



**EARTHMOVING UNLIMITED**  
HELPING YOU MOVE THE EARTH

**APPLICATION FOR COMMERCIAL CREDIT – 30 DAY TRADING ACCOUNT**

**CUSTOMER ACCOUNT DETAILS: (Hereinafter referred to as the “Customer”).**

1. Account to be in the name of \_\_\_\_\_ ABN No: \_\_\_\_\_

2. Account postal address: \_\_\_\_\_

3. Trading address (if different from mailing address) \_\_\_\_\_

4. Registered Office (if Company) \_\_\_\_\_

5. Account Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone No: ( ) \_\_\_\_\_ Mobile No: \_\_\_\_\_

Email address: \_\_\_\_\_

Web Site Address: \_\_\_\_\_

6. Business Structure:

- Sole Trader                       Partnership                       Pty Ltd Company  
 Trading Name for a Pty Ltd Company                       Other

Nature of Business \_\_\_\_\_

How long has the business been operating? \_\_\_\_\_

7. Are Trading Premises Owned  Yes  No or Leased?  Yes  No

If Leased, Name of Agent: \_\_\_\_\_ Agent Phone No: ( ) \_\_\_\_\_

Lease Period From: \_\_\_\_\_ To: \_\_\_\_\_

8. Details of Credit Applicant (\*\*Delete as appropriate\*\*)

Name of Director(s) / Proprietor(s) / Partner(s) / Individual(s)

Full Name                      Residential Address                      Telephone No:                      Driver Licence No:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Trade References: (Minimum of five to be supplied)

Supplier:	Contact name:	Phone:	Email:
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

10. Bank: \_\_\_\_\_ Branch: \_\_\_\_\_ Acct No: \_\_\_\_\_

I/WE THE CUSTOMER ACKNOWLEDGE AS FOLLOWS:

- 11. COMMERCIAL CREDIT TRADING TERMS AND CONDITIONS: To having received the Commercial Credit Trading Terms which were attached to this application.
- 12. PERSONAL GUARANTEE & INDEMNITY. That if the Customer is a Company, then the Directors will execute the Personal Guarantee & Indemnity on the reverse of this Application.
- 13. DUTY OF DISCLOSURE. The Customer Warrants not to be in receipt of any information, notice or court proceedings that may lead to Bankruptcy, Appointment of an Administrator, Controller or Managing Controller, Receiver or Receiver Manager or Liquidator, and that the Customer does not intend to enter into any scheme of arrangement with creditors either formally through a court, or otherwise. Further the Customer Warrants that none of its directors have been a director of a company placed in liquidation or administration, or has been declared a bankrupt or entered into an arrangement, under the under the Bankruptcy Act 1966 (as amended).
- 14. PRIVACY ACT. You authorise the Supplier to obtain from a credit reporting agency details of your personal and commercial credit information if required by the Supplier for the purpose of assessing this credit application.

THIS IS TO CERTIFY: that I/We have read, understand and accept the Commercial Credit Trading Terms and Conditions, and further acknowledge that I/We understand & accept paragraphs 11 – 14 above, and that I/We are authorised to make this application on behalf of the Customer, and without undue pressure or unfair tactic, append my/our signature hereunto:

APPLICATION:

\*\*\* NOTE: IF COMPANY SEE OVERLEAF FOR PERSONAL GUARANTEE & INDEMNITY \*\*\*

Signature: Printed Name: \_\_\_\_\_

Date: Position/Title: \_\_\_\_\_

Signature: Printed Name: \_\_\_\_\_

Date: Position/Title: \_\_\_\_\_



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## COMMERCIAL CREDIT TRADING TERMS AND CONDITIONS

### AGREED TRADING TERMS – 30 DAY ACCOUNT

A reference to “the Supplier” means Earthmoving Unlimited Pty Ltd ABN: 60 616 214 825. Please read the undermentioned terms carefully. If you do not understand these terms of trade you should seek legal advice.

1. The agreed terms are 30 days, i.e., payment is due 30 days from date of invoice.
2. The Customer hereby agrees & acknowledges that at the absolute discretion of the Supplier, an account keeping fee of 2% per month will be levied on any or all amounts in default of the agreed trading terms.
3. The Customer further agrees to indemnify the Supplier for any legal costs incurred by the Supplier (including but not limited to charges & commission charged by mercantile agents) in respect of this application, agreements, personal guarantees, securities given or other documentation required whilst credit is being offered in consequence of this application, and the Customer further agrees to indemnify the Supplier for any dishonoured cheque fees incurred and in the event that the Customer’s account is in default of the agreed trading terms to indemnify the Supplier against its collection fees & legal costs.
4. The Supplier may withdraw credit facilities to the Customer at any time without notice. Without limiting the Supplier’s rights to withdraw credit, the Supplier reserves the right to stop supply & place the account on hold until the account is returned to the agreed trading terms, and the Supplier agrees to recommence supply.
5. These Trading Terms and Conditions apply to all transactions from which the Customer is supplied goods & or services on credit. If any future contract between the Supplier & the Customer is inconsistent with these Trading Terms and Conditions, then these Trading Terms and Conditions will apply unless the subsequent contract refers to and specifically alters these Trading Terms and Conditions in writing.
6. Should there be any variation to any of the information supplied by the Customer in this application or in the structure of the Customer’s business (such as a conversion to or from a company or trust or the appointment of new directors), the Supplier shall be notified in writing. Until a new Commercial Credit Application form is signed and approved in writing by the Supplier, then the original Commercial Credit Application and those person(s) who signed as guarantor(s) shall remain liable to the Supplier as though all goods and services were supplied to the original customer.
7. The Supplier reserves the right to amend these trading terms provided such amendments are conveyed to the Customer in writing. The Customer further acknowledges that such writing will be by ordinary mail to the address set out in the Commercial Credit Application, unless the Customer advises in writing to the Supplier a new address, and this new address is acknowledged by return in writing by the Supplier.
8. The Supplier shall be entitled at any time to assign its rights under this Commercial Credit application to its successors, nominated transferees or assigns (including but not limited to, where applicable personal guarantees), and that these Trading Terms and Conditions shall not be in any way affected or discharged pursuant to such an assignment.
9. Caveatable Interest Clause: In the event of Default of the agreed trading terms by the Customer, then the Customer by its Director(s)/Proprietor(s)/Partners/Individual(s),

nominated in this application hereby charge all their Right, Title of Interest (if any) to any or all property(ies) owned/partly owned, acquired in the future, solely or jointly by the said Customer/Director(s)/Proprietor(s)/Partners/Individual(s) of this application in favour of the Supplier, to better secure all monies owed to the Supplier as of the date of the default, with the due and punctual observance and performance of all of the obligations of the Customer.

Such Customer acknowledges that the Supplier may at its discretion, register a caveat on such property in respect of the interest conferred on it under this clause. In the event that the Supplier is required to exercise its right under this clause, against the Customer, then the Customer grants the Supplier the right to appoint a Receiver and sell the property(ies).

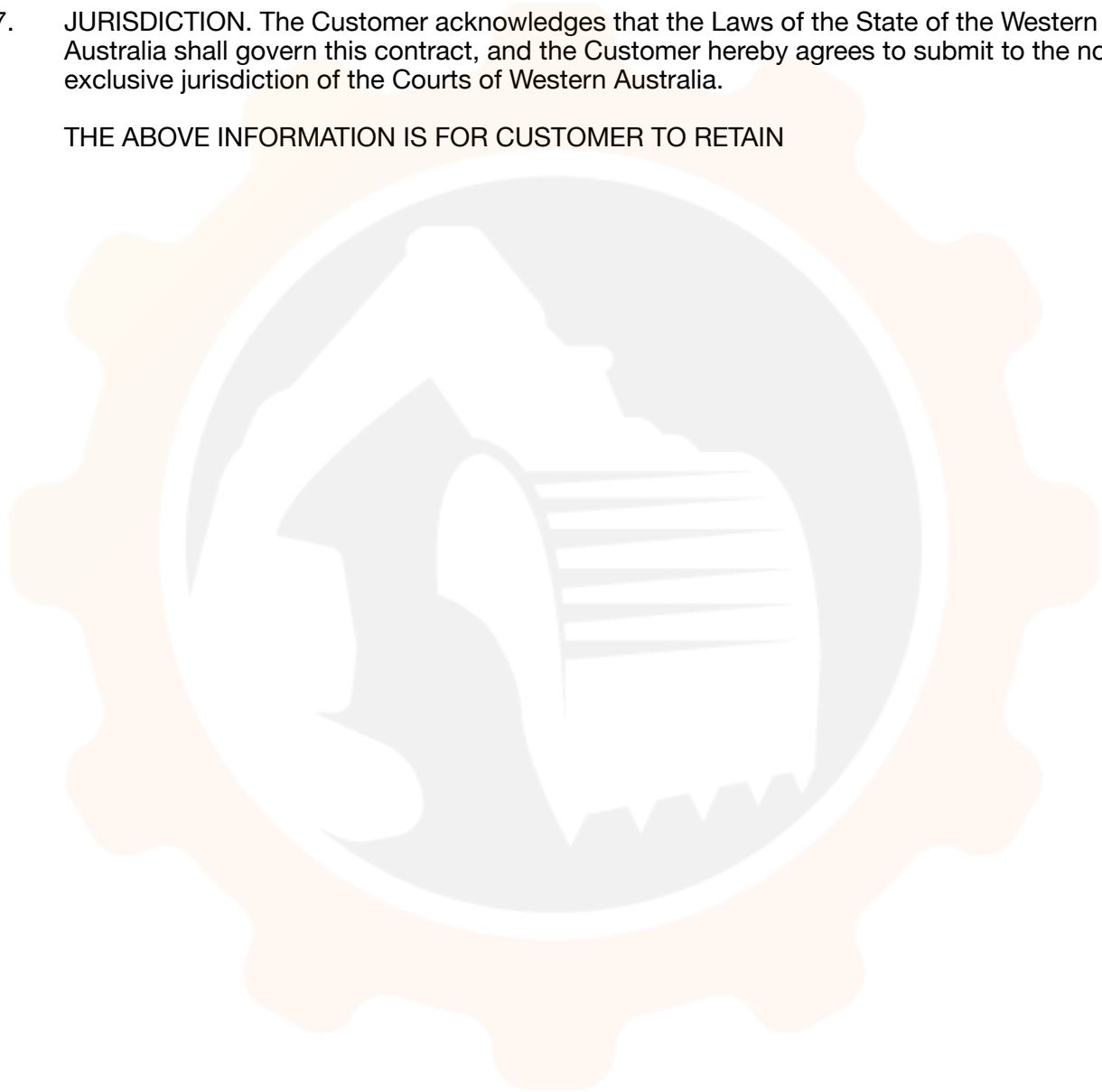
10. **RETENTION OF TITLE:** Until ALL INVOICES are paid in full, and ALL MONIES received and cleared, ownership of the goods remain with the Supplier, but the risk passes to the Customer on delivery. Delivery shall occur if the Supplier or its Agent delivers, on delivery, and/or if the Customer or its Agent(s) takes delivery, at that point of delivery. Until the Supplier is paid in full, the relationship of the Customer to the Supplier shall be fiduciary in respect of the goods and the customer shall hold the goods as bailee only for the Supplier. The Customer shall store the goods separately from its own until ownership has manifested in the Customer. Should the goods be on-sold to a third party before payment, or in the event of the Appointment of an Administrator, Controller, Managing Controller, Receiver or Receiver Manager, or entry into an Informal/Formal Deed of Arrangement under Bankruptcy Act of 1966 by the Customer, then the Customer hereby assigns to the Supplier its right of recovery of payment from the third party. The money(ies) resulting from the sale of goods are to be specifically earmarked and placed in a separate account on trust for the Supplier, until payment in full is made to the Supplier for the cost of the goods only, to guarantee clear passage of ownership to the third party innocent purchaser. In the event the Customer is in default of the agreed trading terms, then the Customer without reservation grants right of entry to any or all properties under the Customer's control, where the goods are reasonably expected to be stored. The Customer indemnifies and save harmless the Supplier, its servants or agents in relation to loss or damage as a result of the retaking of possession of the said goods. Further in the event the Supplier exercises its right of retaking possession of the said goods, the Customer grants power of sale to the Supplier to resell the said goods and the Customer acknowledges that any shortfall owing after the said goods are resold will be the responsibility of the Customer.
11. **DELIVERY.** Deliveries shall be made during normal working hours. Deliveries required outside normal working hours will be delivered on request of the Customer, and all charges will be the sole responsibility of the Customer. In the event the Customer or the Customer's Agent is not on site to accept the delivery, then the driver's signature denoting the time, date and place of delivery, shall be deemed to be acceptance of the said delivery whether by the supplier or the supplier's agent. The date of delivery set forth in the order form is made in good faith, but the performance of the Supplier's engagement is subject to industrial disturbances, delay in transit, damage to goods in transit, shortage of goods and any other cause beyond reasonable control of the Supplier. The Supplier shall be excused from failure to deliver or complete, which is contributed to by any such cause, and the time specified for completion of delivery shall be extended commensurately. Delay in delivery or completion shall not constitute a breach of contract, nor shall it affect any other provisions of the contract to the Supplier's disadvantage.
12. **SERVICE OF DOCUMENTS.** The Customer acknowledges that service of all documents will be prepaid postal addressed envelop to the address nominated on the Commercial Credit Application form, unless a new address is provided by the Customer and such new address is acknowledged by return in writing from the supplier. Note the Customer expressly acknowledges that service is deemed to be effected after the expiration of 2 working days from date of posting of the documents.
13. **TELEPHONE ORDERS.** All telephone orders are to be immediately confirmed in writing by the Customer. In the event the confirmation varies from that recorded and processed by the Supplier, then the Supplier's records shall prevail.
14. **ACCESS TO SITE.** The customer at all times is responsible to ensure suitable access to the site. The Customer further indemnifies and saves harmless the Supplier, and or it's

servants or agents against any loss or damage, in the event the Supplier fails to provide suitable access to site for delivery, and or whilst on site working.

15. **PRICE.** All goods are sold at the price current at the time of delivery. The price of goods is at the Suppliers works. Costs and charges for freight and handling at the point of delivery to the Customer or the Customer's agent are payable by the Customer unless otherwise stated on the quote/order form. NOTE:- Pricing may vary from time to time subject to exchange rate variations and/or material increases outside the control of the Supplier.
16. **SETTLEMENT DISCOUNT.** Where settlement discount applies, no settlement discount will be approved unless all account money(ies) is/are paid within the agreed trading terms.
17. **PAYMENT.** The Customer expressly acknowledges that at the absolute discretion of the Supplier, the Customer may be required to execute an authority to the Customer's Bank authorizing a direct debit from the Customer's Bank account, to the Supplier for all sums due on a monthly basis. The authority will be irrevocable without the express written consent of the Supplier.
18. **FINANCIAL INFORMATION.** The Customer agrees to provide financial information as is reasonably required by the Supplier from time to time, for the assessment of current and future credit limits only. The Supplier and the Customer further agree that such information shall be treated as strictly confidential and will not be disclosed to any third party(ies) without the express written permission of the Customer.
19. **CREDIT CLAIMS.** It is the responsibility of the Customer to carefully inspect the goods immediately they are delivered. Credit Claims will only be recognised if made in the first instance by phone within 72 HOURS of receipt, and also in writing within 7 days of delivery. Claims outside this period will be at the absolute discretion of the Supplier, and its decision final and binding on the Customer. All goods returned must be in original condition and packaging and complete in every detail. Goods will only be accepted if the freight is prepaid by the Customer.
20. **RETURN OF, OR CANCELLATION OF GOODS ORDERED.** In the event the Customer elects to return goods or cancel goods on order, the Supplier at its absolute discretion reserves the right to charge a 10% handling fee on the amount involved. Further no return of goods will be accepted, without prior approval of the Supplier in writing.
21. **SPECIAL ORDERS.** Special orders attract a 50% deposit which will be debited to the Customer's account upon receipt of a written order for goods outside our normal sock line, or for goods specifically modified to the Customer's requirements. NOTE - No return of or cancellation will be accepted once the order has commenced.
22. **WARRANTIES.** All goods carry only such warranty, if any as is furnished by the manufacturer thereof, or as implied by law. This warranty excludes those components supplied by other Suppliers, damage caused by neglect or misuse of materials supplied, powder coating fading, installation of materials less than 500 metres from any marine environment (salt water ocean or lake), labour costs associated with installation or removal of defective products, corrosion caused by chemicals, eg brick cleaning acids. The Supplier will not accept goods returned for warranty work, unless the freight is prepaid by the Customer. NOTE - No warranty work will be completed whilst ever the Customer's account is in default of the agreed trading terms.
23. **DAMAGES.** The Supplier shall not be liable for any amount greater than the sales price of the product originally supplied. Without limiting the meaning of this clause, the Supplier shall not be liable for any claims, loss, expense whatsoever, how so ever arising, or in any event in any way whatsoever for any contingent, consequential direct/indirect special, or punitive damages arising in relation thereto, and the Customer acknowledges this express limit or liability and agrees to limit any claim accordingly. Further the Supplier shall not be responsible directly or indirectly for any consequential loss or maintenance, use or operation of the product by the Customer, or to any third party, or from any failure of the product whether defective or not.

24. GST. The Supplier is required by law to pay Goods and Services Tax, (GST) on any work, the subject of this estimate/quote. GST will be in addition to the estimate/quote provided, if it is not shown otherwise.
25. ENVIRONMENTAL REQUIREMENTS. The Customer confirms and acknowledges it has made all inquiries in relation to all responsibilities conferred upon the Customer, by the said Act, relating to storage of and disposal of any or all products supplied by the Supplier.
26. INSURANCE. NO INSURANCE IS PROVIDED BY THE SUPPLIER. The Customer acknowledges that insurance of all goods are the responsibility of the Customer at point of delivery.
27. JURISDICTION. The Customer acknowledges that the Laws of the State of the Western Australia shall govern this contract, and the Customer hereby agrees to submit to the non-exclusive jurisdiction of the Courts of Western Australia.

THE ABOVE INFORMATION IS FOR CUSTOMER TO RETAIN





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## PERSONAL GUARANTEE & INDEMNITY

Earthmoving Unlimited Pty Ltd  
ABN 60 616 214 825

### Section 1 – GUARANTOR DETAILS

I/We, the Guarantor(s) \_\_\_\_\_  
(insert Guarantor(s) name as applicable)

have requested the Company to supply, \_\_\_\_\_  
(insert company name/partnership/sole trader)

trading as, \_\_\_\_\_  
(insert registered business name)

(the “Customer”) of \_\_\_\_\_  
(street address) (State) (Postcode)

with Goods & Services on Credit.

### Should the Company elect to supply Goods or Services:

1. I/We unconditionally and irrevocably guarantee to the Company the due and punctual payment by the Customer to the Company all monies at any time actually or contingently owing to the Company by the Customer either alone, jointly or severally.
2. I/We indemnify the Company against all costs, losses and expense incurred as a result of any default by the Customer.
3. My/Our guarantee and indemnity herein is a continuing guarantee and will not be affected by:
  - a) the grant of any extension of time or indulgence to the Customer by the Company;
  - b) any variation to any terms of the Customer's account, even where this increased my/our liability under this Guarantee;
  - c) the release of any of the Guarantors, or if this Guarantee is or become unenforceable against any Guarantor;
  - d) any payment by the Customer being later avoided by law.
4. I/We agree that an application for credit made by the Customer is deemed to have been accepted from the date of the first invoice by the Company to the Customer and this Guarantee will extend to all liabilities from the Customer to the Company.
5. This Guarantee may be withdrawn by the Guarantor(s) on expiry of 30 days following written notice of withdrawal being delivered to both the Company's registered office and addressed to a director of the Company at its principal place of business. The Guarantee will continue in force in respect of all liabilities incurred up to the date of the withdrawal.

6. As security for the obligations and liabilities of the Guarantor(s), I/we charge for the due and punctual payment and performance of those obligations and liabilities, all of my/our legal and equitable interest (including as beneficial owner, both present and future) of whatsoever nature held in any and all Real Property in favour of the Company.
7. Without limiting the generality of clause 6, I/we agree on request by the Company to execute any documents and do all things reasonably required by the Company to register a security over any Real Property. In the event that I/we fail to deliver the requested documents, I/we appoint the Company to be my/our lawful attorney for the purpose of executing and registering such documents and indemnify the Company (on an indemnity basis) against any costs and expenses incurred by the Company in connection with the preparation and registration of such documents.
8. I/We consent unconditionally to the Company lodging a caveat noting its interest in any Real Property.
9. I/We agree to advise the Company in writing of the occurrence of any Insolvency Event, any change in my/our legal name, ownership or control as soon as practicable and not later than within 3 business days of such event, change or step occurring.
10. If any payment made by or on behalf of the Customer is alleged to be void or voidable by any liquidator, I/we indemnify the Company against any costs or losses it may incur in connection with such claim. This indemnity shall continue to apply notwithstanding I/we have withdrawn from the Guarantee in accordance with clause 5.
11. If the Guarantor(s) is the trustee of a trust, the Guarantor(s) enters into this deed in both the Guarantor's personal capacity and as trustee of that trust.
12. The Company may at anytime, and from time to time, proceed against any or all of the Guarantors in respect of their obligations at the Company's absolute discretion.
13. Until the whole of the Customer's obligations have been paid or satisfied in full, the Guarantor must not take any steps to recover or enforce a right or claim against the Customer relating to any sum paid to the Company.

**NOTE:** This is an important document, if you do not understand the terms outlined in clause 1-13 above, or the meaning of this document, you should seek independent legal advice prior to signing.

**NOTE:** The definitions in the Credit Application Terms and Conditions shall apply in this Guarantee, except "Real Property" shall mean all real property owned by the Guarantor(s) now or in the future, solely or jointly.

## **Section 2 – CERTIFICATE OF GUARANTEE (EXECUTED AS DEED)**

By signing below as Guarantor(s), I/we certify that I/We understand the terms of this Guarantee. In particular, I/we understand that if the Customer fails to make any required payments to the Company, the Company may recover the amount of these payments from me/us personally. In that case, the Company may also, amongst other steps, take a charge or mortgage over any Real Property.

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



**Who must sign this deed?**

Company: Where there is only one director for the company, then that director must sign. Where there are two or more directors for the company, then all directors of the company must sign.

Sole Traders: The individual.

Partnerships: All Partners of the Partnership must sign.

**Signed as a Deed by: Independent Witness (not spouse or family member)**

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

Position \_\_\_\_\_ Address \_\_\_\_\_

Signature \_\_\_\_\_ Signature \_\_\_\_\_

Date / / Date / /

**Signed as a Deed by: Independent Witness (not spouse or family member)**

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

Position \_\_\_\_\_ Address \_\_\_\_\_

Signature \_\_\_\_\_ Signature \_\_\_\_\_

Date / / Date / /

**Signed as a Deed by: Independent Witness (not spouse or family member)**

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

Position \_\_\_\_\_ Address \_\_\_\_\_

Signature \_\_\_\_\_ Signature \_\_\_\_\_

Date / / Date / /

**Signed as a Deed by: Independent Witness (not spouse or family member)**

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

Position \_\_\_\_\_ Address \_\_\_\_\_

Signature \_\_\_\_\_ Signature \_\_\_\_\_

Date / / Date / /

## HOW TO USE THIS FORM

### GUARANTEE AND INDEMNITY

#### **Section 1 – Guarantor Details**

- Ensure that this section is filled out correctly, and that the details match those provided in the Credit Application.
- The first box should read “I/We, the Guarantor(s), *Joe Bloggs and Mary Bloggs*, have requested the Company to supply *Joe+Mary Pty Ltd*, trading as *Mary’s Florist* (the “Customer”) of *100 Collins Street Melbourne, Victoria* with Goods and Services on Credit.”
- It is advisable to obtain a company search to ensure that the directors have all signed the guarantee and that the names and addresses are correctly stated.

#### **Section 2 – Certificate of Guarantee**

- Ensure that each signatory has signed and dated the form, and that it has been witnessed by an independent witness, not being a spouse or family member.
- If the Guarantors are the directors of a company, ensure that their signatures match those provided in the Credit Application.