

FLOOR SANDING SUPPLIES PTY LTD

ACN 157 795 974 ABN 88 157 795 974

5-7 STRONG AVENUE, THOMASTOWN, VIC 3074

# Application for Commercial Credit Account

With Personal Guarantee & Indemnity



**FSS** | FloorSandingSupplies®

# APPLICATION FOR A COMMERCIAL CREDIT ACCOUNT

The Applicant (set out below) hereby applies to FLOOR SANDING SUPPLIES PTY LTD ACN 157 795 974 their successors and assigns and all of their associated and subsidiary companies (collectively hereinafter referred to as "the Company") for a credit account.

## APPLICANT DETAILS

Trading Name:	Company Name:
ABN:	ACN:
Trading Address:	Postal Address:
Telephone:	Facsimile:
Email:	Trade License Number:

## DIRECTOR/PARTNER/SOLE TRADER DETAILS

Full Name	Gender	Home Address	Date of Birth	Drivers Lic.	Own Home
	M/F				Yes/No
Phone (H)		Mobile:			Email:

Full Name	Gender	Home Address	Date of Birth	Drivers Lic.	Own Home
	M/F				Yes/No
Phone (H)		Mobile:			Email:

Full Name	Gender	Home Address	Date of Birth	Drivers Lic.	Own Home
	M/F				Yes/No
Phone (H)		Mobile:			Email:

Full Name	Gender	Home Address	Date of Birth	Drivers Lic.	Own Home
	M/F				Yes/No
Phone (H)		Mobile:			Email:

## TRADE REFERENCES

Supplier Name	Contact Person	Phone Number

Amount of Initial Credit Limit Requested: \$.....

## Internal Use Only

Application approved by:	Application Approval Date:
Credit Limit:	Comments:

## Acknowledgements & Consents

In support of the Application for a Commercial Credit Account, the Applicant and the Proposed Guarantor(s) hereby provide the following acknowledgements and consents -

- a. I/We acknowledge that at the time I/we provided to the Company any personal information, I/we have been made aware of the identity of the Company and how the Company can be contacted, the fact that I/we and/or the Company can gain access to the personal information, the purposes for which the personal information is collected, the organisations (or the types of organizations) to which the Company usually discloses information of that kind and the main consequences if all the information is not provided in accordance with clause 1.3 of the National Privacy Principles.
- b. I/we consent to the use or disclosure of any personal information provided to or collected by or accumulated by the Company for any purposes whether it is related to the primary purpose of collection of the information or not and including disclosure of the personal information to the Company's parent company, if any, which may be located overseas.
- c. I/we agree that if any personal information provided to the Company is inaccurate, incomplete or not up to date, or such personal information becomes inaccurate, incomplete or not up to date at a later time, I/we shall inform the Company of the changes that need to be made to make that information accurate, complete and up to date.
- d. If the Company considers it relevant to assessing this application and/or the credit worthiness of me/us:
  - I. The Company may seek credit information (section 18K(1)(b) Privacy Act 1988 (Cth)) – I/we agree to the Company obtaining from any credit reporting agency a credit report containing personal credit information about me/us in relation to commercial credit provided or to be provided by the Company;
  - II. Exchanging information with other credit providers (section 18N(1)(b) Privacy Act 1988 (Cth)) – I/we agree to the Company obtaining personal information about me/us from other credit providers whose names I have provided or who may be names in a credit report; and
  - III. Agreement to a credit provider being given a consumer credit report to collect overdue payments on commercial credit (section 18K(1)(h) Privacy Act 1988 (Cth)) – I/we agree that the Company may obtain a consumer credit report about me/us from any credit reporting agency for the purpose of collection of overdue payments relating to commercial credit owed by me/us.
- e. I/We acknowledge:
  - I. That I/we have read all of the pages making up this application (including the Trading Terms and Conditions and the Terms and Conditions of Guarantee & Indemnity that follow);
  - II. That the Trading Terms and Conditions will apply to the supply of any goods and/or services by the Company to the Applicant;
  - III. That I/we am/are authorized to sign (and make) this application on behalf of the Applicant;
  - IV. That all the information provided by me/us in this application is correct;
  - V. And agree that if the Company approves and accepts this application and the accompanying offer to guarantee then:
    - The Applicant waives any requirement of communication of any such approval and acceptance by the Company to the Applicant; and
    - I/we the Proposed Guarantor's waive(s) and requirement of communication of any such approval and acceptance to the Guarantor(s).

### Person/s completing this Application for And on behalf for Applicant

Name:		Name:	
Position:		Position:	
Signature:	Date:	Signature	Date:

### Person/s completing this Application as proposed guarantors

Name:	Signature:	Date:
Name:	Signature:	Date:
Name:	Signature:	Date:

# Trading Terms and Conditions

## 1. definitions

In these Trading Terms and Conditions the following definitions apply:

**Agreement** means any agreement for the supply of Goods by the Company to the Applicant; **Applicant** means the Person making the application for commercial credit; **Arrears** means when the Applicant has failed to pay any invoice rendered by the Company when due or when the Applicant has failed to pay the Company the amounts listed on a statement of account (or any other document listing amounts payable) when due; **CCA** means the Competition and Consumer Act 2010 (Cth) and similar State-based fair trading legislation; **charged property** means all of the rights, property, title, estate and interest of whatever kind and wherever situated and whether present or future in any freehold or leasehold property and/or real estate and in any Land which the Applicant now has or may hereafter have; **company** means FLOOR SANDING SUPPLIES PTY LTD ACN 157 795 974 their successors and assigns and all of their associated and subsidiary companies; **credit Account** means any commercial credit account opened by the Company in favour of the Applicant by which the Applicant is able to purchase Goods from the Company on credit; **default event** means any event or circumstance specified as such in clause 6; **financing change Statement** has the same meaning given to it by the PPSA; **financing Statement** has the same meaning given to it by the PPSA; **goods** means goods and/or services supplied or to be supplied to the Applicant by the Company; **land** means land and includes but is not limited to land as defined in the Real Property Act 1900 (NSW) and/or the Conveyancing Act 1919 (NSW) and/or their equivalents in other States or Territories of the Commonwealth of Australia; **loss** includes but is not limited to any direct or indirect losses, consequential loss, claims, legal costs, demands, damages, consequential damage, liabilities, expenses, charges, suits, actions and/or penalties; **insolvency event** means, in respect of the Applicant, any act of bankruptcy, insolvency, any formal or informal arrangement with creditors whether it be under the Bankruptcy Act 1966 (Cth) or the Corporations Act 2001 (Cth) or otherwise and any action taken by any Person to appoint an administrator, receiver, receiver and manager or some other form of external administration to the Applicant; **other property** means all presently existing and after-acquired legal or equitable right, estate or interest of the Applicant in any personal property, licenses, water rights, choses in action, goodwill, uncalled capital and called up (but unpaid) capital, wherever situated; **person** includes natural persons, firms, incorporated associations, unincorporated associations, registered charities, partnerships, joint ventures, trusts, government or statutory authorities and corporations; **PMSI** means purchase money security interest as defined in the PPSA; **PPSA** means the Personal Property Securities Act 2009 (Cth) as amended and/or any successor legislation; **receiver** means a receiver or a receiver and manager appointed to the Company; **Security Agreement** has the same meaning given to it by the PPSA; **Security interest** has the same meaning given to it by the PPSA; **Special order** means any order of Goods by the Applicant that are not ex-stock and have to be sourced from a third party by the Company and/or manufactured by a third party for the Company whether they be to specification provided by the Applicant or otherwise; and **terms and conditions** means these Trading Terms and Conditions.

## 2. Interpretation:

In these Terms and Conditions reference to:

- a. One gender includes others and the singular includes the plural;
- b. A Statute, regulation or provision of a statute (Law) includes (i) that Law as amended or re-enacted; (ii) a statute, regulation or provision enacted in replacement of that Law, and (iii) another regulation or statutory instrument or amendment made or issued under that Law;
- c. Payment includes repayment, discharge or satisfaction; and
- d. If the Applicant comprises two or more Persons, (i) a reference to the Applicant includes each and any two or more of them; and (ii) these Terms and Conditions bind each of them jointly and severally.

## 3. in consideration of the company agreeing to provide a credit Account to the Applicant:

- a. The Applicant acknowledges and expressly agrees that these Terms and Conditions apply to and form part of each and every Agreement;
- b. The Applicant acknowledges and expressly agrees that these Terms and Conditions will prevail over any other terms and conditions.
- c. The Applicant acknowledges and expressly agrees that any request and/or order by the Applicant to the Company for Goods shall constitute confirmation by the Applicant of its acceptance and the operation of these Terms and Conditions;
- d. The Applicant warrants to the Company that the Credit Account and/or any Agreement and/or any Goods are for commercial, business and/or trade purposes only;
- e. The Applicant acknowledges and agrees that the Company can vary the level of credit allowed to the Applicant by the Company at any time and in its absolute discretion without having to give notice to the Applicant;
- f. The Applicant shall provide written notification to the Company of any change in the Applicant's corporate structure or the sale of any business operated by the Applicant; and
- g. The Applicant agrees that it shall continue to be liable to the Company for any sums outstanding on any Credit Account opened for or on behalf of the Applicant until written notice is received by the Company and full payment is made with respect to all amounts owing.

## 4. Security for payment & charging clause

- a. The Applicant, in order to secure all monies owing by the Applicant to the Company, hereby charges all of its beneficial interest in Charged Property in favour of the Company ("the Charge");
- b. The Applicant hereby irrevocably authorises the Company to lodge a caveat over any or all of the Charged Property noting the Company's interest on the title(s) of the Charged Property, Land or Other Property until all monies payable have been paid to the Company;
- c. The Applicant hereby agrees that if more than one Person comprises the Applicant, then each such Person separately grants the Charge;
- d. The Applicant hereby agrees and consents to the Company taking all actions necessary to give prompt effect to this security including by the lodging of any caveat upon the title of the Charges Property or Land or Other Property; and
- e. The Applicant consents to and requests the Company to appoint any such person which the Company deems fit to be the attorney of the Applicant for the execution of any document necessary to give effect to this charging clause.

## 5. Authority to complete Blank Spaces etc

The Applicant authorises the Company to complete and/or amend any blank, incomplete or inaccurate particulars and/or spaces in the Applicant's Application for a Commercial Credit Account (which forms part of this document) and to otherwise complete any formalities so as to render these Terms and Conditions and any Agreement complete and/or enforceable.

## 6. Default by the Applicant

Each of the following events listed in this clause is a Default Event under this Agreement:

- a. **obligations under any Agreement:** If the Applicant fails to (i) pay or repay the Company in accordance with its obligations under any Agreement when and as due; or (ii) comply with any provision under any Agreement or with any condition imposed by the Company under or in connection with any Agreement.
- b. **misrepresentation:** Any representation, warranty or statement made by or on behalf of the Applicant in connection with any Agreement, which is not true or is otherwise misleading as to a present or future matter.

- c. **insolvent:** In the event that the Applicant becomes insolvent or commits and acts of insolvency.
- d. **enforcement against assets:** A Security Interest becomes enforceable, or a distress, attachment or other execution is levied or enforced over all or any of the assets of the Applicant by a third party.
- e. **reduction of capital:** Without the prior consent in writing of the Company, the Applicant reduces its capital or passes a resolution to that effect.
- f. **credit Account used for different purpose:** The Credit Account is used for a purpose other than for the purchase of Goods on credit by the Applicant.
- g. **natural persons:** If the Applicant is a natural person and they die, no longer have full capacity or become incapable of managing their own affairs.
- h. **partnership:** If the Applicant is a partnership and without the prior written consent of the Company (a) the constitution of the partnership is changed; or (b) the partnership is dissolved.
- i. **Associations:** If the Applicant is an association or a cooperative and without the prior written consent of the Company; (a) an application is made, a resolution is passed or an order is made for the winding up of the Applicant; or (b) the Applicant becomes externally administered or a controller or a trustee for creditors is appointed in respect of its property.

## 7. enforcement following default

In addition to any other rights provided by any law or under any Agreement, at any time after a Default Event has occurred: (a) each security interest and/or PMSI arising under this document becomes immediately enforceable; and (b) the Company; (i) may, in the name of the Applicant or otherwise, at any time, do anything that the Applicant, or if the Applicant is a corporation or trust etc, its directors or trustee (as the case may be) could do in relation to the Charged Property; (ii) has all other rights conferred by any law in relation to the Charged Property and/or Other Property; and (iii) may appoint one or more receivers, and may do anything that a Receiver may do under clause 8.

## 8. receivers

In addition to the powers under clause 7 the Company may appoint one or more persons as Receiver to any part of the Charged Property in the case of a Default Event or if the Company believes that any of the Charged Property is at risk of being seized, becoming subject to a Security Interest or dealt with in a manner inconsistent with the terms of this document. The Receiver will be the agent of the Applicant who alone will be responsible for the Receiver's acts, omissions and remuneration.

## 9. delivery of goods

- a. The Company shall not be liable for any Loss arising in any way from any delay in delivery or any failure to deliver any Goods no matter how such delay or failure arises.
- b. Subject to clause 9(c) below, Goods shall be deemed to be delivered to the Applicant as soon as they are ready for physical delivery to or collection by the Applicant.
- c. Any Goods being the subject of a Special Order shall be deemed to have been delivered to the Applicant upon the acceptance of any such Special Order by the Company.
- d. The Applicant agrees that the Company shall not be responsible for or under any duty to physically deliver or arrange for delivery of any Goods to the Applicant. The Company may elect to arrange such delivery at its discretion, which shall be without liability and at the Applicant's risk in all respects.
- e. The time for delivery of any Goods shall not, in any circumstances, be of the essence notwithstanding any representations (oral and/ or written) by the Company to the Applicant or any other person.
- f. The Applicant shall pay the Company a delivery fee, such fees to be either the Company's Standard Delivery Fee (which may vary from time to time and which the Applicant is taken to know) or a Special Delivery Fee (which may be part of a written quotation given) or otherwise.

## 10. The PPSA

- a. The Applicant acknowledges and agrees that these Terms and Conditions and/or any Agreement constitute a Security Agreement.
- b. The Applicant acknowledges and agrees a Security Interest or PMSI exists in the Applicant's favour in respect of all Goods previously supplied by the Company and all Goods that may be supplied by the Company in the future.
- c. The Applicant consents to the Company affecting and maintaining a registration on the Personal Properties Security Register in relation to any Security Interest contemplated or constituted by these Terms and Conditions and agrees to sign any documents and provide prompt assistance and information to the Company that may be required to facilitate the registration and maintenance of a Security Interest or any other thing under the PPSA.
- d. The Applicant agrees to waive any right to receive notice of a verification statement in relation to any registration in respect of the Goods.
- e. The Applicant agrees the Company has given value and consideration for its Security Interest and/or PMSI by agreeing to provide or continuing to provide financial accommodation, including a Credit Account, to the Applicant.
- f. Nothing in these Terms and Conditions is intended to be construed such that any Security Interest and/or PMSI under these Terms and Conditions attaches at a later time than the time specified in section 19(2) of the PPSA and the Applicant agrees that it has not made any other agreement with the Company to vary the time of attachment of any Security Interest or PMSI.
- g. The Applicant agrees to pay the Company for all expenses incurred in registering a financial charge statement in respect of the Security Interest and/or PMSI with respect to the Goods.
- h. The Applicant expressly agrees not to permit to be registered a Financing Charge Statement in respect of a Security Interest contemplated or constituted by these Terms and Conditions in favour of a third party without the prior written consent of the Company.
- i. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising under or connected with these Terms and Conditions and section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, then the Applicant expressly waives its rights under the following sections of the PPSA: 95 (to the extent to which it requires the security party to give notices to the grantor); 96 and 118 (to the extent to which it requires the secured party to give notices to the grantor); 121(4) (to the extent to which it requires the secured party to give notices of enforcement in a liquid asset; 125; 130; 132(3)(d); 132(2); 132(4); 135; 136(3); 136(4); 136(5); 137, 142, 143, 157(1); and 157(3).
- j. To the extent to which section 115(7) of the PPSA allows for the contracting out of the provisions of the PPSA, the following sections of the PPSA shall not apply and the Applicant waives all rights under them: 127; 129(2); 129(3); 130(1); 132(3)(d); 134(2); 132(4); 135; 136(3); 136(4); 136(5); 137; 142; 143; 157(1); and 157(3).
- k. The Applicant agrees that sections 96, 117 and 125 of the PPSA shall not apply in so far as they confer any rights upon the Applicant.
- l. The Applicant agrees that where the Company has rights in addition to those under Chapter 4 of the PPSA those rights shall continue to apply.
- m. The Applicant agrees not to postpone the time for attachment of any Security Interest and/or PMSI granted to the Company under these Terms and Conditions.
- n. Unless otherwise agreed in writing and to the extent to which permitted by the PPSA both the Applicant and the Company agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person. The Applicant, in making this Application for Commercial Credit, waives any right it may have had but for this clause under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.



- o. For the purposes of section 20(2) of the PPSA, the collateral is the Goods sold by the Company to the Applicant from time to time. These items are a Security Agreement for the purposes of the PPSA.
- p. The Applicant grants the Company the unrestricted right to enter upon the Applicant's property without notice, and without being in any way liable to the Applicant or any third party, to exercise any of the Company's rights under section 123 and/or section 128 of the PPSA. The Applicant further agrees that it shall indemnify the Company against any and all Loss claimed by any third party or by the Company as a result of the Company exercising its rights under this provision.

## 11. defects

- a. The Applicant agrees that it shall inspect the Goods upon delivery and must, within 48 hours of delivery, provide written notification to the Company of any alleged defects, any short deliveries or any failure to fulfill any quotation or order (the Defect Notice). Such Defect Notice shall not be effective unless it is addressed to the Company's National Credit Manager and until such time as it has actually been received by the Company's National Credit Manager.
- b. The Applicant will, within a reasonable time after the receipt of a Default Notice by the Company's National Credit Manager, grant to the Company access to the Goods in order for the Company to inspect same for any alleged defects.
- c. Should the Applicant fail to provide a Defect Notice to the Company as required then the Applicant expressly agrees that the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

## 12. passing of risk and when goods taken to be Sold

- a. Notwithstanding any statutory or other provision to the contrary, Goods are taken to be sold by the Company to the Applicant when there has been a delivery of the Goods, whether or not title or property in them has passed from the Company to the Applicant.
- b. Notwithstanding the retention of title provisions below, the risk of loss or damage to Goods shall pass to the Applicant upon delivery of the Goods.

## 13. return of goods

- a. The Company may, in its sole discretion and subject to any conditions it deems appropriate, agree to accept the return of Goods which remain in good order and condition, however any restocking fee levied by a third party as well as any applicable restocking fee charged by the Company will be debited to the Credit Account of the Applicant.
- b. Goods that are the subject of a Special Order shall not be returnable to the Company without the express written agreement of the Company's National Credit Manager and the relevant third party supplier or manufacturer.

## 14. retention of title

- a. Title in Goods shall remain vested in the Company and shall not pass to the Applicant until all monies owing to the Company by the Applicant have been paid in full. Until title in the Goods passes to the Applicant, the Applicant acknowledges that these Terms and Conditions create, in favour of the Company, a Security Interest and/or PMSI in the Goods and/or the proceeds from the sale of the Goods.
- b. If Goods (whether processed, comingled or accessioned with other goods) are on-sold by the Applicant, the Applicant agrees that the Company shall have the right to trace any proceeds of their sale.
- c. Until title in Goods has passed to the Applicant, the Company may demand at any time that the Applicant return them, in which case any Loss incurred will be debited to the Credit Account of the Applicant.

- d. If the Applicant is at any time in Arrears or an Insolvency Event occurs or the Applicant defaults in the payment of any monies owing to the Company, the Applicant expressly permits the Company to enter upon the Applicant's premises, or any other premises where Goods are known to be stored by the Applicant, in order to take possession of the Goods. The Applicant agrees to grant reasonable access rights to the Company and the Company shall be entitled to do all things reasonably necessary to secure repossession of Goods.

## 15. fees & taxes

Except as may be expressly stated otherwise, the prices quoted by the Company for the supply of the Goods do not include sales tax, stamp duty or any other tax or duty (including, but not limited to, any GST) and the cost of sales tax, stamp duty, GST or any other tax shall be borne by the Applicant.

## 16. payment terms and Set off

- a. The Applicant agrees to pay the Company for all Goods in accordance with these Terms and Conditions.
- b. The amounts listed on statements of account or invoices issued by the Company are payable in full within 30 days of the date borne on same or such other time as agreed in writing by the Company.
- c. The Applicant agrees that should the Applicant fail to make any payment in accordance with (b) above: (i) all amounts that have been listed on statements of account or invoices issued to the Company to that time that have not been paid will become immediately due and payable; and (ii) the Company will be entitled to charge the Applicant interest on any amounts owing at the rate of 18% per annum from the date they became due for payment.
- d. The Applicant expressly agrees and acknowledges that it shall not be entitled to set-off in law or in equity or to apply any deduction from the amount payable to the Company, including without limitation any damages, losses, costs and/or expenses alleged to be recoverable from the Company by the Applicant as a consequence of any alleged breach of this Agreement or any credit claim or for any other reason until such time as the full payment of all monies set out on any invoices or statements of account is made to the Company.

## 17. warranties

Subject to clause 18, the Company warrants that Goods will, under proper use and/or installation, be free from any defects in construction or operation arising solely from faulty design, manufacture or workmanship on the part of the Company. Those parts and/or components which constitute Goods (or which form part of Goods) and which are not manufactured by the Company shall be warranted by the Company only to the extent that they are warranted by the relevant supplier or manufacturer in circumstances where the Company is able to pass the benefit of such warranty to the Applicant. In any event, the period of such warranties shall not exceed 3 months from the date of delivery.

## 18. exclusions

The warranty set out in clause 17 does not apply where: (a) a defect arises from ordinary wear and tear, excessive heating, neglect, misuse, accident, lack of care or incorrect installation; (b) the Applicant has in any way modified, serviced or repaired the Goods; or (c) the Applicant has not complied with any written or oral instructions from either the manufacturer or the Company concerning the installation, use, operation or maintenance of the Goods or any training with the respect to the use of the Goods.

## 19. Limitation of Liability

Subject only to clause 20 below and notwithstanding any other provision of any Agreement or otherwise: (a) the Company shall not be liable to the Applicant for any Loss incurred by the Applicant or any other Person arising out of the supply of Goods by the Company and the Applicant agrees it shall indemnify the Applicant in respect of any such Loss; (b) All representations, express or implied, relating to any quotations or orders prior to an Agreement that might otherwise form part of a collateral agreement are excluded to the extent that they conflict with these Terms and Conditions; (c) No dealing between the Company and the Applicant shall be deemed to be a sale by sample; and (d) The exemptions, limitations and these Terms and Conditions shall apply whether or not the Loss or any loss or damage is caused by the Company's negligence or actions constituting a breach of contract.

## 20. Consumer rights

- a. No provision of these Terms and Conditions purports to exclude, restrict or modify or have the effect of excluding, restricting or modifying; (i) any provision of the CCA; or (ii) any liability of the Company for breach of a condition or warranty implied by any such provision.
- b. If Goods under an Agreement constitutes a supply of Goods to a consumer, as defined in the CCA then: (i) nothing in that Agreement shall be construed as excluding, restricting or modifying any express or implied condition, warranty, right or remedy conferred by the CCA on the Applicant; and (ii) the liability of the Company in respect of any breach of a condition or warranty implied by the CCA (other than any non excludable implied conditions or warranties contained in the CCA), shall be limited, in the case of goods, to the resupply or repair of the goods, and in the case of services, the resupply of the services.

## 21. Acknowledgement

To the full extent permitted by law the Applicant acknowledges and agrees that: (a) it relies on its own skill and judgment in relation to the Goods, including but not limited to the intended use of the Goods and the cost of the Goods; and (b) the Company shall be under no liability for any unsuitability for any purpose of Goods irrespective of any knowledge it may possess as to the purpose for which the Goods were required by the Applicant; and (c) the Company would not provide a Credit Account to the Applicant if the Applicant did not agree strictly to abide by these Terms and Conditions.

## 22. Limitation of warranties

- a. Subject to any condition, warranties and rights implied by statute that cannot by law be excluded by agreement; (i) the Company gives no warranties and the Applicant has no other right other than those expressly set out in these Terms and Conditions and in any other express warranties provided in writing by the Company to the Applicant; and (ii) the Applicant expressly agrees that all implied conditions, warranties and rights are excluded pursuant to section 57 of the Sale of Goods Act 1927 (NSW) and any equivalent sections of legislation in other States and Territories.
- b. Where any condition, warranty or right is implied by law and cannot be excluded, the liability of the Company to the Applicant for breach of, or other act contrary to that implied condition, warranty or right in respect of any goods and/or services provided by or on behalf of or under any arrangement with the Company to the Applicant or any other person subject to the qualifications set out in section 64A of Schedule 2 of the CCA or any other law, shall be limited as set out in clause 22(d) below or, otherwise, to the extent permitted by law.
- c. The Applicant expressly agrees that the Company may limit any other liability it may have in relation to any claim, demand or proceedings of any kind whatsoever in respect of any goods and/or services provided by or on behalf of or under any arrangement with the Company to the Applicant or any other Person, whether in contract, tort (including negligence), under any statute (to the extent permitted by law) or otherwise, as set out in clause 22(d) below.

- d. Pursuant to clauses 22(b) and 22(c) above, the Applicant expressly agrees that the Company is entitled to limit its liability (as the Company may determine in its absolute discretion): (i) in connection with any supply of goods (by the Company to the Applicant) to the replacement of the goods, the repair of the goods, payment to the Applicant for the cost of replacement or the acquiring of similar or equivalent goods and/or payment to the Applicant of the cost of having the goods repaired; and (ii) in connection with the supply of services (by the Company to the Applicant) the supply of the services again or payment to the Applicant of the cost of having the services supplied again.

## 23. indemnity

The Applicant unconditionally and irrevocably indemnifies and keeps indemnified the Company from and against any and all Loss which may be made or brought against or suffered or incurred by the Company, the Applicant and/or any third party including but not limited to:

- a. (Property damage): for any and all Loss which may be made or brought by or suffered or incurred by any person (including but not limited to the Company, the Applicant and/ or any third party) for any and all damage to that person's property (whether real or personal) arising in any way whatsoever out of or in connection with the carriage, use, installation, storage or keeping of any Goods;
- b. (Personal injury): for any and all Loss which may be made or brought by or suffered or incurred by any person (including but not limited to the Company, the Applicant and/ or any third party) for any injury such person may sustain arising in any way whatsoever out of or in connection with the carriage, use, installation, storage or keeping of any Goods;
- c. All expenses, costs, disbursements, legal costs (on a full indemnity basis); search fees and/or commercial agent's debt collection fees (including any commission that would be payable if the Applicant makes payment of the amount owing) incurred or to be incurred by the Company in relation to any action taken by the Company to attempt recovery of any monies owing by the Applicant to the Company or to attempt to take possession of any Goods pursuant to these Terms and Conditions (or otherwise) or to enforce any of its rights under these Terms and Conditions or any Agreement and
- d. Any Loss caused, whether directly or indirectly, by the unauthorised use of the Credit Account.

## 24. termination

- a. If a Default Event occurs or the Applicant is in breach of any Agreement or an Insolvency Event occurs to the Applicant then the Company may, without notice: (i) terminate any Agreement; (ii) cease supplying any further Goods; (iii) commence proceedings against the Applicant, including for any monies owing and/or the seeking of any available remedies or relief; and/or (iv) exercise any other rights it has.
- b. It is not necessary that termination takes place for the Company to be able to commence proceedings.

## 25. result of termination

- a. Termination of an Agreement pursuant to clause 24 shall be without prejudice to the rights of Company accruing up to the date of termination.
- b. In the event of a termination of an Agreement, the Applicant shall pay the Company: (i) all monies owing resulting from any Agreement up to and including the date of the termination; and/ or (ii) for any Loss suffered by the Company, including without limitation the Company's loss of profit on any Agreement; and/ or (iii) all expenses, costs, disbursements, legal costs (on a full indemnity basis); search fees and/or commercial agent's debt collection fees (including any commission that would be payable if the Applicant makes payment of the amount owing) incurred or to be incurred by the Company in relation to any action taken by the Company to attempt recovery of any monies owing by the Applicant to the Company or to attempt

to take possession of any Goods pursuant to these Terms and Conditions (or otherwise) or to enforce any of its rights under these Terms and Conditions or any Agreement.

## **26. Assignment**

- a. The Applicant is unable assign any of the Applicant's rights in relation to any Applicant without the prior written consent of the Company.
- b. The Applicant consents to the Company assigning any of the Company's rights in relation to any Agreement, Credit Account or these Terms and Conditions.
- c. The Applicant agrees that the Company may assign any or all of its rights in relation to any Agreement without having to give any notice of same to the Applicant.

## **27. waiver**

- a. Any waiver by the Company of strict compliance with these Terms and Conditions shall not be a deemed waiver by the Company unless it is in writing and: (i) it specifies the specific right which is being waived; and (ii) it is specifically referred to as a waiver; and (iii) it is signed by the National Credit Manager of the Company.
- b. A single or partial exercise or waiver by the Company of a right will not prevent the Company from exercising that right or any other right at any time.

## **28. Unauthorised use of credit Account**

The Applicant acknowledges that: (a) The Company will not be liable in any way whatsoever for any unauthorised use of the Applicant's Credit Account; and (b) the Applicant will nevertheless be liable to the Company for payment of any Goods ordered on the Applicant's Credit Account even if such orders were made without the authority of the Applicant.

## **29. Amendment of terms and conditions**

- a. The Applicant acknowledges and agrees that these Terms and Conditions may be amended by the Company at any time by providing written notice of such amendment to the Applicant; or
- b. Any such amendments to these Terms and Conditions shall apply to orders of Goods (including orders for goods that are the subject of a Special Order) from the time notice is given.

## **30. invalid or unenforceable terms etc**

- a. Should any of these Terms and Conditions or any part of these Terms and Conditions be illegal, invalid or unenforceable for any reason they shall be severed from the other Terms and Conditions and shall not effect the remaining Terms and Conditions.
- b. Should any of these Terms and Conditions be incorrect in an obvious way then they shall be read as though they were intended to be read.

## **31. Service of documents etc**

- a. Service of any documents, including but not limited to, notices, demands, originating process of legal proceedings or any other document required to be served or provided by the Company to the Applicant under these Terms and Conditions or any law (collectively referred to as "Documents") shall be effected upon the Applicant by any of the following methods: (i) sending it by pre-paid ordinary post to the Applicant's principal place of business, trading address, postal address or registered office; (ii) sending it by email to the Applicant; (iii) sending it by facsimile to the Applicant; or (iv) delivering it to the Applicant's principal place of business, trading address, postal address or registered office. The addresses, email address or facsimile number used for the methods in (a) above may be the most recent ones provided by the Applicant to the Company in written form or may be the most recent ones ascertained by the Company through its own investigations.

- b. The method in (a) above chosen to serve Documents shall be at the absolute discretion of the Company.
- c. The methods in (a) above do not limit the use of any other methods for service of Documents available to the Company under any statute and/or law.
- d. Service of Documents in accordance with one of the methods in (a) is deemed to have been effective when the Company (by its authorised officers, agents or lawyers) does the thing required whether or not the Documents are received by the Applicant.
- e. The Applicant agrees not to dispute the service of Documents that have been served in accordance with this clause.
- f. An affidavit or statutory declaration on behalf of the Company will be conclusive proof of service of Documents under this clause.

## **32. evidence in legal proceedings**

A Certificate given by any authorised person on behalf of the Company in legal proceedings that certifies as to an amount of monies ("Debt") owing to the Company by the Applicant shall be prima facie evidence of: (i) the formation of any Agreement that relates to that Debt, including the ordering of the relevant Goods by the Applicant; and (ii) the delivery of the Goods to which that Debt relates to the Applicant by the Company; and (iii) the fact that the Goods where/are fit for the purpose for which they were supplied; and (iv) the fact that the Debt has not been paid; and (v) the fact that the Debt is owed by the Applicant to the Company.

## **33. Jurisdiction**

- a. The Applicant expressly agrees that it is an essential term of these Terms and Conditions that any legal proceedings between the Company and the Applicant will be governed by the laws of the State of New South Wales and the Commonwealth of Australia, as applicable.
- b. The Applicant expressly agrees that it is an essential term of these Terms and Conditions that it will irrevocably submit to the exclusive jurisdiction of the courts of New South Wales for any legal proceedings between the Company and Applicant.
- c. Any legal proceedings between the Company and the Applicant shall be instituted in a court of competent jurisdiction in New South Wales (including the New South Wales registry of the Federal Court of Australia and Federal Magistrates Court of Australia, if applicable).
- d. The Applicant expressly agrees that it shall not attempt to interfere in any way whatsoever with the choice of jurisdiction herein.
- e. The Applicant expressly agrees that it will not attempt to intervene with the jurisdiction of any court of New South Wales of the operation of these Terms and Conditions by seeking a stay (for example, under the Service and Execution of Process Act 1992) or by seeking to transfer the proceedings or by seeking the striking out or dismissal of the proceedings on the basis that they should be held and determined in a State or Territory other than New South Wales.
- f. The Applicant and the Company expressly agree that the Company is entitled to rely on these Terms and Conditions as a plea in bar to any application brought by the Applicant to have proceedings heard in the State other than New South Wales or to interfere with the operation of these Terms and Conditions.
- g. The Applicant agrees that by signing and executing this Application for Commercial Credit Account or any Agreement that incorporates these Terms and Conditions that it is making an express representation as to a future matter for the purposes of section 4 of the CCA and that this representation is being relied upon by the Company as a basis for providing a Credit Account to the Applicant.
- h. The Applicant agrees that, should the Company choose to commence any proceedings in a State or Territory other than New South Wales for any reason, the Applicant will not rely upon this clause to interfere with the jurisdiction of those proceedings.



## Personal Guarantee & Indemnity

**Note: this is a legally binding document – please ensure that you read it carefully**

To: FLOOR SANDING SUPPLIES PTY LTD 157 795 974 their successors and assigns and all their associated and subsidiary companies (collectively referred to as the “Company”) in this document.

From: The person/s who sign below as guarantor/s (collectively referred to as “Guarantor/s”).

**in consideration** of the Company agreeing to provide goods and/or services (hereinafter referred to as “Goods”) to the Applicant (defined herein as the Applicant in the Application for Commercial Credit accompanying this Guarantee & Indemnity) I/we the Guarantor/s hereby irrevocably jointly and severally offer this Guarantee & Indemnity to the Company on the basis of the terms and conditions set out herein.

### Terms and Conditions of guarantee & indemnity

Guarantor/s agrees to be unconditionally bound to the following terms and conditions of this Guarantee & Indemnity:

1. If there is more than one Guarantor/s the obligations under this Guarantee & Indemnity are joint and several.
2. Guarantor/s hereby guarantee payment by the Applicant of all monies owing by it to the Company at any time for any reason, including for the supply of Goods to the Applicant by the Company.
3. In addition to 2 above and as a separate obligation, Guarantor/s hereby indemnify the Company against any loss suffered by the Company as a result of dealing with the Applicant, including but not limited to any loss suffered as a result of accepting an order for Goods from the Applicant and, should the Company have to take any action against the Applicant or the Guarantor/s, any and all expenses, costs, disbursements, legal costs (on a full indemnity basis); search fees and/or commercial agent's debt collection fees (including any commission that would be payable if the Applicant makes payment of the amount owing) incurred or to be incurred by the Company.
4. Guarantor/s acknowledge and agree that, in addition to the liabilities arising elsewhere in this Guarantee & Indemnity, if the Applicant fails to pay for Goods it orders from the Company they will make payment to the Company for the Goods as though they ordered them from the Company.
5. Guarantor/s acknowledge and agree that they will be liable under this Guarantee & Indemnity without the need for any notice being given to them.
6. Guarantor/s acknowledge and agree that: (a) this Guarantee & Indemnity is given to the Company for a business and/or trade purpose on behalf of the Applicant; (b) they have undertaken their own enquiries into the ability of the Applicant to pay for Goods it orders from the Company; (c) they are satisfied that the Applicant is able to pay for Goods it orders from the Company now and in the future; and (d) should circumstances arise that will mean the Applicant will be unable to make payment for Goods it orders from the Company they will immediately advise the Company of same in writing.
7. Guarantor/s acknowledge and agree that this Guarantee & Indemnity will not be affected by: (a) the granting of any indulgence to the Applicant or any Guarantor/s including an extension of time for payment, amendment of the amount of credit allowed, acceptance of a lesser amount in full settlement or an amount owing or any other settlement (none of which require notice to the Guarantor/s).  
In order to secure monies owing by the Applicant to the Company and compliance with their obligations under this Guarantee & Indemnity, Guarantor/s hereby unconditionally agree to charge all of their beneficial interest (either freehold or leasehold) in real or personal property held by them in favour of the Company.
8. Guarantor/s agree that by signing this Guarantee & Indemnity they are making an express representation as to a future matter for the purposes of section 4 of the CCA and that this representation is being relied upon by the Company as a basis for providing a Credit Account to the Applicant.
9. The following clauses of the Trading Terms and Conditions that form part of the Application for Commercial Credit accompanying this Guarantee & Indemnity shall apply to this Guarantee & Indemnity as though reproduced herein – 1, 26, 27, 29, 30, 31, 32 and 33 – though with any reference to Applicant in clauses 26, 29, 31, 32 and 33 to be read as a reference to the Guarantor/s.

### Signed by the guarantor/s

Name:		Name:
Position:		Position:
Signature:	Date:	Signature

Name:		Name:
Position:		Position:
Signature:	Date:	Signature

Name:		Name:
Position:		Position:
Signature:	Date:	Signature