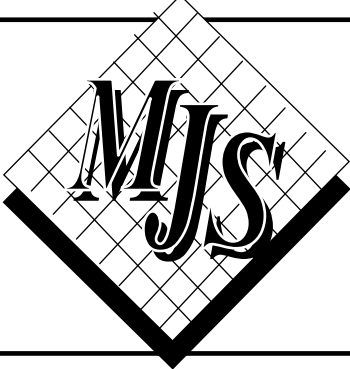


Office use only: Date opened: \_\_\_ / \_\_\_ / \_\_\_ Account No. \_\_\_\_\_

<p><b><u>M.J. STURGESS &amp; CO. PTY. LTD.</u></b> <b><u>(ACN 009 753 164) trading as</u></b> <b><u>MJS FLOORCOVERINGS</u></b> Accounts Dept. PO Box 2393, Mansfield Q 4122 35 Dividend Street, Mansfield Q 4122 Ph: (07) 3347 7300 Fax: (07) 3849 2010</p>	
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Date of Application: \_\_\_ / \_\_\_ / \_\_\_ ABN: \_\_\_\_\_

Application Name: \_\_\_\_\_

Trading Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_ Postcode \_\_\_\_\_

Postal Address: \_\_\_\_\_

\_\_\_\_\_ Postcode \_\_\_\_\_

Registered Address (Company): \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ MOBILE: \_\_\_\_\_

Website Address (if applicable): \_\_\_\_\_

<u>Contact Name</u>	<u>Phone Number</u>	<u>Email</u>
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\_\_\_\_\_

\_\_\_\_\_

I / We hereby apply for a 30 day credit account and submit the following confidential information:

Business Type: (Please tick one)

Sole Trader                       Partnership                       Private Company

Trust                                       Govt. Instrun

Nature of Business i.e. Retail Floorcoverings, Installer etc. \_\_\_\_\_

Description of Business: \_\_\_\_\_

\_\_\_\_\_

Date Business commenced \_\_\_ / \_\_\_ / \_\_\_

Details of Proprietor / Partners / Director:

1) Full Name: \_\_\_\_\_ Position Held: \_\_\_\_\_

Residential Address: \_\_\_\_\_

D.O.B: \_\_\_\_\_ License No: \_\_\_\_\_

2) Full Name: \_\_\_\_\_ Position Held: \_\_\_\_\_

Residential Address: \_\_\_\_\_

D.O.B: \_\_\_\_\_ License No: \_\_\_\_\_

3) Full Name: \_\_\_\_\_ Position Held: \_\_\_\_\_

Residential Address: \_\_\_\_\_

D.O.B: \_\_\_\_\_ License No: \_\_\_\_\_

Value of expected monthly purchases \$ \_\_\_\_\_

Business references

1) Company Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

Contact Name: \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

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

2) Company Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

Contact Name: \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

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

3) Company Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

Contact Name: \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

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

4) Company Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

Contact Name: \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

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

Preferred method of transport

Name: \_\_\_\_\_ Contact Number: \_\_\_\_\_

Terms of payment: I / We \_\_\_\_\_

\_\_\_\_\_ (Applicant) hereby accepts the Terms & Conditions of Sale herein & agrees that, until otherwise specified by M.J. Sturgess & Co. Pty. Ltd (ACN 009 753 164) trading as MJS Floorcoverings, the terms of payment applicable to the applicant should be:

30 days from end of month of supply of goods (30 days from statement date)

OR Buying Group Centrally Billed Account

If centrally billed, please advise details of Buying Group:

Group Name: \_\_\_\_\_ Contact Number: \_\_\_\_\_

Address: \_\_\_\_\_

**Applicants Signature:** \_\_\_\_\_ **Date** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Please circle one: Proprietor / Partner / Director / Authorized Person**

**Your Name:** \_\_\_\_\_



# Floorcoverings

Please fill in details as complete as possible to ensure we have correct information for our database.

POSITION	NAME	TELEPHONE	MOBILE	EMAIL
MANAGING DIRECTOR				
SALES MANAGER				
ACCOUNTS PAYABLE				
WAREHOUSE/DESPATCH				
SALES PERSON				

*Note: If you have more than one Sales Person please enter their details in the extra spaces*

**1. GENERAL**

Any reference to "the Company" is a reference to M.J. Sturgess & Co. Pty. Ltd. (ACN 009 753 164) trading as MJS Floorcoverings. Any order placed by a purchaser will be taken to be an order incorporating these Terms and Conditions even if any inconsistencies are introduced in the purchaser's order or acceptance, unless expressly agreed to by the Company in writing. The possible supply of certain product ranges maybe limited to certain geographical areas due to current distribution agreements.

**2. PRICES**

The applicable prices will be those at the date of delivery. Prices are subject to change without notice due to market fluctuation, amendments to tariff and taxation rates and movements in international exchange rates.

**3. GST**

Where applicable relevant Government charges will be added.

**4. QUOTATIONS**

Prices quoted are based on the Company's supplier costs. The quotation may be altered without notice to the purchaser if there is any increase in the Company's buy price between the date of quotation and the date of delivery. All goods will be charged at the prices ruling at the date of delivery unless the Company agrees otherwise in writing. All prices quoted are FOB Brisbane, Sydney, Melbourne, Hobart warehouses, unless otherwise specified in the handling and delivery conditions, and are exclusive of any applicable delivery, installation, storage, maintenance, stamp duty or other taxes or charges which may be levied from time to time by any government (domestic or foreign) upon the merchandise sold by the Company.

**5. PAYMENT**

Standard terms are nett 30 days from statement date and therefore payment must be made without deduction within 30 days of the date of the statement, but the Company reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery if, at any time, the credit worthiness of the purchaser is, in the Company's opinion, unsatisfactory. If the purchaser has not paid for the goods within 30 days of the payment being due, the Company may, at its option, rescind the contract and resell or dispose of the goods without prejudice to any claims for damages against the purchaser. Alternatively, after 90 days, the Company, at its discretion may charge a 5% interest fee plus another 1.5% per month thereafter. The Company may, at its discretion, charge a commercial stocking/storage fee for any order not taken within 30 days from the end of the month of the original required date. These fees would be calculated at \$3.00 per roll and/or \$8.00 per pallet per week or part thereof.

**6. CLAIMS FOR WRONGFUL DELIVERY**

Any claim by the purchaser for short or wrongful delivery of goods must be notified to the Company in writing within 14 days of delivery of the goods. Any claim which the purchaser does not notify within that time (time being of the essence) will be taken to have been absolutely waived.

**7. CANCELLATION**

If the purchaser cancels any order or refuses to accept all or any of the goods in an order other than in circumstances permitted in these Terms and Conditions, the purchaser will be liable for any resulting damage or loss suffered by the Company. If the goods have been or are in the process of being manufactured or produced specifically for the purchaser, the purchaser will pay to the Company as liquidated damages the full contract price of the goods and any costs incurred by the Company less the current scrap value of the goods as determined by the Company. Imported materials are firm and non-cancellable.

**8. DESCRIPTION**

Any description of the goods is given by way of identification only and the use of that description does not constitute a sale by description.

**9. SALE BY SAMPLE**

The purchaser acknowledges that no sale made under these terms constitutes a sale by sample. Samples may vary from actual production.

**10. SPECIALS**

Products listed as clearance lines, end of batch runs or seconds are deemed as specials and are non returnable. No claims will be recognised for these types of specials.

**11. IMPLIED TERMS**

All conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise are expressly excluded to the maximum extent permitted by law.

**12. EXPRESS WARRANTY**

The Company warrants that the goods are free from defects caused by faulty workmanship and material as disclosed by the manufacturers' data and specification sheets and warranty statements.

**13. LIABILITY**

So far as the law permits, the liability of the Company for a breach of a condition or warranty is limited, at the Company's option, to:

- (a) the replacement or repair of the goods;
- (b) the supply of equivalent goods; or
- (c) the cost of replacing or repairing the goods or of acquiring equivalent goods (where product fault is not obvious)

in accordance with manufacturers' product warranty.

The purchaser agrees to release, hold harmless and indemnify the Company to the maximum extent permitted by law from and against any liability whatsoever and howsoever arising (including, without limitation, from negligence or willful misconduct on the part of the Company or others) in connection with the sale of goods by the Company.

**14. INDIRECT LOSS**

So far as the law permits, the Company is not liable in any way for any indirect or consequential loss or loss of profit including, without limitation, any loss by reason of delay, defective or faulty materials or workmanship, negligence or any act or matter or thing done, permitted by the Company.

**15. DELIVERY**

- (a) Refer Handling/Delivery details on the Price List.
- (b) Delivery times are between 7.00 a.m. and 5.00 p.m. Monday to Friday (except public holidays).
- (c) Customer must provide adequate unloading facilities and manpower (incl. forklift if required)

(d) Pickups can be made:  
Full cartons/rolls – 4 hours notice  
Cuts – order by 10.00 am pickup next day between 7 a.m. and 5 p.m.

- (e) The Company is not liable for any failure to deliver or delay in delivery for any reason including, without limitation:
  - (i) act of God, lightning, fire, flood, explosion;
  - (ii) strike, lock-out or other labour difficulty;
  - (iii) breakage or accident or other damage to machinery;
  - (iv) unavailability or shortage of stock from the Company's suppliers; or

- (v) failure or inability to obtain licences or the effect of any applicable laws, orders, rules or regulations of any government or competent authority.
- (f) If the Company determines that it is or may be unable to deliver within a reasonable time or at all the contract may be cancelled by the Company. If the contract is cancelled, the purchaser will have no claim against the Company for any damage, loss, cost or expense.

**16. RISK AND PROPERTY**

- (a) The risk of loss of, or damage to, the goods will pass to the purchaser on delivery and the purchaser will insure the goods until sold by the purchaser.
- (b) Property in, and ownership of, the goods will not pass from the Company to the purchaser until payment in full of the purchase price of the goods and all other amounts owing to by the purchaser (the money owing).
- (c) Until property passes to the purchaser:
  - (i) The Company, its employees or agents, are entitled to enter the purchaser's premises between 9.00 a.m. and 5.00 p.m. to inspect the goods;
  - (ii) unless otherwise notified in writing by the Company and subject to paragraph (f), the purchaser is authorised to sell the goods in the ordinary course of the purchaser's business; and

- (d) If payment for the goods is not made by the purchaser to the Company on the due date, the purchaser must deliver the goods to the Company on demand. If the purchaser does not comply with such a demand, the Company, its employees or agents, are entitled:
  - (i) to enter the purchaser's premises at any time to do all things necessary in order to take possession of the goods and the purchaser:

- (A) must procure the consent of all other persons having any interest in the premises where the goods are situated to entry of those premises by the Company, its employees or agents; and
- (B) indemnifies the Company against any claim, loss, liability, cost and expense that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the goods are situated; and
  - (ii) with or without taking possession of the goods, to sell them as the Company sees fit.

- (e) The purchaser acknowledges that the goods are not intended to become affixed to any of its premises and must ensure that the goods may be removed from those premises without causing damage of any kind to the premises.

- (f) The purchaser's right to hold and sell the goods will immediately cease if an administrator or a controller within the meaning of section 9 of the Corporations Law or similar officer is appointed to all or any assets or undertaking of the purchaser or an order is made or resolution passed for the appointment of an administrator or the winding up of the purchaser or the purchaser is deregistered. In any such case, and without the need for notice or demand by the Company, the purchaser acknowledges any sale or purported sale of the goods will not be in the ordinary course of the purchaser's business and the proceeds of any goods sold in such circumstances will, to the extent of money owing, be held on trust for the Company by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the purchaser.

- (g) Any provision of this Clause 16 which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Clause 16 nor affect the validity or enforceability of that provision in any other jurisdiction.

- (h) The purchaser acknowledges that the goods are not intended to become affixed to any of its premises and must ensure that the goods may be removed from those premises without causing damage of any kind to the premises.

- (i) The purchaser's right to hold and sell the goods will immediately cease if an administrator or a controller within the meaning of section 9 of the Corporations Law or similar officer is appointed to all or any assets or undertaking of the purchaser or an order is made or resolution passed for the appointment of an administrator or the winding up of the purchaser or the purchaser is deregistered. In any such case, and without the need for notice or demand by the Company, the purchaser acknowledges any sale or purported sale of the goods will not be in the ordinary course of the purchaser's business and the proceeds of any goods sold in such circumstances will, to the extent of money owing, be held on trust for the Company by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the purchaser.

- (j) Any provision of this Clause 16 which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Clause 16 nor affect the validity or enforceability of that provision in any other jurisdiction.

- (k) The purchaser acknowledges that the goods are not intended to become affixed to any of its premises and must ensure that the goods may be removed from those premises without causing damage of any kind to the premises.

**17. COSTS**

The purchaser must pay to the Company the costs and expenses incurred by the Company of legal advisers (on a solicitor and client basis), mercantile agents and other agents acting on the Company's behalf in respect of:

- (a) any enforcement of these Terms and Conditions;

- (b) recovery or attempted recovery of money owing by the purchaser to the Company;
- (c) repossession of the purchaser's goods pursuant to these Terms and Conditions.

**18. CHARGING**

In consideration of the Company entering into a contract with the purchaser, as security for any amount payable under the contract and the performance of the purchaser's obligations under these Terms and Conditions, the purchaser hereby charges any interest in real property, both freehold and leasehold, which it holds now or in the future in favour of the Company.

**19. PERFORMANCE AND REPRESENTATIONS**

The purchaser acknowledges that neither the Company nor any person purporting to act on its behalf have made any representation or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the goods for any particular purpose or any other matter.

**20. INSTALLMENTS**

The Company reserves the right to deliver by installments and each installment will be taken to be sold under a separate contract. Failure of the Company to deliver any installment will not entitle the purchaser to cancel the balance of the order. If the purchaser defaults in payment for any installment, the Company may elect to treat the default as a breach of contract relating to each other installment.

**21. RETURNS**

Goods delivered to the purchaser may be returned on the following basis:

- (a) Factory damaged or defective goods may be returned to the Company, and a credit or replacement will be provided to the Customer if the Company is liable for the damage or defect under any implied term for express warranty contained in these Terms and Conditions.

- (b) Other than in accordance with paragraph (a), non-stock items, non-current ranges, specials (colour/gauge not outlined in current year marketing literature and/or not regularly made), made to order goods or goods, in the Company's opinion, that are not fit for sale (age, damage, cut lengths, etc.) cannot be returned to the Company following delivery to, or pick up by, the Customer.

- (c) Other than in accordance with paragraph (a), prior written approval is received from the Company. Goods suitable for return will be accepted given they are approved by the Company's Credit Controllers and:
  - (i) the freight cost is borne by the customer; and
  - (ii) a charge of 20% of the invoice value or \$200, whichever is the greater,

- (d) is agreed to be levied on the customer's account.

- (e) Other than in accordance with paragraph (a), prior written approval is received from the Company quoting an authorisation number

**22. WAIVER**

Failure by the Company to insist on strict performance of any term, warranty or condition of the contract will not be taken as a waiver of it or of any rights the Company may have and no waiver will be taken as a waiver or any subsequent breach of any term, warranty or condition.

**23. MITIGATION OF LOSS**

The purchaser shall notify the Company immediately of any effect in the goods of which it becomes aware and will take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect. If the purchaser transforms the goods and sells the transformed goods, the purchaser undertakes to the Company that it will impose on the acquirer of the transformed goods an obligation to notify immediately the purchaser and the Company of any defect in the transformed goods of which it becomes aware after delivery and to take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect.

**24. NOTICES**

- (a) Any notice to be given by the purchaser to the Company must be sent by prepaid mail or facsimile transmission to the Company's address. No notice will be taken to have been given until it is actually received at the Company's address.

- (b) Any notice (including any demand, consent, approval, request, court document or other communication) to be given by the Company to the purchaser must be in writing and may be given to the purchaser in any of the following ways, and in each case is deemed to be served by:
  - (i) hand delivered, on the date of delivery;
  - (ii) sent by facsimile transmission, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted;
  - (iii) sent by prepaid ordinary mail within Australia on the date that is 2 Business Days after the date of posting; or
  - (iv) sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries on the date that is 10 Business Days after the date of posting.

**25. GOVERNING LAW**

Each contract is governed by and is to be construed in accordance with the laws of Queensland, and the purchaser submits to the non-exclusive jurisdiction of the courts of that State.

**BY:** The Guarantor

**IN FAVOUR OF:** M.J. Sturgess & Co. Pty. Ltd (ACN 009 753 164) trading as MJS Floorcoverings (the Company) as described in the Credit Application to which this deed of Guarantee and Indemnity is attached.

In consideration of the Company agreeing to enter into the Credit Application with the purchaser:

**1. GUARANTEE**

The Guarantor unconditionally and irrevocably guarantees to the Company the due and punctual performance by the purchaser of all of the purchaser's obligations under the Credit Application; and the due and punctual payment of all amounts for which the purchaser is or becomes liable in connection with the Credit Application, and will fully indemnify the Company against all losses, damages, liabilities, costs, claims and expenses of any kind which the Company incurs arising out of any of the following:

- (a) a breach of the Credit Application by the purchaser;
- (b) the Company being unable to enforce any part of the Credit Application against the purchaser;
- (c) the purchaser failing to pay any amount payable in connection with the Credit Application;
- (d) any part of the Credit Application which is, or which is or claimed to be, void or voidable; and
- (e) enforcement of any of the Company's rights under the Credit Application or this Guarantee and Indemnity.

**2. COSTS**

The Guarantor must pay to the Company the costs and expenses incurred by the Company of legal advisers (on a solicitor and client basis), mercantile agents and other agents acting on the Company's behalf in respect of:

- (a) any enforcement of the Credit Application and/or this Guarantee and Indemnity;
- (b) recovery or attempted recovery of money owing by the purchaser to the Company;
- (c) repossession of the purchaser's goods pursuant to the Credit Application.

**3. JOINT AND SEVERAL LIABILITY**

If this Guarantee and Indemnity names more than one person as Guarantor, each Guarantor is jointly and severally liable with each other Guarantor, and each person who signs this Guarantee and Indemnity is bound by it, even if another person does not sign.

**4. GUARANTEE IS NOT ANCILLARY**

This Guarantee and Indemnity is a principal obligation and must not be treated as ancillary or collateral with any other obligation. The Guarantor will be jointly and severally liable with the purchaser (rather than merely being a surety for the purchaser) for the obligations set out in the Credit Application. This Guarantee and Indemnity may be enforced against the Guarantor without the Company first taking any steps or proceedings against the purchaser.

**5. CONTINUING GUARANTEE**

This Guarantee and Indemnity is a continuing obligation and will not be discharged by the payment of any amount secured under this Guarantee and Indemnity or by any other act, but only by the satisfaction in full of the purchaser's obligations under the Credit Application. This Guarantee and Indemnity will remain in full force and effect until the Company has given the Guarantor written notice terminating the Guarantee and Indemnity. The Company will give the Guarantor such notice on request, but only if the Company is satisfied, in its sole discretion, that all of the obligations under the Credit Application and this Guarantee and Indemnity have been performed fully and all liabilities have been discharged.

**6. SUCCESSORS**

This Guarantee and Indemnity will bind the successors, assignees and personal representatives of the Guarantor and will not be determined by the death of the Guarantor (if a natural person) or the liquidation of the Guarantor (if a corporate entity).

**7. ACKNOWLEDGEMENT**

The Guarantor acknowledges that it has examined and understood the Credit Application, and this Guarantee and Indemnity will not be prejudiced or affected by any amendment or variation of the Credit Application, any complete or partial assignment, transfer or novation of the Credit Application or any change in the constitution of any party to the Credit Application, except that the Credit Application in its modified form will be deemed to be the Credit Application referred to in this Guarantee and Indemnity.

**8. TERMINATION OF CREDIT APPLICATION**

If the Credit Application is terminated for any reason, the Guarantor will still be liable for any obligation that the purchaser incurs in connection with the Credit Application after the date of termination.

**9. LIABILITY IS NOT ALTERED**

The Guarantor's liability under this Guarantee and Indemnity will not be altered, limited, prejudiced, discharged or diminished by any act or omission or any event which might otherwise have (whether at law, in equity or under statute) the effect of altering, limiting, prejudicing, discharging or diminishing the liability of the Guarantor either as guarantor, principal debtor or indemnifier including without limitation any of the following occurring:

- (a) the Company does something or fails to do something which would, under the law relating to guarantees or indemnities, have affected the Guarantor's liability;
- (b) any other person becomes liable to the Company for any of the obligations of the purchaser, whether alone or jointly, or jointly and severally;
- (c) any liability of the purchaser to the Company ceases for any reason;
- (d) the Credit Application is partly or completely illegal, void, voidable or unenforceable or is terminated for any reason;
- (e) the Company accepts a repudiation of the Credit Application by the purchaser;
- (f) the Company enforces, does not enforce, or postpones enforcing, any part of the Credit Application;
- (g) the Company enforces or does not enforce this any part of this Guarantee and Indemnity or the Company releases (either partly or completely) any co-Guarantor from any obligations;
- (h) the Company grants time, credit or any indulgence or concession to the purchaser or the Guarantor;
- (i) the Company obtains a court judgment against the purchaser or any other person;
- (j) the Company compounds with, compromises with, or makes an arrangement with, the purchaser or any other person;
- (k) the Company obtains any other any other security interest including an oral or written mortgage, pledge, lien, charge, encumbrance, preferential interest or arrangement from any person to secure the purchaser's or the Guarantor's compliance with its obligations (**Security**);
- (l) any Security obtained by the Company is void, defective or informal;
- (m) the Company enforces or does not enforce (either strictly or at all), or does not obtain, or releases or loses the benefit of any Security;
- (n) the Company does not stamp or register, or stamp or register properly, this deed, the Contract or any other document;

- (o) the purchaser becomes insolvent or subject to external administration or becomes bankrupt or commits any act of bankruptcy; or
- (p) anything else occurs which would result in this deed ending or being prejudiced or affected.

**10. INSOLVENCY OF PURCHASER**

If the purchaser is subject to any insolvency the Guarantor may not prove in competition with the Company, and the Guarantor authorises the Company to prove for all money owed to the Company by the purchaser and, at the Company's discretion, appropriate those amounts until the Company has received the full amount owing to the Company without any discount or pro-rated reduction. The Guarantor waives in favour of the Company all rights against the Company, the purchaser or any other person to the extent necessary to give full effect to this Guarantee and Indemnity.

**11. LIABILITY**

The Guarantor's liability under this Guarantee and Indemnity includes all amounts which the purchaser has paid to the Company, but which the Company is required to repay on the grounds of preference or for any other reason.

**12. STATEMENT OF ACCOUNT**

The Guarantor must pay an amount for which it is liable under this Guarantee and Indemnity on receipt of a written notice from the Company specifying the matter giving rise to the liability and the amount due. A statement in writing made up from the books of the Company and signed by an authorised officer of the Company which specifies the amount owing by the purchaser will be conclusive evidence that the amount is owing and of all other matters set out in the statement. It will not be necessary to produce any books or vouchers to verify the amount, and the statement need not look back to accounts beyond the preceding half-yearly balance of account in the books of the Company.

**13. ENFORCEMENT**

The Company is entitled to enforce this Guarantee and Indemnity against the Guarantor even if the Company has not given the Guarantor notice that the purchaser is in breach of the Credit Application or the Company has not attempted to enforce the Credit Application against or demanded payment from the purchaser, or attempted to enforce any other Security, or if the purchaser or any other person is not liable to the Company.

**14. NOTICES**

Any notice (including any demand, consent, approval, request, court document or other communication) to be given by the Company to the Guarantor must be in writing and may be given to the Guarantor in any of the following ways:

- (a) hand delivered;
- (b) sent by facsimile transmission;
- (c) sent by prepaid ordinary mail within Australia; or
- (d) sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries.

A notice is deemed to be given to the Guarantor if:

- (a) hand delivered, on the date of delivery;
- (b) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted;
- (c) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
- (d) sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting.

Any notice given by the Company in the manner specified above to the Guarantor at the Guarantor's residential or business address last known to the Company is deemed to be sufficient notice pursuant to this Guarantee and Indemnity.

**15. RIGHTS AT LAW**

This Guarantee and Indemnity is additional to any rights at law (including rights under another document) and any Security the Company has or may in the future have. Any other Security will not prejudice the Company's rights under this Guarantee and Indemnity. The Company's rights are not merged in any Security.

**16. DELAY**

A delay or failure by the Company in exercising any right will not operate as a waiver of that or any other right. If the Company waives any right that it may have against the Guarantor, or releases the Guarantor from an obligation under this Guarantee and Indemnity, that does not amount to a waiver of any other right or a release from any other obligation, nor does it imply that the Company consents to any later breach. To be effective, a waiver or release by the Company must be in writing and executed by the Company.

**17. CHARGING**

In consideration of the Company entering into the Credit Application with the purchaser, as security for any amount payable under the Contract and the performance of the Guarantor's obligations under this Guarantee and Indemnity, the Guarantor hereby charges any interest in real property, both freehold and leasehold, which it holds now or in the future in favour of the Company.

**18. GOVERNING LAW**

This Guarantee and Indemnity is governed by and is to be construed in accordance with the laws of Queensland, and the Guarantor submits to the non-exclusive jurisdiction of the courts of that State.

**19. POWER OF ATTORNEY**

The Guarantor irrevocably appoints the Company and each director of the Company as the Guarantor's joint and several attorneys to complete, execute and deliver on the Guarantor's behalf, and at the Guarantor's expense, this Guarantee and Indemnity and any other documents which the Guarantor may fail to complete, execute and deliver, and do any thing that the attorney may think desirable to give full effect to this Guarantee and Indemnity, including dating this Guarantee and Indemnity.

**20. ENTIRE AGREEMENT**

The Guarantor acknowledges that this Guarantee and Indemnity contains all the terms of the arrangement between the Company and the Guarantor with respect to the transactions contemplated by this Guarantee and Indemnity, except for other documents to which the Guarantor and the Company are both parties. The Guarantor is not entitled to rely on representations made by the Company or any of its officers, agents or employers, whether oral or in writing, prior to this Guarantee and Indemnity. This Guarantee and Indemnity may only be varied by a document signed by the Company and the Guarantor

**21. EXCLUSION OF LAW**

Any present or future law that varies the Company's rights or the Guarantor's obligations under this Guarantee and Indemnity is excluded to the extent permitted by law. If any clause or any part of any clause of this Guarantee and Indemnity is invalid or unenforceable, it is to be treated as not being part of the Guarantee and Indemnity, without affecting the validity of the remainder.

**22. ENDURANCE OF GUARANTEE**

This Guarantee and Indemnity will endure concurrently to the benefit of the Company and its

**SIGNED by the Guarantor in the presence of:**

.....  
**Signature of witness**

.....  
**Signature of Guarantor**

.....  
**Name of witness**

.....  
**Name of Guarantor**

**Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

**OFFICE USE ONLY**

**PRODUCT GROUP**

**SALESMAN**

A – Accessories

\_\_\_\_\_

Customer Group

\_\_\_\_\_

CS– Commercial Spec.

\_\_\_\_\_

Price Group

\_\_\_\_\_

C – Commercial Vinyl

\_\_\_\_\_

Territory Group

\_\_\_\_\_

D – Domestic Vinyl

\_\_\_\_\_

Supplying W'hse

\_\_\_\_\_

G – Synthetic Turf

\_\_\_\_\_

T - Timber / Laminate

\_\_\_\_\_

U – Underlays

\_\_\_\_\_

**APPROVED BY:** \_\_\_\_\_ **CREDIT LIMIT:** \_\_\_\_\_

**SPECIAL CONDITIONS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CUSTOMER NOTIFICATION DATE:** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**SALESMAN NOTIFICATION DATE:** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**PROCESSED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Notes:

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