

***COMMERCIAL  
CREDIT APPLICATION,  
TERMS OF TRADE,  
GUARANTEE AND INDEMNITY***

This document will constitute a contract between Prospect F & T Pty Ltd as trustee for Prospect F & T Trust (Prospect Frame & Truss) and yourself after signing.

If you have any queries, we suggest that you seek legal advice before signing.

# COMMERCIAL CREDIT APPLICATION – SUPPLY AGREEMENT GUARANTEE AND INDEMNITY

The Customer (and where a Company applicant, its Guarantors) by completing the following Commercial Credit Application form applies for trade credit with Prospect Frame & Truss in accordance with the Trading Terms and Conditions forming part of this Application.

**BUSINESS NAME:** \_\_\_\_\_

**LEGAL ENTITY NAME:** \_\_\_\_\_ (“the Customer”)

**TYPE OF ENTITY:** \_\_\_\_\_  
*(Company, Partnership, Trust, Sole Trader)*

**A.C.N.** \_\_\_\_\_ **A.B.N.** \_\_\_\_\_

**POSTAL ADDRESS:** \_\_\_\_\_

**TRADING ADDRESS:** \_\_\_\_\_

**CONTACT:** (Tel) \_\_\_\_\_ (Fax) \_\_\_\_\_ (Mob) \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**WEBSITE:** \_\_\_\_\_

**TYPE OF BUSINESS:** \_\_\_\_\_ **YEARS IN BUSINESS:** \_\_\_\_\_ **NO. OF EMPLOYEES:** \_\_\_\_\_

**BANK:** \_\_\_\_\_ **BRANCH:** \_\_\_\_\_

**BANK CONTACT:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_

**BUSINESS PREMISES:** Owned ( ) Rented ( ) Buying ( ) *(Please tick)*

**IF RENTED:** **NAME OF AGENT:** \_\_\_\_\_

**CONTACT NAME:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**COPY OF CERTIFICATE OF INCORPORATION OR BUSINESS REGISTRATION NAME ATTACHED?** YES / NO

**COPIES OF CERTIFICATE OF INSURANCE ATTACHED?** YES / NO  
*(Public liability, Workers’ Comp, Professional Indemnity, etc.)*

**ACCOUNTS CONTACT:** \_\_\_\_\_ **PHONE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_ **ESTIMATED NUMBER OF JOBS IN A YEAR** \_\_\_\_\_

**ESTIMATED MONTHLY PURCHASES \$** \_\_\_\_\_

**REQUESTED MONTHLY CREDIT LIMIT \$** \_\_\_\_\_

*Form continues to next page.*

**DIRECTORS /PARTNERS - Please give full details of Directors or Partners.**

	<b>Legal Name (underline Surname)</b>	<b>Date of Birth</b>	<b>Residential Address</b>	<b>Driver's License Number</b>	<b>Spouse's Legal Name (if married)</b>
1.					
2.					
3.					
4.					

**TRADE CREDIT REFERENCES**

	<b>NAME</b>	<b>PHONE</b>	<b>FAX</b>
1.			
2.			
3.			
4.			

The Customer agrees that the Supplier may give to and seek from any credit providers named in this Document or any credit providers that may be named in a credit report issued by a credit reporting agency, information about the Customer. The Customer understands that this information can include any information about the applicant/s credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.

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## TRADING TERMS & CONDITIONS

### **Interpretation**

1. In these conditions:
  - (1) Prospect Frame & Truss means Prospect F & T Pty Ltd as trustee for Prospect F & T Trust (ACN. 662 457 712, ABN. 58 846 707 234) of 37-43 Loftus Street, Riverstone 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 Prospect Frame & 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 Prospect Frame & 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 Prospect Frame & Truss are sold on these terms and conditions.

### **Prospect Frame & Truss quotations**

3. Unless previously withdrawn, Prospect Frame & 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. Prospect Frame & Truss reserves the right to refuse any order based on any quotation within 7 days after the receipt of the order.

### **Prices**

4.
  - (1) Unless otherwise stated all prices quoted by Prospect Frame & 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 Prospect Frame & 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 Prospect Frame & Truss will accept no claims.

### **Payment**

5.
  - (1) For Credit Account Customers
    - (a) who have entered into a Credit Account pre-approved by Prospect Frame & Truss the purchase price is payable strictly on or before 30 days from the delivery date of the Goods ('the due date') or within any other period agreed in writing by Prospect Frame & Truss.
  - (2) For Cash Sales – no account customers
    - (a) Fifty (50) percent of the purchase price in relation to Goods is payable upon the Customer accepting the price quoted by Prospect Frame & Truss and is payable as a deposit due prior to detailing of the Goods.
    - (b) The balance of the purchase price is due strictly prior to manufacture of the Goods, SAVE AND EXCEPT for Customers having entered into a Credit Account pre-approved by Prospect Frame & Truss where the purchase price is payable strictly on or before agreed payment term from the delivery date of the Goods ('the due date').
  - (2) 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 Prospect Frame & Truss notifies the Customer in writing from time to time; and
    - (b) Prospect Frame & 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 Prospect Frame & Truss for anything or matter related to the Goods delivered under this contract.

### **Customer's Order**

5.
  - (1) The Customer warrants the accuracy of all plans, specifications, drawings or other particulars supplied by the Customer.
  - (2) The Customer acknowledges that the Prospect Frame & Truss price is quoted on and the wall frames 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, Prospect Frame & Truss will only accept such cancellation by notice in writing to the Prospect Frame & Truss and on the basis that all costs incurred by Prospect Frame & 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 the Prospect Frame & Truss and by the Customer accepting any variation in the price of the Goods in writing.

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### **Delivery**

6. The delivery times made known to the Customer are estimates only and Prospect Frame & Truss is not 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) Prospect Frame & 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.
  - (3) 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. 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.
  - (4) The Customer Agrees that Prospect Frame & Truss may attend the delivery site at the completion of the Goods being installed to collect any surplus Goods or part thereof.

### **Loss or damage in transit**

7. Prospect Frame & 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 Prospect Frame & Truss is legally responsible for the person who caused or contributed to that loss or damage).

### **Shortage**

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

### **Performance**

9. Prospect Frame & 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, sheets, etc.)
  - (3) The trusses are to be spaced correctly and in accordance with Prospect Frame & 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 Prospect Frame & Truss.
  - (7) All other materials and construction methods used as part of the roof's structure must in accordance 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 mid-point 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) Prospect Frame & Truss will not accept liability for tradesmen employed by the Customer.

### **Guarantee**

10. (1) Further and in addition to clause 10, Prospect Frame & Truss liability for any Goods manufactured by it is limited to making good any defects by repairing the defects or at Prospect Frame & 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.

*Form continues to next page.*

- (2) If the Goods are not manufactured by Prospect Frame & 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. Prospect Frame & 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 Prospect Frame & 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) Prospect Frame & Truss is not liable for and the Customer releases Prospect Frame & Truss from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by Prospect Frame & Truss and the responsibility for any claim has been specifically accepted by Prospect Frame & Truss in writing. In any event Prospect Frame & 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. Prospect Frame & 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 Prospect Frame & Truss negligence or in any way whatsoever.

#### **Claims**

11. Prospect Frame & 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 Prospect Frame & Truss invoice number on which the goods were supplied.

#### **Rights in relation to goods**

12. (1) Prospect Frame & Truss reserves the following rights in relation to the goods until all accounts owed by the Customer to Prospect Frame & 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 Prospect Frame & Truss and shall pay such amount to Prospect Frame & Truss upon request. Notwithstanding the provisions above Prospect Frame & 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) Prospect Frame & 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 [Your Company's Name] a security interest in respect of all goods supplied by [Your Company's Name] 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 [Your Company's Name] under these Terms and Conditions or otherwise;
  - (f) the Customer agrees to [Your Company's Name] may require to ensure that [Your Company's Name] has an enforceable, perfected, maintained an otherwise effective purchase monies security interest in the Goods; and
  - (g) the Customer must reimburse [Your Company's Name] for all costs and/or expenses incurred or payable by [Your Company's Name] in relation to the registration of any notice of [Your Company's Name] 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, Prospect Frame & 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 Prospect Frame & 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 Prospect Frame & Truss and the performance of the Customer's obligations under these conditions and the Customer agrees that Prospect Frame & Truss may register a caveat over the land in relation to this charge.

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#### **Indemnity and Interest**

13. 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 [Your Company's Name] at the rate of 2% per month, compounding monthly; and
  - (b) pay all recovery and enforcement costs incurred by [Your Company's Name], 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**

14. Any property of the Customer under Prospect Frame & 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**

15. Prospect Frame & 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 Prospect Frame & Truss for such instructions. The parties agree that Prospect Frame & Truss may charge for storage from the first day after Prospect Frame & Truss requests the Customer to provide delivery instructions.

**Place of contract**

16. (1) The contract for the sale of the goods is made in the State of NSW.  
(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**

17. 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 the Customer hereby certify that I have read and understand the above Terms and Conditions and warrant that the information provided in the above Application is true and correct in every particular.

DATE THIS DAY: \_\_\_\_\_ MONTH: \_\_\_\_\_ YEAR: \_\_\_\_\_

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

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

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

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

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

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**GUARANTEE AND INDEMNITY**

In consideration of the Supplier, as described in the Document to which this Guarantee and Indemnity is annexed, (“the said Document”) agreeing to supply or continuing to supply goods on credit in accordance with its trading terms to the Customer as described in the said Document (“the Company”) we the Persons (“the Guarantors”) as described in the Schedule hereto, **HEREBY JOINTLY AND SEVERALLY CONVENANT AND AGREE** with the Supplier as follows:

1. To guarantee the due payment to the Supplier by the Company of all moneys owing by the Company from time to time to the Supplier for all goods and services as the Supplier may supply to the Company pursuant to the terms of the said Document.
2. The Supplier is at liberty without notice to us/me at any time and without discharging us/me from any liability hereunder to grant time or other indulgence whatsoever to the Company and to accept payment from the Company in cash or by any other means or negotiable instruments.
3. That where there is more than one signatory to this Guarantee and Indemnity, each signatory shall be **JOINTLY AND SEVERALLY LIABLE HEREUNDER**, and for the purposes hereof the singular shall mean the plural and vice versa and further the obligation created herein shall be principal obligation ranking pari passu with the terms of the said Document.
4. Liability under this guarantee shall not be affected by:
  - a. any guarantor failing to execute this guarantee or failing or ceasing to be bound by it;
  - b. this guarantee not being or ceasing to be legally binding against any other guarantor;
  - c. any guarantor being incapable of giving this guarantee; or
  - d. the death or bankruptcy of any guarantor.
5. This guarantee shall bind the legal personal representatives, successors, assigns and estates of the Guarantor.
6. If any sequestration order is made affecting property of the Guarantors or authority is given to a Trustee under Section 88 of the Bankruptcy Act, or any act of Bankruptcy is committed by the Guarantors or any petition for winding up is received, or the Guarantors are placed in Receivership or any official manager is appointed, or the business of any of the Guarantors ceases in the usual manner, or any breach of any Terms of Conditions of the Credit Contractor or the Supply Contract, any amount then due by us/me to the Supplier shall become immediately payable.
7. In the event of the administration of the Company’s affairs pursuant to scheme, deed of company arrangement or some other appointment, arrangement or agreement, formal or informal, pursuant to the Corporations Law or otherwise, or pursuant to a composition, deed of arrangement, assignment or some other appointment, arrangement or agreement, formal or informal, pursuant to the Bankruptcy Act 1966 or otherwise, the Guarantor will not prove in such administration in competition with the Supplier **AND THE GUARANTOR HEREBY AUTHORIZES** the Supplier to prove for all moneys owing to the Guarantors by the Company (including the whole or any part of the Guaranteed Debt).
8. That notwithstanding anything herein if for any reason whatsoever the whole or any part of the obligations guaranteed herein shall be or become irrecoverable from or unenforceable against the Company **THEN** and in any such event the Guarantors as a separate severable and additional liability under this Deed **INDEMNIFIES** and agrees to keep Indemnified the Supplier against all losses damages costs and expenses which the Supplier may suffer or incur by reason of the recoverability or unenforceability of any of the obligations guaranteed hereunder against the Company.
9. That the Guarantor, and each of the person, persons company or companies who comprise the Guarantor, to better secure the covenants and agreements set out do hereby respectively jointly and severally for ourselves and our respective executors and administrators and successors **CHARGE** all of our respective present and future real and leasehold properties whether held in the sole name of any one or more of us or jointly between us or some of us or jointly with any other person or persons or company (to the extent, in each case, of our respective estate or interest in the same), with the due performance and observance by us and each of us the person, persons, company or companies who comprise the guarantor of the covenants and agreements hereby given or made in this Guarantee and with our respective liability hereunder.

**SCHEDULE**

SIGNED SEALED AND DELIVERED on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_ by the said

**Guarantor 1:** \_\_\_\_\_ Date of Birth \_\_\_\_\_ Driver’s License Number \_\_\_\_\_  
*Print Name*

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

**Guarantor 2:** \_\_\_\_\_ Date of Birth \_\_\_\_\_ Driver’s License Number \_\_\_\_\_  
*Print Name*

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

**Guarantor 3:** \_\_\_\_\_ Date of Birth \_\_\_\_\_ Driver’s License Number \_\_\_\_\_  
*Print Name*

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

**Guarantor 4:** \_\_\_\_\_ Date of Birth \_\_\_\_\_ Driver’s License Number \_\_\_\_\_  
*Print Name*

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

in the presence of (Witness)

\_\_\_\_\_ Date of Birth \_\_\_\_\_ Driver’s License Number \_\_\_\_\_  
*Print Name*

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