

**DRYSDALE TIMBER & HARDWARE**

**CREDIT APPLICATION & TERMS AND CONDITIONS OF SALE**

DATE: / /

To: Barwon Timber (the Company)  
 Bar-Truss (the Company)  
 Drysdale Timber & Hardware (the Company)

ABN 39 006 592 525  
 ABN 87 103 238 295  
 ABN 104 780 841

Business Addresses: 50 Fellmongers Road, Breakwater VIC 3219  
 36 Murradoc Road, Drysdale VIC 3222

Postal Address: 50 Fellmongers Road, Breakwater VIC 3216  
 Telephone (Bus): 03 5229 0080  
 Fax: 03 5229 0071

Email: ar@barwontimber.com.au  
 Website: www.barwontimber.com.au

<b>1 CUSTOMER:</b>					
Are you a (tick):	<input type="checkbox"/> Sole Trader	<input type="checkbox"/> Partnership	<input type="checkbox"/> Private Co (Pty Ltd)	<input type="checkbox"/> Public Co (Ltd)	
	<input type="checkbox"/> Trading as a Trust	Trustee Name:		Trust ABN:	
Registered and/or Trading Name:					
Registered Address:					
ACN:			ABN:		
Postal Address:				Postcode:	
Business Address:				Postcode:	
Telephone (Bus): ( )		Mobile:		Facsimile: ( )	
Email:					
Contact Person:			Position:		
Tel:			Email:		
<b>2 PURCHASING DETAILS:</b>					
Estimated monthly purchases: \$					
<b>3 FULL NAMES AND ADDRESSES OF DIRECTORS, PARTNERS AND SOLE TRADERS:</b>					
Name:			Telephone : ( )		
Address:					
Date of Birth: / /	Residence (tick) :	<input type="checkbox"/> Own	<input type="checkbox"/> Renting	<input type="checkbox"/> Mortgage	
Name:			Telephone : ( )		
Address:					
Date of Birth: / /	Residence (tick) :	<input type="checkbox"/> Own	<input type="checkbox"/> Renting	<input type="checkbox"/> Mortgage	
Name:			Telephone : ( )		
Address:					
Date of Birth: / /	Residence (tick) :	<input type="checkbox"/> Own	<input type="checkbox"/> Renting	<input type="checkbox"/> Mortgage	

<b>4 DETAILS OF BUSINESS:</b>	
Bank Details: Account Name:	Bank:
Account No.:	BSB:
Type of Business:	How long established?
How long the current owner?	Company/Builders Registration No.
Previous Trading Name (if changed in the previous 2 years):	
Name of any related or subsidiary companies or partnerships:	
Are the Customer's business premises owned or leased?	
If leased, agent/landlord name and phone no.:	Expiry date of lease: / /
Do you (or any related companies) currently trade with the Company or hold an account with the Company, or have you (or any related companies) traded with the Company or held an account with the Company?	
If yes, give details:	
Have securities been given over of any assets of the Customer or any Guarantor: If yes, give details:	

Please attach certificate of incorporation and/or business name registration and financial records to support this application.

<b>5 TRADE REFERENCES Monthly purchases equal to or more than requested credit limit.</b>	
1 Supplier Name: Fax or Email:	Phone No: Avg Monthly Purchases \$
2 Supplier Name: Fax or Email:	Phone No: Avg Monthly Purchases
3 Supplier Name: Fax or Email:	Phone No: Avg Monthly Purchases
4 Supplier Name: Fax or Email:	Phone No: Avg Monthly Purchases

**DECLARATION & ACKNOWLEDGEMENT**  
**The Application**

I/We (the Customer) (variously in this application called "I/we" and "me/us") agree, declare and acknowledge that:

- (a) If this application is accepted by the Company, all of its terms of trade as amended from time to time ("Terms") will be binding on me/us;
  - (b) I/We have been given, read and understood the current Terms and Conditions of Sale employed by the Company prior to completing this application; and
  - (c) The Company reserves the right to accept or reject this application in its absolute discretion;
- I/we hereby represent and warrant that the information set out in this application is true and correct and acknowledge that the Company will rely upon the information provided and is hereby induced to grant credit to me/us.

**The Terms**

Upon the Company allowing me/us to trade on credit, I/we agree, declare and acknowledge that the Terms apply to all my/our dealings with the Company and I/we hereby agree to comply with the Terms.  
I/we further acknowledge that if the Customer is a corporation, provision of credit pursuant to this application may, at the Company's absolute discretion, be subject to and conditional upon all of the directors of that corporation executing the attached Guarantee and Indemnity.  
I/we further acknowledge that if I am/we are a trustee for a trust, the Terms are binding on the trustee in its own capacity as well as in its capacity as trustee.

## The National Consumer Credit Code

I/We declare that the credit to be provided to me/us by the Company is to be applied wholly or predominantly for business and/or investment purposes.

Important: You should only sign this declaration if this credit is wholly or predominantly for business and/or investment purposes. Otherwise, in signing this declaration you may lose your protection under the National Consumer Credit Code.

## The Credit Information

I/We consent to and authorise the Company:

- to request a credit report containing information about my/our consumer or commercial credit arrangements from a credit reporting agency for the purposes of assessing this application or in connection with the attached Guarantee and Indemnity;
- to give a credit reporting agency or the Timber Merchants Association information to allow the credit reporting agency or Timber Merchants Association to create and maintain a credit information file containing information about me/us;
- to disclose a credit report or any personal information derived from the credit report, and any information about my/our personal or commercial credit arrangements to the Company, any agent of the Company assisting in processing the application and any other provider of credit to me/us named in this application in a credit report from a credit reporting agency; and
- to notify and exchange information with other credit providers and any collection agent of the Company.

## Privacy

I/We understand that the information permitted to be disclosed under the Australian Privacy Principles under the Privacy Act 1988 (Cth) includes:

- details to identify me/us, including that is, name, sex, date of birth, bank account details, tax file number, current and 2 previous addresses, current or last known employer, and driver's licence number (including copy of drivers licence);
- the fact that I/we have applied for credit, the amount, or that the Company is a current credit provider to me/us;
- advice that payments previously notified as unpaid are no longer overdue, payments overdue for at least 60 days and for which collection action has started, or cheques for more than \$100 drawn by me/us which have been dishonoured more than once;
- in specified circumstances, that in the opinion of the Company I/we have committed a serious credit infringement; and
- the fact that credit provided to me/us by the Company has been paid or otherwise discharged.

Further, in order to assess this application, I/we authorise the Company:

- to obtain from a credit reporting agency a credit report containing personal information about me/us in relation to personal credit provided by the Company;
- to obtain from a credit reporting agency a credit report containing personal information about me/us in relation to commercial credit provided by the Company;
- to obtain a report containing information about my/our commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person in relation to personal credit provided by the Company;
- to obtain a report from a credit reporting agency and other information in relation to my/our commercial credit activities.
- to obtain and retain private information in accordance with the Company's Privacy Policy from time to time.

I/we authorise the Company to give and obtain from credit providers that may be named in this application and credit providers that may be named in a credit report issued by a credit reporting agency information about my/our credit arrangements.

I/we understand this information can include any information about my/our general credit history and credit worthiness that credit providers are allowed to give or receive from each other under the Privacy Act. I/we understand the information may be used for any of the following purposes:

- to assess an application by me/us for credit;
- to assist me to avoid defaulting on my/our credit obligations;
- to notify other credit providers of a default by me/us;
- to assess my/our creditworthiness.

*If signing on behalf of a company, I/we are duly authorised by the company to sign this application. A copy of a current valid driver's licence of the authorised representative signing this agreement must provided with this application.*

Name (print):

Signature:

Position (print):

(Signed for and on behalf of the Customer)

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Witness Name (print):

Witness Signature:

Witness Address:

## TERMS & CONDITIONS OF SALE

All contracts and dealings between the Company and the Customer relating to any products ("products") or services ("services") are subject to these Terms & Conditions of Sale ("Terms") unless otherwise expressly agreed in writing.

1. **Purchase Price:** All products are sold by the Company at its current price at the time of delivery. Prices may be subject to change without notice. Official quotations made by the Company are valid for thirty (30) days from quotation date, after which they may be subject to change without notice.
2. **Payments:** Unless otherwise specified in writing by the Company, all payments are without deduction unless otherwise agreed and all payments are due within 30 days after the end of the month in which delivery was made. If payment is not made within the agreed time, the 5% settlement discount will be forfeit. Loss of the settlement discount is a penalty for late payment and is intended to discourage the Customer from late payment of accounts.
3. **GST:** Each amount payable by the Customer under these Terms in respect of a Taxable Supply by the Company is a GST exclusive amount and the Customer must, in addition to that amount and at the same time, pay the GST due in respect of that supply.
4. **Interest:** The Company will charge interest on overdue moneys owed at the annual rate of 4 percent above the annual rate of interest set out in the *Penalty Interest Rates Act 1983 (Vic)* from time to time. Interest will be calculated from the due date of the moneys owing to the date the Company receives payment in full.
5. **Security Interest and Charge:**
  - (a) The risk in the products passes to the Customer when the products are collected by the Customer or are delivered to a carrier nominated to take delivery of the products.
  - (b) Property and ownership in any products delivered does not pass to the Customer until payment in full of all Monies Owed to the Company on any account.
  - (c) Until property and ownership passes to the Customer, the Customer acknowledges and agrees that it grants the Company a Security Interest in the products and that:
    - (i) The Customer will not grant or seek to grant any Security Interest in the goods adverse to the interest of the Company;
    - (ii) The Company's Security Interest secures all monies owing by the Customer to the Company on any account;
    - (iii) The Company's Security Interest in the products (and the proceeds) is a Purchase Money Security Interest ("PMSI") to the extent that it secures payment of the amounts owing in relation to the products;
    - (iv) The Company may apply any monies received by the Customer first to satisfy any portion of debt that is unsecured, second to satisfy any portion of debt that is secured but not by a PMSI and third to satisfy any portion of debt that is secured by a PMSI, or in any other manner the Company sees fit; and
    - (v) The Company's Security Interest Attaches to the products when the Customer attains possession of the products and to the proceeds of sale of the products.
  - (d) The Customer will hold the products as fiduciary bailee and agent for the Company and must store the products separately from products not supplied by the Company and in a manner to enable them to be cross-referenced to particular invoices.
  - (e) The Company is and will be entitled at any time to demand the return of the goods, to retake possession of the goods and to recover the deficiency on resale plus cost of repossession from the Customer and the Customer must do all things necessary to immediately permit the Company without notice and without liability to the Company, to enter and access any premises occupied by the Customer in order to search for, locate, identify, retrieve and remove those goods to which the Company has title.
  - (f) The Customer agrees to provide all information and execute all documents necessary for the Company to register and perfect its Security Interest in the products under the PPSA and agrees that all fees in relation to registration including amendments to any registration are to be borne by the Customer.
  - (g) The Customer waives its right to receive any notice under the PPSA (including notice of a verification statement after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPSA.
  - (h) The Customer agrees that a certificate signed by an officer of the Company identifying products as unpaid shall be conclusive evidence that the goods have not been paid for.
  - (i) As further security for payment of all Monies Owed to the Company, the Customer as Secured Party charges the Customer's Other Property by way of fixed charge, in favour of the Company as continuing security for the payment to the Company of all Monies Owed to the Company.
  - (j) To the extent that the Security Interest relates to the Customer's after acquired Personal Property, the Security Interest Attaches on the date that the Customer has the power to transfer rights in the Customer's Personal Property to the Company.
  - (k) The Security Interest in favour of the Company is a continuing security and remains in force until the Company gives a final release and where required a Financing Change Statement, to the Customer.
  - (l) The Company is under no obligation to provide a final release until:
    - (i) the Monies Owed have been repaid in full and the Company is satisfied that no money will subsequently become owing to the Company within the definition of Monies Owed; and
    - (ii) the Company is satisfied that any payment to the Company in reduction of the Monies Owed is not repayable, void or voidable under a law relating to insolvency or protection of creditors.

6. Warranty:
- (a) If the Australian Consumer Law applies to these Terms:  
Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
  - (b) The Customer acknowledges that all products are sold subject to the manufacturer's trading terms and conditions and any warranty of the manufacturer.
  - (c) In order for the Customer to be entitled to make a warranty claim, the Customer must notify the Company in writing within 14 days of the defect appearing in the products. The notice must be sent to the Company's postal address, being that set out in the Credit Application, and should include the company's store from where the goods were purchased (including its address) and the invoice number.
  - (d) Subject always to clause 6(a), all conditions, warranties and guarantees other than those expressly provided for in these Terms are excluded to the fullest extent permitted by law; and the Company will not be liable to the Customer for any loss caused (in whole or in part) by or arising out of any use of the products or any defect in the products or any failure, malfunction, breakdown or deterioration of the products.
7. Limitation of liability:
- (a) The Company will not be liable for any contingent, consequential, direct, indirect, special or punitive damage or loss whatsoever suffered by the Customer, as a result of any act, omission or statement made by the Company, its employees, contractors or agents whether due to negligence or otherwise, except that nothing in these Terms limits any liability imposed by any statute unless or to the extent that is lawful to do so.
  - (b) No other term, condition, agreement, warranty, representation or understanding whether express or implied, in any way extending to, otherwise relating to or binding upon the Company, other than these Terms, is made or given by or on behalf of the Company and the Customer acknowledges that it relies on its own knowledge and expertise in selecting any products for any purpose and any advice or assistance given for or on behalf of the Company shall be accepted at the Customer's risk.
  - (c) Where the Company is not permitted to exclude, restrict, or modify its liability for a breach of a condition or warranty that is implied by any statute or applicable laws but is permitted to limit its liability for the breach of such condition or warranty, the Company's liability is limited to any one of the following as determined by the Company in its absolute discretion:
    - (i) in the case of products supplied, the replacement of the products or the supply of equivalent products, the repair of the products, the payment of the cost of replacement of the products or of acquiring equivalent products, or for the payment of the cost of having the products repaired; and
    - (ii) in the case of services provided, the supply of the services again, or the payment of the cost of having the services supplied again.
8. Cancellation & Returns: No order may be cancelled except with the Company's consent in writing. The Customer agrees that:
- (a) the Company may elect to take back products in saleable condition on terms agreed;
  - (b) any product which the Company has elected to accept back must be returned at the Customer's cost;
  - (c) the Company is under no obligation to provide a refund for products returned;
  - (d) custom made, custom processed or custom acquired products will not be returnable at all; and
  - (e) in the event that the Company agrees to the return of the products by the Customer, the products are at the Customer's risk until such time as the products reach the Company's place of business.
9. Orders and Delivery: The Customer agrees that:
- (a) The Company may, without incurring any liability, refuse to accept any order for products made by the Customer in whole or in part in its absolute discretion;
  - (b) When any order is placed, the Customer shall inform the Company of any facts which might reasonably affect any decision to accept the order and/or grant credit. Any failure to do so shall be deemed to create an inequality of bargaining position, the taking of an unfair advantage of the Company and to be unconscionable, misleading and deceptive;
  - (d) From the time of placing an order (including forward orders), the Customer is obliged to accept and pay for the products in accordance with these Terms and a cancellation of or alteration of the order by the Customer for any reason shall not discharge this obligation to accept the products and make payment;
  - (e) The Company shall use its best endeavours to ensure that the product is available and that the services are provided to the Customer within a reasonable time frame requested by the Customer, but shall not be liable for any loss or damage caused by any delay. The Customer shall not be entitled to reject the products or services by reason of any delay;
  - (f) The Company may at any time alter specifications in respect of products without giving notice to the Customer, in the interest of continued product improvement. An alteration does not entitle the Customer to return products, cancel an order or otherwise avoid its obligations and liabilities pursuant to these Terms;
  - (g) The Company may charge the Customer for its costs and expenses associated with handling and/ or holding any products once ready for delivery. The Company has no responsibility or duty to deliver but may elect to arrange delivery at its discretion and without liability for delay, failure or inability to deliver, and at the Customer's sole cost and risk. The Company may charge the expenses for a frustrated delivery;
  - (h) The Company is not responsible for any loss or damage to products in transit; and
  - (i) The Company has the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure by the Company to deliver any instalment will automatically be deemed to be a back order and will not entitle the Customer to cancel the balance of the order. In the event of the Customer failing to take delivery of any instalment, the Company may elect to cancel the balance of the order.
10. Termination: The Company is entitled in its absolute discretion to immediately cancel any order of the Customer if the Customer suffers an Event of Default without any liability attaching to the Company.

11. Notification of Change of Details: Where any change takes place in the Customer's trading structure or management, including any change of director, shareholder or any change in partnership or trusteeship notwithstanding any advice by the Customer to Company, the Customer shall not continue to operate its credit account without the Company's prior written consent, and the Customer shall remain liable for all amounts owed to the Company until the whole amount (including interest and charges) has been paid in full to the Company.
12. Other Terms and Conditions: No terms and conditions sought to be imposed by the Customer upon the Company shall apply. These Terms supersede all previous terms and conditions and may only be varied if authorised in writing on behalf of the Company.
13. Expenses: The Customer must pay to the Company all costs, charges and expenses (including all stamp duty and legal fees on an indemnity basis) incurred by the Company, its legal advisers, mercantile agents and others in connection with entry into these Terms, the exercise or attempted exercise of any power, right or remedy under these Terms, the failure of the Customer to comply with these Terms; recovery of Monies Owed, possession of any products or otherwise.
14. Set off: The Company is entitled in its absolute discretion to set off any credits that may appear in the Customer's account with the Company against any other amounts owed by or debts of the Customer to the Company (and to give effect to this, the Customer irrevocably appoints the Company as the Customer's attorney).
15. Credit Limit: The grant of any credit facility and/or the nomination of any credit limit is an indication only of the Company's intention at that time and the Company may vary, reduce or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other person or entity. The Customer agrees to pay on demand all sums owing in connection with this credit facility in the event the credit facility is withdrawn. The Customer acknowledges that the Company may make additional periodic credit checks to ensure the Customer remains credit worthy.
16. Privacy Act 1988 (Cth): You hereby authorise:
- the Company to use any personal information that you give the Company for credit (including investigating your trading history and trade practices), administration, service, and marketing purposes. If you do not give this information the Company may not be able to provide products to you;
  - any person or company to give the Company such information as it may require in response to its credit and other enquiries; and
  - otherwise in accordance with the Company's Privacy Policy from time to time. A copy of which is available on the company website <http://www.barwontimber.com.au> or by calling (03) 5229 0080.
17. You understand that the Company may use a credit reporting agency to credit check you. In such case:
- the agency will give the Company information about you for that purpose;
  - the Company will give your personal information to the agency, and the agency will hold the information on its systems and use it to provide their credit reporting service;
  - when other customers use the service, the agency may give the information to those customers; and
  - if you default in your payment obligations to the Company, information about the default may be given to the agency, and the agency may give the information to other customers.
18. You acknowledge that any personal information provided by you to the Company is subject to the Company's Privacy Policy from time to time. The Company's Privacy Policy is on the Company's website <http://www.barwontimber.com.au>. You may also request a copy of the Company's Privacy Policy by calling the Company on (03) 5229 0080 or emailing the Company at [enquiries@barwontimber.com.au](mailto:enquiries@barwontimber.com.au). You understand you have a right of access to, and may request correction of, your personal information in the manner specified in the Company's Privacy Policy from time to time.
19. For the purposes of clauses 16, 17 and 18 above "you" and "your" includes any guarantor of the Customer's obligations to the Company, and copies of identification or personal information are required to be provided for any and all Guarantors when and as required by the Company.
20. Force Majeure: The Company will not be or deemed to be in default or breach of any contract as a result of the effects of force majeure. Force majeure will include any cause beyond the reasonable control of the Company. The Company will not be liable for any loss incurred as a result of delay or failure to meet an acceptable order or to observe these Terms due to the effects of force majeure.
21. Disputes: Any claims as to quality or quantity of products supplied must be made within 14 days of delivery of the products to the Customer. In the event of a dispute between the Customer and the Company, the Customer agrees to pay the Company all such amounts owing to the Company by the Customer until such time as the dispute is resolved.
22. Statement by the Company: A statement by any officer of the Company is conclusive evidence of any fact, matter or thing.
23. General:
- These Terms are governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the Victorian Courts and the courts of appeal therefrom.
  - These Terms bind the Customer both personally and as trustee of any trust which the Customer is trustee.
  - Each clause and subclause of these Terms are separate and independent. If any clause or subclause is found to be invalid or ineffective, the other clauses or subclauses will not be adversely affected.
  - The Company can transfer its rights under these terms to a third party. If the Company does so, these Terms will apply to the transferee as if it were the Company. If the Company wants to transfer its rights it can give the proposed transferee all information that privacy legislation allows it to give.
  - The Customer cannot assign its rights or obligations under these Terms to any third party without the prior written consent of the Company, which may be withheld in the Company's absolute discretion.

24. Definitions:

Attaches	has the same meaning as defined in the PPSA.
Australian Consumer Law	means the Australian Consumer Law as set out in Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth).
Company	means the company identified on page 1 of this Credit Application or the supplier of products to the Customer as the case may be.
Customer	means the party to whom the Company has supplied its products, including but not limited to its subsidiaries, affiliates, associated companies, related company successors or assigns.
Customer's Other Property	means all of the Customer's present and after acquired legal and beneficial rights and interests in land and any other property, which is not the Customer's Personal Property.
Customer's Personal Property	means all of the Customer's present and after acquired Personal Property and all present and after acquired Personal Property in which the Customer has rights.
Event of Default	means any of the following events: (a) the Customer is in breach of these Terms; (b) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer; the Customer resolves to appoint an administrator, or a receiver or provisional liquidator or an administrator is appointed; the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; the Customer is deemed unable to pay its debts within the meaning of the <i>Corporations Act 2001</i> (Cth); if the Customer is a natural person, an order is made for the Customer's bankruptcy or the Customer is bankrupted, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs or an order is applied for or made to place the assets and affairs of the Customer under administration; (c) the Customer ceases or threatens to cease carrying on business.
Financing Change Statement	has the same meaning as defined in the PPSA.
GST	means any tax or imposition on the supply of goods and services covered by the GST Act as amended from time to time.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Monies Owed	means all monies which are owing or payable to the Company by the Customer for any reason whatsoever.
Personal Property	has the same meaning as defined in the PPSA.
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth) and all italicised and capitalised terms used above have the meaning given to them in the PPSA.
Purchase Money Security Interest	has the same meaning as defined in the PPSA.
Secured Party	has the same meaning as defined in the PPSA.
Security Interest	has the same meaning as defined in the PPSA.
Taxable Supply	has the same meaning as defined in the GST Act.

## PERSONAL/DIRECTORS GUARANTEE AND INDEMNITY

IN CONSIDERATION of the Company at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to the Customer,

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. GUARANTEES the due and punctual payment to the Company of all moneys which are now owing to the Company by the Customer and all further sums of money from time to time owing to the Company by the Customer in respect of goods and services supplied or to be supplied by the Company to the Customer or any other liability of the Customer to the Company, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Company. If for any reason the Customer does not pay any amount owing to the Company the Guarantor will immediately on demand pay the relevant amount to the Company.
2. HOLD HARMLESS AND INDEMNIFY the Company on demand as a separate obligation against any liability (including but not limited to damages costs losses and legal fees (as defined hereunder in paragraph (b) hereof)) incurred by or assessed against the Company in connection with:
  - (a) the supply of goods and/or services to the Customer; or
  - (b) the recovery of moneys owing to the Company by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Company's nominees costs of collection and legal costs calculated on a solicitor and own client basis; or
  - (c) moneys paid by the Company with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Company, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Company to the Customer.
3. PROVIDES THE FOLLOWING SECURITY
  - (a) To secure payment of all monies which are or may become payable by the Guarantor to the Company under this Guarantee, the Guarantor hereby:
    - (i) charges with the due payment of all of those moneys all of the Guarantor's right, title and interest in any and all real property wherever located both present and future and the Guarantor consents to the Company lodging a caveat or caveats to protect the Company's interest therein; and
    - (ii) grants a *Security Interest* in all of the Guarantor's present and after-acquired *Personal Property* in favour of the Company and consents to the Company registering such *Security Interest* over the Guarantor on the *Register*;
  - (b) The Guarantor agrees that this Guarantee constitutes a *Security Agreement* under the PPSA.
  - (c) The Guarantor waives its right to receive any notice under the PPSA (including notice of a *Verification Statement* after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPSA.
  - (d) Upon demand by the Company, the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Company to further secure the Guarantor's indebtedness to the Company. Should the Guarantor fail within a reasonable time of such demand to execute such mortgage or other instrument then the Guarantor appoints irrevocably the credit manager or a duly authorised officer of the Company to be the Guarantor's lawful attorney to execute any such mortgage or other instrument.
4. I/WE FURTHER ACKNOWLEDGE AND AGREE THAT:
  - (a) 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 all moneys owing to the Company and all obligations to be performed by the Customer have been fully paid satisfied and performed;
  - (b) no granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Company's part (whether in respect of the Customer 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 of any Guarantor under this Guarantee and Indemnity. Without affecting the Customer's obligations to the Company, each Guarantor shall be a principal debtor and liable to the Company accordingly;
  - (c) If any payment received or recovered by the Company is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Company shall each be restored to the position in which they would have been had no such payment been made;
  - (d) this Guarantee and Indemnity shall bind each of the signatories notwithstanding that one or more of the persons named as a "Guarantor" may never execute this Guarantee and Indemnity;
  - (e) 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.
  - (f) 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 Customer to the Company;
  - (g) I/we irrevocably authorise the Company to obtain from any person or company any information which the Company may require for credit reference purposes. I/We further irrevocably authorise the Company 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 the Company as a result of this Guarantee and Indemnity being actioned by the Company;
  - (h) The information provided herein is to be used by the Company for all purposes in connection with the Company considering this Guarantee and Indemnity and the subsequent enforcement of the same and in accordance with the Company's Privacy Policy from time to time.



5. DEFINITIONS

In this Guarantee unless the context requires otherwise:

- Company means the company identified on page 1 of the Credit Application attached.
- Customer means the customer identified on page 1 of the Credit Application attached.
- Guaranteed Moneys means all moneys which are, will or may be at any time in the future, owing or payable to the Company by the Applicant for any reason whatsoever. It includes, without limitation, money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated damages. Where the Applicant would have been liable but for its Administration, it will still be taken to be liable.
- PPSA means the *Personal Property Securities Act 2009* (Cth) and all italicised and capitalised terms used above have the meaning given to them in the PPSA.

**SCHEDULE**

*I have read and understood this document. I have not relied on anything said to me by the Customer or the Company as to what it means or what its effect may be.*

*SIGNED by each Guarantor in the presence of the witnesses named below. A copy of a current valid driver's licence of the Guarantor signing this agreement must provided with this application.*

Guarantor's Name (print):  Guarantor's Address:	Signature:
Witness' Name (print):  Witness Address:	Signature:
Dated this _____ day of _____ 20____	

Guarantor's Name (print):  Guarantor's Address:	Signature:
Witness' Name (print):  Witness Address:	Signature:
Dated this _____ day of _____ 20____	

Guarantor's Name (print):  Guarantor's Address:	Signature:
Witness' Name (print):  Witness Address:	Signature:
Dated this _____ day of _____ 20____	

**IMPORTANT NOTICE:** This is an important document. It may require you to pay someone else's debts. You should ensure you read and understand the terms of this Guarantee. If necessary, seek independent legal advice.



**BAR-TRUSS  
DRYSDALE TIMBER & HARDWARE**

**I acknowledge that I have read and understand the credit application that I have signed and that it is a binding legal document.**

IN PARTICULAR I ALSO ACKNOWLEDGE THE FOLLOWING:

1. Credit may be withdrawn at any time and there is no obligation to give credit.
2. Credit is given on a 30 day basis. This means payment must be made on or before the last trading day of the month following the month of purchase.
3. If payment is not made within the agreed time, the 5% settlement discount will be forfeit. Loss of the settlement discount is a penalty for late payment and is intended to discourage people from late payment of accounts.
4. If payment is not made in accordance with the above conditions, credit will be suspended without notice **across all businesses**. Goods will not be delivered and nothing can be picked up unless prior payment is made.
5. The vendor will take legal action to recover the debt and any personal guarantees will be pursued.
6. Any legal costs incurred by the vendor will be recovered by the purchaser.
7. Interest may be charged on overdue amounts. Refer to Trading Terms for interest rates.
8. The agreed credit limit will be enforced. You can elect how you would like to split requested credit between our businesses below.

1. Barwon Timber & Hardware: \_\_\_\_\_ %
2. Bar-Truss: *(Complete pages 11 - 14)* \_\_\_\_\_ %
3. Drysdale Timber & Hardware: \_\_\_\_\_ %

9. All sales are subject to Barwon Timber & Hardware, Flooring Installation, Cladding Installation and Bar-Truss Trading Terms and Conditions. Trading terms and conditions are subject to change without notice. Trading terms are available on our website or in store.  
[www.barwontimber.com.au](http://www.barwontimber.com.au).
10. E-mail addresses supplied will be included in our newsletter and marketing database. Customers can unsubscribe from newsletters.

SIGNATURE OF APPLICANT \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/ 20\_\_\_\_

NAME: \_\_\_\_\_

## BAR-TRUSS TRADING TERMS & CONDITIONS

### Interpretation

1. In these conditions:
  - (1) Bar-Truss means Bar-Truss Pty Ltd with ABN 87 103 238 295 of 50 Fellmongers Road which is the supplier of the Goods.
  - (2) 'Customer' means the purchaser or a purchaser's representative of the Goods.
  - (3) 'Goods' means any goods supplied by Bar-Truss to the Customer.
  - (4) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

### General

2. These conditions (which shall only be modified, varied or waived by notice in writing signed by Bar-Truss shall prevail over all conditions of the Customer's order to the extent of any inconsistency. The Goods and all other products sold by Bar-Truss are sold on these terms and conditions.

### Bar-Truss quotations

3. Unless previously withdrawn, Bar-Truss quotations are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date. Bar-Truss reserves the right to refuse any order based on any quotation within 7 days after the receipt of the order.

### Barwon Timber and Hardware Pty Ltd quotations

4. All goods and services quoted by Barwon Timber and Hardware Pty Ltd are subject to its Terms and Conditions of Sale. These can be viewed at [www.barwontimber.com.au](http://www.barwontimber.com.au) or a copy can be e-mailed, faxed or posted to the Customer on request.

### Prices

5.
  - (1) Unless otherwise stated all prices quoted by Bar-Truss are net, exclusive of Goods and Services Tax (GST). An amount equivalent to the prevailing rate of GST will be charged to the Customer and payable in addition to any price quoted.
  - (2) Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, cartage, cost of materials and any other charges affecting the cost of production ruling on the date is made.
  - (3) If Bar-Truss makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Customer's account.
  - (4) It is the responsibility of the Customer to inform itself of the current ruling price. However, all contracts exceeding 30 days duration are subject to rise and fall assessments on the material and labour rates prevailing at the time.
  - (5) Retention monies have not been allowed for and Bar-Truss will accept no claims.

### Payment

- (1) Fifty (50) percent of the purchase price in relation to Goods is payable upon the Customer accepting the price quoted by Bar-Truss and is payable as a deposit due prior to manufacture of the Goods, SAVE AND EXCEPT for Customers having entered into a Credit Account pre-approved by Bar-Truss where the purchase price is payable strictly within agreed trading terms.
- (2) The balance of the purchase price is due strictly prior to delivery of the Goods, SAVE AND EXCEPT for Customers having entered into a Credit Account pre-approved by Bar-Truss where the purchase price is payable strictly within agreed trading terms.
- (3) Customers with Credit Accounts may be eligible for settlement discounts where accounts are paid within agreed trading terms. This will be indicated on Quotations.
- (4) If the Customer has not paid for any Goods by the due date, without prejudice to any other right or remedy:
  - (a) all outstanding money carries interest on daily balances until paid at a rate of interest per annum equal to 14% or other such rate as Bar-Truss notifies the Customer in writing from time to time; and
  - (b) Bar-Truss may recover the purchase price of the Goods together with all interest forthwith from the Customer as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim that the Customer may have against Bar-Truss for anything or matter related to the Goods delivered under this contract.

### Customer's Order

6.
  - (1) The Customer warrants the accuracy of all plans, specifications, drawings or other particulars supplied by the Customer.
  - (2) The Customer acknowledges that the Bar-Truss price is quoted on and the wall frames, floor systems and trusses are manufactured reliant on the Customer's warranty in clause 6(1).
  - (3) If the Customer cancels an order for the Goods for any reason, Bar-Truss will only accept such cancellation by notice in writing to Bar-Truss and on the basis that all costs incurred by Bar-Truss up to receiving such notice from the Customer will be a debt due to the Customer in accordance with these Terms and Conditions.
  - (4) Any variation to the Goods ordered as required by the Customer will only be accepted by the Customer detailing such variation by notice in writing to Bar-Truss and by the Customer accepting any variation in the price of the Goods in writing.

## Delivery

7. The delivery times made known to the Customer are estimates only and Bar-Truss is not to be liable for late delivery or non-delivery. In any event the Customer should check the estimated delivery time for the Goods at least 5 days prior to the date delivery is required.
  - (1) Bar-Truss is not liable for any loss, damage or delay occasioned to the Customer or its clients arising from late or non-delivery or late installation of the Goods.
  - (2) The Customer shall provide clear access on the delivery site so that the delivery vehicle can unload the Goods as close as practicable to the place the Goods are to be erected. Clear access areas are to comply with Work Safe guidelines, including *No go Zones for Overhead Electrical Powerlines*.
  - (3) The Customer Agrees that Bar-Truss may attend the delivery site at the completion of the Goods being installed to collect any surplus Goods or part thereof.
  - (4) The Customer is responsible for the payment of all costs incurred and associated with the delivery of the Goods, including the lifting of trusses to plate height. Lifting to plate may be completed at the discretion of Bar-Truss. The Customer or its representative must be present to complete lifting to plate and ensure it is safe to do so. This includes ensuring the building can take the weight of the lifted load. Note that portable crane hire is not included in any quotation provided to the Customer and must be paid in addition to any agreed price of the Goods.
  - (5) The Customer Agrees that Bar-Truss may attend the delivery site at the completion of the Goods being installed to collect any surplus Goods or part thereof.
  - (6) Bar-Truss will try best as possible to include costs in quotations for delivery escorts and permits required under Vic Roads guidelines for *Oversize Load Carrying Vehicles*. These costs are subject to Vic Roads guidelines and should extra costs be incurred owing to guideline changes, these will be passed on to the Customer.

## Loss or damage in transit

8. Bar-Truss is not responsible to the Customer or any person claiming through the Customer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not Bar-Truss is legally responsible for the person who caused or contributed to that loss or damage).

## Shortage

9. The Customer waives any claim for shortage of any goods delivered if a claim in respect for short delivery has not been lodged with Bar-Truss within seven (7) days from the date of receipt of goods by the Customer.

## Performance

10. Bar-Truss will only accept liability for any failure of floor and roof trusses ('the trusses') supplied to comply with the Nail Plate Suppliers engineering requirements provided the following conditions have been met by the Customer:
  - (1) The trusses must be erected and braced to comply with Australian Standard "Installation of Nail Plate Timber Trusses" AS 4440 1997.
  - (2) The trusses shall be laden with covering as indicated in the quotation provided to the Customer (i.e. tiles, sheet, etc.)
  - (3) The trusses are to be spaced correctly and in accordance with Bar-Truss requirements and Local Council Ordinances.
  - (4) The lintels over all openings in external walls must comply with AS 1684 or Approved Engineer's Design.
  - (5) The trusses shall be slung by panel points only.
  - (6) The trusses must not under any circumstances be cut or altered without the prior written permission of Bar-Truss.
  - (7) All other materials and construction methods used as part of the roof's structure must accord with AS 4440 1997, Local Council Ordinances and accepted building standards.
  - (8) The Customer must check with the Fabricator as to any proposed method of construction of auxiliary roof timbers which could impair the structural efficiency of the roof trusses.
  - (9) Concrete slabs must be properly waterproofed.
  - (10) Bottom plates are to be blocked correctly where required on bearers.
  - (11) Wall connectors are to be used at all junctions on top plates.
  - (12) All junction studs are to be nailed at midpoint to blocks provided.
  - (13) All bracing elements are to be nailed finally after plumbing on site has occurred.
  - (14) Roof trusses and wall frames must be effectively clad and weather protected at all times.
  - (15) Bar-Truss will not accept liability for tradesmen employed by the Customer.

## Guarantee

11. (1) Further and in addition to clause 10, Bar-Truss' liability for any Goods manufactured by it is limited to making good any defects by repairing the defects or at Bar-Truss' option by replacement, within a period not exceeding twelve (12) calendar months after the goods have been dispatched so long as:
- (a) defects have arisen solely from faulty materials or workmanship;
  - (b) the Goods have not received maltreatment, inattention or interference; and
  - (c) the Goods have not been incorrectly installed by the Customer.
- (2) If the Goods are not manufactured by Bar-Truss the guarantee of the manufacturer of those Goods is accepted by the Customer and is the only guarantee given to the Customer in respect of the Goods. Bar-Truss agrees to assign to the Customer on request made by the Customer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to Bar-Truss under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- (3) Bar-Truss is not liable for and the Customer releases Bar-Truss from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by Bar-Truss and the responsibility for any claim has been specifically accepted by Bar-Truss in writing. In any event Bar-Truss' liability under this paragraph is limited strictly to the replacement of defective Goods in accordance with clause 11(1) of these terms and conditions.
- (4) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded Bar-Truss is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of Bar-Truss negligence or in any way whatsoever.

## Claims

12. Bar-Truss will not be under any duty to accept any claim made by the Customer in relation to the Goods unless such claim is received within 7 days of the delivery date and on terms to be agreed in writing in each individual case. All claims must accompany a request for credit quoting Bar-Truss' invoice number on which the goods were supplied.

## Rights in relation to goods

13. (1) Bar-Truss reserves the following rights in relation to the goods until all accounts owed by the Customer to Bar-Truss are fully paid:
- (a) ownership of the Goods;
  - (b) to enter the Customer's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
  - (c) to keep or resell any Goods repossessed pursuant under paragraph (b) of this clause 13(1). If the goods are resold, or products manufactured using the Goods are sold, by the Customer, the Customer shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of Bar-Truss and shall pay such amount to Bar-Truss upon request. Notwithstanding the provisions above Bar-Truss shall be entitled to maintain an action against the Customer for the purchase price and the risk of the Goods shall pass to the Customer upon delivery.
- (2) Bar-Truss and the Customer agree:
- (a) that the Customer is bailee of the goods until such time as property in them passes to the Customer and that this bailment continues in relation to each of the goods until the purchase price has been paid in full;
  - (b) that pending payment in full for the goods, the Customer must insure the goods for their full insurable or replacement value (whichever is the higher) with a reputable and competent insurer;
  - (c) that the Customer will not supply any of the goods to any person outside its ordinary or usual course of business;
  - (d) that the Customer will not allow any person to have or acquire any security or interest in the goods;
  - (e) that the Customer grants to Bar-Truss a security interest in respect of all goods supplied by Bar-Truss pending payment by the Customer being a security interest under the Personal Properties Securities Act 2009. This security interest constitutes security for payment of all of the Customer's indebtedness to Bar-Truss under these Terms and Conditions or otherwise;
  - (f) the Customer agrees to Bar-Truss may require to ensure that Bar-Truss has an enforceable, perfected, maintained an otherwise effective purchase monies security interest in the Goods; and
  - (g) the Customer must reimburse Bar-Truss for all costs and/or expenses incurred or payable by Bar-Truss in relation to the registration of any notice of Bar-Truss interest.
- (3) In the event that the Customer fails to pay for the Goods by the due date; commits an act of bankruptcy or becomes insolvent or bankrupt; or is placed in receivership or voluntary administration; enters into any type of arrangement with creditors; is the subject of a petition for winding up or is wound up; or otherwise fails to observe its obligations under these conditions, Bar-Truss may exercise its rights under clauses 13(1)(b) and 13(1)(c) and terminate the further supply of goods.
- (4) The Customer hereby charges in favour of Bar-Truss all its respective right, title and interest in any land owned by the Customer, including any land the Customer may acquire in the future, ('the land') to better secure all amounts owing by the Customer to Bar-Truss and the performance of the Customer's obligations under these conditions and the Customer agrees that Bar-Truss may register a caveat over the land in relation to this charge.

**Indemnity and Interest**

14. The Customer agrees, in the event of the Customer defaulting under its obligations expressed in these Terms and Conditions, to:
- (a) pay interest on all money due by the Customer to Bar-Truss at the rate of 2% per month, compounding monthly; and
  - (b) pay all recovery and enforcement costs incurred by Bar-Truss, on an indemnity basis, such enforcement costs include, but are not limited to, legal costs and disbursements and mercantile agent costs and charges.

**Customer's property**

15. Any property of the Customer under Bar-Truss possession, custody or control is completely at the Customer's risk as regards loss or damage caused to the property or by it.

**Storage**

16. Bar-Truss reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within fourteen days of a request by Bar-Truss for such instructions. The parties agree that Bar-Truss may charge for storage from the first day after Bar-Truss requests the Customer to provide delivery instructions.

**Place of contract**

17. (1) The contract for sale of the goods is made in the State of Victoria.  
 (2) The parties irrevocably submit all disputes arising between them to the courts of such State and any court competent to hear appeals from those courts of first instance.

**Customer's Warranties**

18. The Customer warrants:
- (a) that it is solvent and creditworthy;
  - (b) that it is authorised under its constitution or charter to enter into this supply contract;
  - (c) that, where it is the trustee of any trust or trusts, it is entering into this supply contract both in its capacity as trustee of that trust or trusts, and in its own beneficial capacity; and
  - (d) that it or its directors have had the opportunity to review and consider these Terms and Conditions and to seek legal advice as to their implications.

I have read and understood this document. I have not relied on anything said to me by the Customer or the Company as to what it means or what its effect may be.

DATE THIS DAY: \_\_\_\_\_

PRINT SIGNATORY'S NAME: \_\_\_\_\_

SIGNATORY'S CAPACITY: \_\_\_\_\_

SIGNED: \_\_\_\_\_

PRINT NAME OF WITNESS: \_\_\_\_\_

WITNESSED: \_\_\_\_\_