to time of E-Steel, each successor of E-Steel, each assignee of E-Steel, each manager and each credit manager from time to time of each successor and such assignee and each of them severally to be the duly constituted attorney of each of us to execute in our several names and as our several acts and deeds any documents including, without limitation, any mortgage or mortgages of real property, bills of sale, mortgage debentures or any like documents and consents to any caveats as E-Steel may wish to lodge against any dealings in any real property of mine/ours in any titles office and to do all acts and execute any documents necessary to give effect to and/or register any of the foregoing and undertake to not object to the lodging of any such caveat or take any steps to remove any such caveat. "Real property" includes estates and interests including leasehold. I/We hereby authorise any officer, partner or employee of any solicitors or agents engaged by E-Steel or any of E-Steel's offices or employees as referred to previously in this clause to sign any stamp duties form on my/our behalf so as to stamp any form required to withdraw any caveat lodged by E-Steel over any of my/our real property.
4. In consideration of and as an essential condition of the acceptance of this application by E-Steel I/we the undersigned do jointly and severally with the incorporated, body and in our own names:
  - (i) accept liability to E-Steel for the payment as principal debtor of all monies owed by the incorporated body to E-Steel from time to time and waive all rights as a mere surety which may be inconsistent therewith and hereby guarantee to the supplier payment of all such monies;
  - (ii) accept liability to the Supplier for the payment as principal debtor of any sum required to be paid by E-Steel to any administrator, liquidator, receiver or other controller of the incorporated body pursuant to Law;
  - (iii) enter into this Agreement and the charge as contained in clause 3 above; bind the incorporated body and warrant our authority to bind the incorporated body.

**PERSONAL GUARANTEE & INDEMNITY AND CHARGE (“GUARANTEE”)**

In consideration of E-Steel agreeing at the request of the Guarantor (which request is testified by the Guarantor’s execution of this document) to commence or continue to supply to the Customer on credit or otherwise goods and/or services from time to time on the terms and conditions imposed from time to time by the Supplier on the Customer the Guarantor (jointly and severally if more than one) agrees with the Supplier as follows:

1. That this guarantee applies to all money owed by the Customer to the Supplier.
2. To pay to the Supplier without any demand and without any deductions, all monies which are now or may from time to time hereafter be owing or remain unpaid by the Customer to the Supplier on all accounts whatsoever including (without limitation):
  - (i) all moneys payable in respect of the supply of goods and services;
  - (ii) interest payable on overdue accounts; and
  - (iii) costs on an indemnity basis of any attempt made by or on behalf of the Supplier to recover monies from the Customer or from the guarantor or to secure any such indebtedness or liability to the Supplier.
3. To Guarantee the due performance of the Customer of any other obligations owed by it to the Supplier.
4. This Guarantee shall be a continuing Guarantee.
5. The Supplier may at any time (with or without the notice to the Guarantor) without prejudicing and/or without affecting and/or without discharging the Guarantor from liability:
  - (a) Enter into any arrangement with or release of the Customer or any other guarantor or person by the Supplier or by operation of law, whether the consent of the Guarantor shall have been obtained, or notice thereof given to the Guarantor or not, or any omission or delay on the part of the Supplier.
  - (b) grant time or other indulgence to the Customer in respect of the liability of the Customer to pay the Supplier;
  - (c) refuse to supply to the Customer further supplies of products and/or services;
  - (d) may release or impair any security;
  - (e) release or otherwise compromise with the Customer;
  - (f) release or otherwise compromise with another Guarantor.
6. The Guarantor shall not be discharged from liability by:
  - (a) Any other guarantee or any security or instrument, negotiable or otherwise which the Supplier may now or hereafter hold in respect of any moneys hereby guaranteed, or any judgement obtained by the Supplier, or any release, discharge, surrender or modification of or dealing with any such guarantee, security, instrument or judgement.
  - (b) The fact the moneys payable by the Customer or any part thereof may cease to be recoverable from the Customer or from any other guarantor or person or for any other reason than that the same have been paid in full, and to such extent as may be necessary to give effect to this sub-clause this Guarantee shall be treated as an indemnity.
  - (c) Any change in the membership of or termination of any partnership or firm of which the Customer or Guarantor is a member or the death, liquidation or bankruptcy of the Customer, or the assent of the Supplier to any composition, arrangement or scheme in respect of the Customer or the acceptance by the Supplier of any dividend or sum of money thereunder.
  - (d) The failure of any other person named as a party to execute this instrument.
  - (e) Any variation of the terms upon which the goods and/or services are supplied to the Customer and paid for by the Customer.
  - (f) Any claim the Customer may have against the Supplier.
  - (g) Any act or omission by the Supplier which may result in prejudice to the Guarantor.
  - (h) Any payment to the Supplier by the Customer which is later avoided by the application of any statutory provision.
  - (i) The death of the Guarantor.
7. This Guarantee and all obligations hereunder shall be binding on the Guarantor’s personal representatives, successors and permitted assigns.
8. Until the Supplier has received one hundred cents in the dollar in respect of moneys hereby guaranteed, the Guarantor AGREES:
  - (a) In the event of any bankruptcy or any other administration of the Customer’s estate or any winding up, official management or scheme of arrangement of the Customer the Guarantor will not without the prior written consent of the Supplier lodge any proof of debt or similar claim in respect of any debt or liability to the Guarantor on any account whatsoever, nor enforce any security held by the Guarantor in respect of the Customer and shall hold any such debt, liability or security and any rights or benefits in respect thereof in trust for the Supplier.
  - (b) If requested by the Supplier to lodge a proof of debt or similar claim in any such administration and enforce any such security aforesaid, and to execute all such documents and do all such things as the Supplier may require to enable the Supplier to have and receive the benefit of or arising from any such proof, claim or security.
9. The Guarantor shall be jointly and severally liable with the Customer as principal debtor and not a mere surety. The obligations of the Guarantor imposed by this clause shall not be in any way limited by other clauses in this Guarantee.
10. The Guarantor shall pay to the Supplier upon demand from time to time amounts equal to amounts received by the Supplier for the credit of any account of the Customer and for which the Supplier may in or in connection with any administration in insolvency of the Customer be obliged to account to any person or may in its discretion so account.
11. This Guarantee shall remain in force so long as the Customer shall maintain an account with the Supplier for the sale of good by the Supplier to the Customer notwithstanding that the account may from time to time be not in debt PROVIDED THAT the Guarantor may, by giving the Supplier three

months prior notice in writing, terminate this Guarantee so far as it relates to transactions occurring between the Supplier and the Customer after the expiry of that period whereupon the liability of the Guarantor upon this Guarantee shall be limited to the amount representing the indebtedness of the Customer to the Supplier at the date upon which that period of three months expires. That Notice must be left personally with the Credit Manager of the Supplier or such other person as may be notified by the Supplier to the Guarantor in writing.

12. A statement in writing signed by the manager or credit manager of the Supplier as to the moneys due from or owed by the Customer or covered by this Guarantee shall be prima facie evidence of the amount so due or owing or covered by this guarantee.
13. The Guarantor irrevocably appoints the Supplier as their attorney with authority to do on behalf of the Guarantor anything the Guarantor may lawfully authorise an attorney to do, including without limitation the following:
- (a) to make, sign, execute, seal and deliver any document;
  - (b) to execute any instrument or do any act which may result in a benefit being conferred on the Supplier;
  - (c) to appoint substitute attorneys;
  - (d) to exercise any rights or powers as trustee held by the Guarantor ; and
  - (e) to take possession of, use, sell or otherwise dispose of any asset of the Guarantor.
14. To secure the payment of all monies which the Guarantor may become liable to pay to the Supplier hereunder, and as an essential condition of this Guarantee, the Guarantor charges all of its interest in any real property both present and future and wheresoever situated with the amount of the Guarantor's indebtedness to the Supplier on any account whatsoever from time to time and shall, immediately upon demand being made on the Guarantor by the Supplier, sign all documents and so all things that the Supplier may reasonably require to be signed and done to further secure to the Supplier the amount of any indebtedness owed to the Supplier from time to time by the Customer or Guarantor including, but without being limited to, such mortgage or mortgages (including, without limitation, a mortgage in the terms contained in the approved Form "M" published by the Law Institute of Victoria or any revision or replacement of that form) over any real property (whether acquired before or after the date of this Guarantee) containing such covenants as are required by the Supplier. The Guarantor (and if more than one then jointly and each of them severally) irrevocably appoint(s) the Supplier, each Manager and each Credit Manager from time to time of the Supplier, each successor of the Supplier, each assignee of the Supplier and each of them severally to be the duly constituted attorney of each Guarantor to execute in the name of each Guarantor and as each Guarantor's several act and deed any documents including, without limitation, any mortgage or mortgages of real property, bills of sale, mortgage debentures or any like documents and Consents to any Caveats as the Supplier may wish to lodge against any dealings in the real property of the Guarantor in any Titles Office (and if more than one Guarantor, the real property of each Guarantor severally and real property of each combination of Guarantors) and to do all acts and execute any documents necessary to give effect to and/or register any of the foregoing. Each Guarantor undertakes to not object to the lodging of any such caveat or take any steps to remove any such caveat. "Real property" includes estates and interests including leasehold. I/We hereby also authorise any officer, partner or employee of any solicitors or agents engaged by the Supplier or any of the Supplier's officers or employees as referred to previously in this clause to sign any stamp duties form on my/our behalf so as to stamp any form required to withdraw any caveat lodged by the Supplier over any of my/our real property.
15. The Guarantor declares that the proper law of this Guarantee shall be of State of Victoria and that any proceedings taken by the Supplier may be taken in the Courts of the State of Victoria.
16. The Guarantor further agree that:
- (a) they have signed this Guarantee voluntarily;
  - (b) they have understood the nature and effect of this Guarantee in particular that they agreed to guarantee all amounts now owed by the Customer to the Supplier and all amounts that the Customer may in the future owe to the Supplier;
  - (c) each Guarantor has compared his/her obligations and responsibilities under the Guarantee and those of any other person named in the Guarantee; and
  - (d) they have considered the consequences to themselves should they default in those obligations and responsibilities.
17. In this Guarantee the following rules of interpretation apply unless the context otherwise requires:
- (a) words denoting the singular number include the plural and vice versa;
  - (b) words denoting natural persons include bodies corporate and unincorporated bodies and their permitted assigns; and
  - (c) references to any party to the Agreement or any other agreement or instrument include the party's successors and permitted assigns.
18. Where the whole or any part of parts of any provision of this Guarantee should be held to be void or unenforceable or otherwise ineffective by operation of law in whole or in part then such provision or part thereof shall to that extent be severed from this Guarantee but the validity and enforceability of the remainder of the Guarantee shall not be effected.
19. Notwithstanding this Guarantee may be intended or expressed to be given by more than one Guarantor, it shall be valid and binding on such person or persons as shall sign the document and shall be binding forthwith upon signature by such person and shall continue to be binding on each such Guarantor or Guarantors shall not in fact subsequently sign the Guarantee or otherwise be bound as a Guarantor.
20. In this instrument: 'Guarantor' means the Guarantors jointly and each person who is a Guarantor severally and their respective successors and assigns.
21. Each of us acknowledge that the information provided in this Agreement is the basis for evaluation by the Supplier of the financial standing and credit worthiness of each of us and do hereby:
- (a) certify that the information provided in this Agreement is true and correct;

- (b) acknowledge that the Supplier has informed me/us, in accordance with the Privacy Act 1988 as amended, that certain items of personal information, including an opinion about me/us are permitted to be kept on a credit information file and might be disclosed to credit reporting agencies;
- (c) in accordance with the Privacy Act 1988 as amended:
  - (i) agree to the Supplier obtaining from a business which provides information about the commercial credit worthiness of persons, information concerning my/our commercial activities or commercial credit worthiness and using such information for the purpose of assessing whether to accept me/us as guarantors.
  - (ii) authorise the Supplier to exercise my/our rights to access to my/our credit information file and credit reports;
- (d) agree that the Supplier may give to and seek from any credit providers reports and information that has any bearing on my/our credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:
  - (i) to assess an application by me/us for credit or commercial credit.
  - (ii) to notify other credit providers or a default by me/us.
  - (iii) to exchange information with other credit providers as to the status of my/our account here I am/we are in default with the Supplier or other credit provider.
  - (iv) to access my/our credit worthiness or commercial credit worthiness at any time.
  - (v) to access whether to accept me/us as guarantors or to continue supplying credit to the Customer;
- (e) agree that the Supplier may seek, from a credit reporting agency, a credit report containing personal information about me/us to assess whether to accept me/us as a Guarantor for credit applied for, or provided to, the Customer;
- (f) agree that these authorisations shall continue to have effect for the duration of the period during which credit or commercial credit is provided for or sought by the Customer from the Supplier or while any moneys are owed by me/us or the Customer to the Supplier on any account under this or any other Guarantee or any terms and conditions for the sale of products or supply of services by the Supplier to the Customer as the case may be.

**SIGNED ON BEHALF OF THE CUSTOMER**

I/We hereby acknowledge, affirm and agree that I/We have read all the terms of the Credit Application, Terms and Conditions of Sale and Agreement and I/We fully understand and comprehend same and certify the information supplied herein as the basis for you to grant credit is true and correct.

Sign on behalf of Customer:

Signature: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Print Name and Position: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Print Name and Position: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Print Name and Position: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Print Name and Position: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SIGNED, SEALED AND DELIVERED BY EACH GUARANTOR NAMED BELOW**

I/We hereby acknowledge and agree that before signing this Guarantee I/we have been given and have read all of the terms of the Credit Application, Terms and Conditions of Sale and Agreement between the Supplier and the Customer and this Guarantee and that I/we fully understand that the terms and nature and effect of each of those documents and in particular that this Guarantee will be a continuing guarantee (subject only to its terms) for all of the Customer's obligations under the Application for Credit Facilities and that I/we have been given an opportunity to obtain legal advice on those terms and either have taken that advice or declined to get it (as the case may be).

Signature of Guarantor: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Guarantor: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Guarantor: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Guarantor: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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**E-STEEL (AUST) PTY LTD to Complete:**

**Credit Limit Approved: \$**

**Terms Approved:**

**Approved / Declined By:**

**Acceptance / Refusal Letter Sent Date:**

**Date**