

Demak Timber Pty. Ltd.
ACN 059 222 767 ABN 50 059 222 767

Heathmont (Ringwood East)
 388 Canterbury Road
 Ringwood East VIC 3135
 03 8756 3060

Ferntree Gully
 20 Brenock Park Drive, Ferntree Gully VIC 3156
 03 8756 3050

tradeaccounts@demak.com.au

www.demak.com.au



APPLICATION FOR COMMERCIAL CREDIT

The applicant described in **Part 1: Customer Information** ("Customer," "you," "your") applies to Demak Timber Pty. Ltd. ACN 059 222 767 ("Demak," "we," "us," "our") to supply Goods and Services on credit on the terms of this Application for Commercial Credit ("Credit Application"), which incorporates the attached **Part 2: Privacy Statement, Part 3: Credit Facility Terms, Part 4: National Credit Code Declaration, and Part 5: Deed Poll of Guarantee and Indemnity.**

Please ensure that all parts of this Credit Application have been completed prior to submitting your application to us. A failure to complete any part of this Credit Application may result in delays in processing your application or the rejection of your application.

Upon our acceptance of your application in writing, we may agree to supply Goods and Services to you on credit on the terms contained in this document.

PART 1: CUSTOMER INFORMATION

CUSTOMER DETAILS

Name of Legal Entity:			
Business Type (please select):			
<input type="checkbox"/> Pty. Ltd. Company	<input type="checkbox"/> Individual / Sole Trader	<input type="checkbox"/> Corporation as Trustee	<input type="checkbox"/> Other (Please Specify):
<input type="checkbox"/> Public Company	<input type="checkbox"/> Partnership	<input type="checkbox"/> Individual(s) as Trustee(s)	
Trading Name (if any):			
Name of Trust (if applicable):			
ACN (if applicable):		ABN:	
Registered Address:			
Business Address:			
Postal Address:			
Business Telephone:		Email Address:	
Date Business Commenced:		Nature of Business:	
Estimated Monthly Purchases: \$		Monthly Credit Requested:	\$
Purchasing Contact:		Telephone:	
Email Address:			
Accounts Payable Contact:		Telephone:	
Email Address:			

DETAILS OF DIRECTORS / PARTNERS / SOLE TRADER

Full Name:		Date of Birth:	
Title / Position:		Mobile:	
Residential Address:		Drivers Licence No.:	
Email Address:		Director ID (DIN) No.:	
Full Name:		Date of Birth:	
Title / Position:		Mobile:	
Residential Address:		Drivers Licence No.:	
Email Address:		Director ID (DIN) No.:	
Full Name:		Date of Birth:	
Title / Position:		Mobile:	
Residential Address:		Drivers Licence No.:	
Email Address:		Director ID (DIN) No.:	

Full Name:		Date of Birth:	
Title / Position:		Mobile:	
Residential Address:		Drivers Licence No.:	
Email Address:		Director ID (DIN) No.:	

TRADE OR BUSINESS REFERENCES

Business Name:		Telephone:	
Email Address:			

Business Name:		Telephone:	
Email Address:			

Business Name:		Telephone:	
Email Address:			

PART 2: PRIVACY STATEMENT

- This privacy statement encompasses consents, notifications, and disclosures under or in relation to the *Privacy Act 1988* (Cth) ("Act").
- The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation, or notification, whether contained in our Credit Application or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement will prevail.
- For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
- We may collect personal information about you and the Guarantor(s) (if any) for our primary purposes, which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes, and direct marketing.
- You and the Guarantor(s) (if any) consent to us collecting, using, and disclosing personal information (including sensitive information) for both our primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
- We may collect, and may already have collected, Information from you and the Guarantor(s) (if any), other credit providers, credit reporting bodies, and other third parties for the purposes of our functions and activities including, but not limited to, credit, sales, marketing, and administration. If the Information was not collected by us, it may restrict or impede upon us trading with, extending credit to, continuing to extend credit to, or extending further credit to you.
- You and the Guarantor(s) (if any) consent to us obtaining and making disclosure of Information about you and the Guarantor(s) (if any) from and to a credit reporting body, and/or another credit provider for a commercial credit related purpose, and/or a credit guarantee purpose, and/or a consumer credit purpose, and/or another related purpose. We hereby notify you and Guarantor(s) that we may use and disclose credit eligibility information under section 21G of the Act.
- We may provide your and the Guarantor(s)' (if any) personal information to any or all of the credit reporting bodies nominated below. We intend to disclose default information to any or all of the credit reporting bodies listed below. You and the Guarantor(s) consent to such disclosure. Our credit reporting policy contains a statement of notifiable matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what we may disclose, and your and the Guarantor(s)' right to request limitations to the use of their information.

Equifax Australia Level 15, 100 Arthur Street NORTH SYDNEY NSW 2060 Tel: 1300 921 621	Creditor Watch Level 13, 109 Pitt Street SYDNEY NSW 2000 Tel: 1300 501 312	NCI Level 2, 165 Grenfell St ADELAIDE SA 5000 Tel: 1800 882 820	Illion Level 2, 143 Coronation Drive MILTON QLD 4064 Tel: (07) 3360 0600	Experian Level 6, 549 St Kilda Road MELBOURNE VIC 3004 Tel: (03) 9699 0100
-------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------	------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------
- We may disclose Information to, and about you, and you and the Guarantor(s) (if any) hereby acknowledge that you consent to the disclosure of such information to our subsidiaries, employees, agents and related bodies corporate, past, present, or prospective credit providers of yours and the Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit.
- A full copy of our privacy policy and credit reporting policy can be obtained from our website (details above) or by making a request in writing directed to our privacy officer. Our privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how we will deal with any such complaint.
- You and the Guarantor(s) (if any) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to us within fourteen (14) days of receipt of this privacy statement that its terms are not accepted, continuing to trade with us after receipt of this privacy statement or, if the Guarantor(s) are directors of yours, by not taking steps to prevent you from continuing to trade with us after receipt of this privacy statement.

PART 3: CREDIT FACILITY TERMS

Term

1. This Credit Agreement commences on the date we accept your completed Credit Application in writing and notify you of your credit limit or provide you with credit and continues until such time as it is terminated in accordance with these Credit Facility Terms.
2. The decision to grant you a credit facility is solely at our discretion.

Credit limit

3. Any credit approval limit noted in this Credit Agreement or on any form, invoice, or document issued by us to you is for our convenience only and will not be read as a commitment, promise, or warranty by us to extend any level of credit to you.
4. You are liable to pay all amounts due to us, regardless of whether you have exceeded your credit limit.

No obligation to supply on credit

5. We reserve the right to refuse to supply you with Goods or Services on credit (even if you have not exceeded your credit limit), without having to provide reasons to you for doing so.

Terms of Trade

6. By applying for a credit facility with us, you:
 - (a) acknowledge and agree that our Terms of Trade form part of this Credit Agreement;
 - (b) you warrant and represent to us you have accessed, read, and understood our Terms of Trade which may be found at demak.com.au/termsoftrade and are available upon request at any time by email to tradeaccounts@demak.com.au; and
 - (c) agree to be bound by our Terms of Trade.

Payment terms

7. Until we notify you that you have been granted a credit facility with us, all Goods and Services supplied by us must be paid for on a cash before delivery or performance basis.
8. Where we have granted you a credit facility, the terms of payment are strictly thirty (30) days from the end of month of invoice or the last trading day of the month following the end of month of invoice, whichever falls first (or such other period as nominated by us in writing).
9. If you default in the payment of any money due to us pursuant to these Credit Facility Terms, then in addition to any other rights which may be conferred upon us by law or equity, we will be entitled to charge you interest on such money at the rate of 10% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full. For clarity, this rate of interest will also apply to any judgment debt owing by you.
10. Any sums owed to us by you under this Credit Agreement will be made free of any set-off or counterclaim whatsoever, and without deduction or withholding whatsoever (including by way of cash retention).
11. We are entitled to deduct or set off against any monies owing to you by us on any account whatsoever.

Suspension and cancellation of credit facility

12. We may, without prejudice to any other rights which may be conferred upon us by law or equity, suspend your credit facility by notifying you in writing if you fail to make payment of any monies due to us by the due date for payment or for any other reason in our sole discretion.
13. We reserve the right to close your account without notice to you if you do not use your credit facility for a period of twelve (12) months.

Liability for purchases

14. You are liable for all purchases made using your credit facility. We are not responsible for confirming the authority of persons using your account. You are solely responsible for ensuring there is no unauthorised use of your account.

Retention of title

15. Until such time as you have made payment in full for any Goods supplied by us, and until such time as you have made payment in full of all other money owed to us by you (whether in respect of money payable under a specific contract or on any other account whatsoever):
 - (a) title in the Goods does not pass to you;
 - (b) you agree that property and title in the Goods will not pass to you and we retain the legal and equitable title in those Goods supplied and not yet sold;
 - (c) you will hold the Goods in a fiduciary capacity for us and agree to store the Goods in such a manner that they can be identified as our property, and will not mix the Goods with other similar goods; and
 - (d) you will be entitled to sell the Goods in the ordinary course of your business but will sell as agent and bailee for us and the proceeds of sale of the Goods will be held by you on trust for us absolutely.
16. Your liability to us will not be discharged by the operation of clause 15(d) (but your levels of indebtedness will be reduced by the extent of the funds so remitted to us).
17. You agree that whilst property and title in the Goods remains with us, we have the right, with prior notice to you, to enter upon any premises occupied by you (or any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours) to inspect our Goods and, when payment is overdue, to immediately enter the premises (as your invitee) to repossess the Goods which may be in your possession, custody, or control when payment is overdue.
18. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 17 where you are otherwise in default of this Credit Agreement. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
19. You agree that where the Goods have been retaken into our possession, we have the absolute right to sell or deal with the Goods, and if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell such Goods.
20. For the avoidance of doubt, our interest constitutes a 'purchase money security interest' pursuant to the PPS Act.

Personal Property Securities Law

21. You acknowledge that by assenting to this Credit Agreement, which constitutes a security agreement for the purposes of the PPS Act, you grant us a security interest in all Goods (and their proceeds) now or in the future supplied by us to you (or to your account).
22. You undertake to do anything that is required by us:
 - (a) so that we can acquire and maintain one or more perfected security interests under the PPS Act in respect of the Goods (and their proceeds);
 - (b) to register a financing statement or financing change statement; and
 - (c) to ensure that our security position, and rights and obligations, are not adversely affected by the PPS Act.
23. Unless you have obtained our prior written consent, you undertake not to:
 - (a) register a financing change statement in respect of a security interest contemplated or constituted by this Credit Agreement; and

- (b) create, or purport to create, any security interest in the Goods, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party.

24. You:

- (a) waive your right under section 157 of the PPS Act to receive a copy of the verification statement relating to a security interest contemplated or constituted by this Credit Agreement;
 - (b) agree that to the extent permitted by the PPS Act, the following provisions of the PPS Act will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
 - (c) agree that the following provisions of the PPS Act will not apply and you will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
25. You agree that you will, if requested by us, sign any documents, provide any information, or do anything else we request, to ensure that any security interest created in our favour by this Credit Agreement is, to the fullest extent possible under the PPS Act, perfected in accordance with Part 2.2 of the PPS Act.
 26. Notwithstanding section 275 of the PPS Act, the Parties agree to keep confidential all information of the kind referred to in section 275 of the PPS Act, unless compelled by law to disclose such information.
 27. You irrevocably grant to us the right to enter upon your property or premises, with notice, and without being in any way liable to you or to any third party, if we have cause to exercise any of our rights under sections 123 or 128 of the PPS Act, and you will be liable for and indemnify us from and against any claims made by any third party as a result of such exercise.
 28. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 27 where you are otherwise in default of this Credit Agreement. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
 29. You agree to accept service of any document required to be served, including any notice under this Credit Agreement or the PPS Act or any originating process, by prepaid post at any address nominated in this Credit Agreement or any other address later notified to us by you or your authorised representative.
 30. You further agree that where we have rights in addition to those under Part 4 of the PPS Act, those rights will continue to apply.

Charge over property

31. You charge in our favour all of your estate and interest in any real property, whether held in your own right or as capacity as trustee, you own at present and in the future with payment of all monies which are now owing or in the future become owing to us whether pursuant to this Credit Agreement or otherwise until all such monies are paid in full by you.
32. You charge in our favour all of your estate and interest in any personal property, whether held in your own right or as capacity as trustee, you own at present and in the future with payment of all monies which are now owing or in the future become owing to us whether pursuant to this Credit Agreement or otherwise until all such monies are paid in full by you.
33. As security for the payment of the amount of your indebtedness to us from time to time, you irrevocably appoint as your duly constituted attorney our company secretary from time to time to execute in your name and as your act and deed any real property mortgage, bill of sale or consent to any caveat we may choose to lodge against real property that you may own in any Land Titles Office in any state or territory of Australia (even though you may not have defaulted in carrying out your obligations hereunder) upon written notice and demand to you (in the event that there is no default by you in carrying out its obligations hereunder).
34. Where you have previously entered into an agreement with us by which you have granted a charge, mortgage, or other security interest (including a security interest as defined in the PPS Act) over or in respect of real or personal property, those charges, mortgages, or other security interests and the terms which directly or indirectly create rights, powers, or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Credit Agreement and will secure all of your indebtedness and obligations hereunder. We may, at our election and upon the provision of written notice, vary the terms of such previous charges, mortgages, or other securities to reflect the terms herein.

Provision of further information

35. You undertake to comply with any reasonable written requests made by us from time to time to provide us with further documents and information we may require for the purpose of assessing your creditworthiness.
36. If you are a corporation (with the exception of a public listed company), you must advise us of any alteration to your corporate structure (for example, by changing directors, shareholders, or your constitution). In the case of a change of directors or shareholders, we may ask for your directors to sign a guarantee and indemnity.

Corporations

37. If you are a corporation, you warrant and represent to us that all of your directors have signed this Credit Agreement.

Partnerships

38. If you enter into this Credit Agreement in your capacity as a partnership, you warrant and represent to us that all partners have signed this Credit Agreement.
39. If you are a partnership, you must not alter your partnership (for example, adding or removing partners or altering its partnership agreement) without notifying us in writing.

Trustees

40. If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:
 - (a) you enter into this Credit Agreement in both your capacity as trustee and in your personal capacity;
 - (b) you have the right to be reasonably indemnified out of trust assets;
 - (c) you have the power under the trust deed to sign this Credit Agreement; and
 - (d) you will not retire as trustee of the trust or appoint any new or additional trustee sign an agreement on substantially the same terms as this Credit Agreement.
41. You must give us a copy of the trust deed upon request.

Insolvency

42. If you become insolvent, to the extent permitted by law, you remain liable under this Credit Agreement for payment of all liabilities incurred hereunder. You remain liable under this Credit Agreement even if we receive a dividend or payment as a result of you being insolvent.

Indemnity

43. You are liable for and indemnify us from and against any liability, claims, damages, losses, costs, and expenses whatsoever (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that we may suffer or incur at any time, directly or indirectly, arising out of, or in connection with, any default by you in the performance or observance of your obligations under this Credit Agreement.

44. Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives termination of this Credit Agreement.

45. It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred upon us by this Credit Agreement.

Costs

46. You are responsible for your own legal, accounting, and business costs in connection with the execution of this Credit Agreement. You must also pay for all stamp duty and other taxes payable on this Credit Agreement (if any).

47. You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

Application of payments

48. Subject to clauses 49 and 50, payments by, or on behalf of, you will be applied by us as follows.

(a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 18, 28, 43, and 47.

(b) Secondly, in payment of any interest incurred in accordance with clause 8.

(c) Thirdly, in payment of any outstanding Tax Invoices (or part thereof) in an order determined by us in our sole discretion.

49. To the extent that payments have been allocated to Tax Invoices by us in our business records, we may allocate or retrospectively reallocate payments in any manner whatsoever at our absolute discretion, including in a manner inconsistent with clause 48 herein.

50. Payments allocated (or reallocated) under clause 48 or 49 will be treated as though they were allocated (or reallocated) in the manner determined by us on the date of receipt of payment.

Notices

51. A notice or other communication connected with this Credit Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, a notice or other communication may be sent by pre-paid post to the address of the addressee as set out in this Credit Agreement, or sent by email or fax to the email or fax number of the addressee.

Termination

52. If:

(a) a Party commits a material breach of this Credit Agreement and fails to remedy that breach within seven (7) days of receiving notice from the other Party requiring it to do so; or

(b) an Insolvency Event occurs in relation to a Party, then the other Party may terminate this Credit Agreement by written notice to that Party, in which case this Credit Agreement will terminate immediately.

53. Each Party expressly waives any rights it may have to terminate this Credit Agreement other than as contemplated by clause 52.

54. Each Party acknowledges that the other Party may terminate this Credit Agreement under clause 52 without considering the impact of the termination on the other Party.

55. On termination of this Credit Agreement, accrued rights of a Party are not affected.

Assignment

56. Neither Party may assign, transfer, or novate its rights or obligations under this Credit Agreement without the prior written and fully informed consent of the other (which consent must not be unreasonably withheld).

Waiver

57. A waiver of any provision or breach of these Credit Facility Terms will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of these Credit Facility Terms, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

Severance

58. If any provision of these Credit Facility Terms is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from these Credit Facility Terms. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.

Variation of Credit Facility Terms

59. Any proposed variation to these Credit Facility Terms by you must be requested in writing and we may refuse any such request without providing reasons to you for doing so.

60. For clarity, no proposed variation of these Credit Facility Terms will be binding upon us, unless varied in writing and agreed by an authorised officer of ours. Clerical errors (such as spelling mistakes, grammatical errors, or numerical errors) may be subject to correction by us without notification.

61. You agree that these Credit Facility Terms may be amended by an authorised officer of ours at any time by written notice to you. Subject to clause 62, after fourteen (14) days of receipt of the written notice of the amendments, the amendments will be deemed agreed by you.

62. If you do not agree with the amendments proposed by us, you must notify us in writing, within fourteen (14) days from receipt of the written notice, that the amendments are not agreed to. We will then be at liberty to suspend your credit facility until such time as an agreement can be reached.

Governing law

63. You acknowledge and agree that this Credit Agreement will be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.

64. The Parties to this Credit Agreement submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

Entire agreement

65. This Credit Agreement constitutes the entire agreement and understanding between the Parties in relation to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of this Credit Agreement are merged in this Credit Agreement and are of no further effect. No oral explanation or information provided by a Party to another affects the meaning or interpretation of this Credit Agreement or constitutes any collateral agreement, warranty, or understanding.

66. Notwithstanding clause 65, in circumstances where there is a pre-existing written credit agreement ("**Original Agreement**") between the Parties, this Credit Agreement will constitute a variation of the Original Agreement whereby the terms and conditions of the Original Agreement are deleted and replaced with this Credit Agreement, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by this Credit Agreement, in which case they will co-exist with this Credit Agreement, and, to the extent of any inconsistency, this Credit Agreement will prevail.

Definitions

67. Unless the contrary intention appears, in these Credit Facility Terms:

"**Credit Agreement**" means the Application for Commercial Credit, the Privacy Statement, these Credit Facility Terms, the National Credit Declaration, and the Terms of Trade.

"**Credit Facility Terms**" means these credit facility terms.

"**Customer**," "**you**," "**your**" means the person acquiring Goods or Services from us, as described in Part 1 of this Credit Agreement.

"**Demak**," "**we**," "**us**," "**our**" means Demak Timber Pty. Ltd. ACN 059 222 767.

"**Goods**" means all goods supplied by us to you (and where the context so permits includes any supply of Services) and as are described on our Tax Invoices, quotation, or any other forms as provided by us to you.

"**Government Authority**" means:

- a government or government department or other body;
- a governmental, semi-governmental, or judicial person; or
- a person (whether autonomous or not) who is charged with the administration of a law

"**GST**" has the meaning given to it by the GST Act.

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**Insolvency Event**" means any of the following events concerning a Party, unless the events take place as part of a solvent reconstruction, amalgamation, merger, or consolidation on terms approved by the other Party before it takes place and the implementation of the reconstruction, amalgamation, merger, or consolidation complies with the terms of the approval:

- if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the Party;
- if the Party becomes bankrupt;
- if a controlling trustee is appointed to, or over, any of the property or undertaking of the Party;
- if the Party's property or undertaking becomes subject to a personal insolvency arrangement under part X of the *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX of the *Bankruptcy Act 1966* (Cth);
- the Party is unable to pay its debts when they become due and payable;
- if the Party ceases to carry on business; or
- if any event happens in Australia or any other country or territory in respect of a Party that is similar to any of the events or circumstances referred to in this definition.

"**Parties**" means Demak and the Customer, and "**Party**" means either one of them.

"**PPS Act**" means the *Personal Property Securities Act 2009* (Cth).

"**Services**" means all services supplied by us to you (and where the context so permits includes any supply of Goods).

"**Tax Invoice**" has the meaning given to this expression by the GST Act.

"**Terms of Trade**" means our terms of trade.

Interpretation

68. If there is any conflict or inconsistency between any of the documents which comprise this Credit Agreement, it is expressly agreed the order of precedence will be (in descending order of precedence):

- these Credit Facility Terms; and
- our Terms of Trade.

69. Unless the contrary intention appears, a reference to:

- this Credit Agreement or another document includes any variation or replacement of it, notwithstanding any change in the identity of the Parties;
- the singular includes the plural and vice versa;
- "right" includes a benefit, remedy, authority, discretion, or power;
- "information" is to information of any kind in any form or medium, whether formal or informal, written or unwritten (e.g. computer software or programs, concepts, data, plans, reports, drawings, specifications, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets);
- "person" includes a natural person, partnership, body corporate, association, joint venture, Government Authority, or other entity;
- a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns; and
- any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.

70. Headings are for convenience only and will not affect the interpretation of these Credit Facility Terms.

71. Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".

72. The expressions "in writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

73. Where two or more persons are defined as a Party in these Credit Facility Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.

74. An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.

75. Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties must be in the English language.

PART 4: NATIONAL CREDIT CODE DECLARATION

The Customer declares that the credit to be provided to it by Demak Timber Pty. Ltd. is to be applied wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

IMPORTANT

You should **only** sign this declaration if this credit is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

By signing this declaration you may **lose** your protection under the National Credit Code

Signed on behalf of the Customer by:

Signature:		Title / Position:	
Name (please print):		Date:	

ACKNOWLEDGEMENTS AND EXECUTION

You hereby apply for the opening of an account and provide the information set out in **Part 1 of this Credit Application** in support of your application.

By signing this Credit Application, you warrant and represent to us that:

- all information provided by you in support of your application is true and correct;
- you agree to the terms of the **Privacy Statement** contained in **Part 2 of this Credit Application**;
- you have read and understood the **Credit Facility Terms** contained in **Part 3 of this Credit Application**;
- you have executed the **National Credit Code Declaration** contained in **Part 4 of this Credit Application**;
- you have accessed, read, and understood our Terms of Trade, which may be found at demak.com.au/termssoftrade;
- (if the Customer is a corporation) you understand the granting of a credit facility may, at our sole discretion, be conditional upon the Customer's directors executing the **Deed Poll of Guarantee and Indemnity** contained in **Part 5 of this Credit Application**;
- you understand that if your application is accepted, all parts of this Credit Application will apply to any provision of Goods and Services to you; and
- you have obtained, or had the opportunity to obtain, independent legal advice prior to signing this Credit Application.

By signing this Credit Application, you accept, and agree to be bound by, all parts of this Credit Application.

I/We, the below named persons, are authorised to sign this Credit Application on behalf of the Customer.

Signature:		Witness Signature:	
Full Name (please print):		Witness Name (please print):	
Title / Position:		Date:	

Signature:		Witness Signature:	
Full Name (please print):		Witness Name (please print):	
Title / Position:		Date:	

OFFICE USE ONLY – FOR COMPLETION BY DEMAK

The Customer's application is accepted. Signed on behalf of Demak Timber Pty. Ltd.

Signature:		Title / Position:	
Full Name (please print):		Date:	
Account No. / Reference:		Credit Limit Approved:	\$

PART 5: DEED POLL OF GUARANTEE AND INDEMNITY

To: Demak Timber Pty. Ltd. ACN 059 222 767 ("Demak")

Each of the below named persons ("Guarantors") hereby covenant and undertake and if more than one, jointly and severally, as follows.

Consideration

1. In consideration of Demak extending or agreeing to extend credit or further credit to the Customer at the Guarantors' request (testified by the Guarantors' execution of this Credit Agreement) for Goods sold or to be sold from time to time or Services provided or to be provided, the Guarantors guarantee payment to Demak of all money which is now or at any time in the future becomes due and payable to Demak by the Customer on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Customer to Demak arising out of a relationship of trustee and beneficiary.

Guarantee and indemnity

2. The Guarantors agree to guarantee and indemnify Demak against all losses damages or expenses that Demak may suffer as a result, either directly or indirectly, of any failure by the Customer to make due payment of any money owing to Demak (including, for the removal of doubt, any interest) whether for Goods sold, Services provided or otherwise or to observe the terms of any agreement between the Customer and Demak, including costs on a full indemnity basis of any attempt or attempts to recover from the Customer or any Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by Demak to the Customer or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to Demak.

3. This guarantee and indemnity is a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by Demak to the credit of any account of the Customer or the Guarantors, or deemed to be held on trust by the Customer for Demak, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 1 and 2 of this guarantee and indemnity.

4. Where two or more persons execute this guarantee and indemnity, the guarantors, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and Demak will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.

5. Demak will have the right to enforce this guarantee and indemnity, irrespective of whether Demak has sought to recover the amounts guaranteed from the Customer and with or without notice to the Customer, as if the primary liability for any money owing was the Guarantors' own. Further, Demak may proceed against the Guarantors (or any one of them) notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.

6. This guarantee and indemnity will continue in force until such time as Demak releases all of the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders, or owners of the Customer.

7. This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of Demak against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:

- (a) any other security taken by Demak from the Customer or from any other person;
- (b) any waiver or indulgence, whether as to time or otherwise, given to the Customer or to the Guarantors or any one or more of the Guarantors;
- (c) by any other act, matter, or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
- (d) any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

Right of subrogation

8. In the event of a Guarantor making any payment in respect to an obligation of the Customer whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Customer unless and until Demak has been paid in full.

9. In the event of the Customer going into liquidation, the Guarantors will be prohibited from proving in competition with the Customer unless and until Demak has been paid in full.

Insolvency of Customer

10. No sum of money which the Customer pays to Demak and Demak later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Customer by reason of the *Corporations Act 2001* (Cth), *Bankruptcy Act 1966* (Cth), or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Customer.

Costs

11. Demak is at liberty from time to time to charge the account of the Customer with all costs, charges, and expenses, legal or otherwise that Demak incurs in connection with:

- (a) the account of the Customer;
 - (b) this guarantee and indemnity;
 - (c) any other security in respect of the indebtedness of the Customer to Demak;
 - (d) the preparation, completion and stamping of this deed poll; or
 - (e) the exercise or attempted exercise of any right, power or remedy conferred on Demak under or by virtue of this deed;
- and the same will be part of the monies secured by this deed poll.

12. The Guarantors agree to pay Demak's costs and disbursements incurred in recovering monies secured by this guarantee and indemnity, including debt recovery agency fees and legal costs on a full indemnity basis.

Security/charge

13. The Guarantors charge in favour of Demak all of their estate and interest in any real property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with all monies which are now or in the future become owing by the Guarantors to Demak, including all amounts referred to in clauses 1 and 2.

14. The Guarantors charge in favour of Demak all of their estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with all monies which are now or in the future become owing by the Guarantors to Demak, including all amounts referred to in clauses 1 and 2.

15. As security for the payment of the amount of the indebtedness to Demak from time to time, the Guarantors irrevocably appoint as their duly constituted attorney Demak's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat Demak may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

16. This guarantee and indemnity secures the repayment of all monies owed by the Customer whatsoever, and this deed poll constitutes the entire guarantee.

17. Where the Guarantors have previously entered into an agreement with Demak by which the Guarantors have granted a charge, mortgage, or other security over real or personal property, those charges, mortgages, or other security interests will continue and co-exist with the obligations and security interests created in this deed poll and will secure all indebtedness and obligations of the Guarantors under this guarantee and indemnity. Demak may, at its election, vary the terms of such previous charges, mortgages, or other securities to reflect the terms herein.

Variation

18. The Guarantors authorise Demak to give time or any other indulgence or consideration to the Customer in respect of compliance with its obligations to Demak, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

19. The Guarantors agree that this guarantee and indemnity will not be avoided, released, or affected by Demak making any variation or alteration in the terms of its agreement(s) with the Customer, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

Severance

20. If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

Personal Property Securities Act

21. For the avoidance of any doubt, the security interest(s) created by this instrument in favour of Demak constitutes security interests pursuant to the PPS Act.

22. The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Notices

23. The Guarantors agree to accept service of any document required to be served, including any notice under this agreement or the PPS Act or any originating process, by prepaid post at any address nominated in the Credit Agreement or any other address later notified to Demak by the Guarantors or the Guarantors' authorised representative.

Jurisdiction

24. The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.

25. The parties to this guarantee and indemnity submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

Privacy Act

26. The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (Cth) contained in Part 2 of the Credit Agreement.

Definitions

27. Capitalised terms which have not been defined in this guarantee and indemnity have the meaning given to those terms in the Credit Facility Terms.

Executed as a Deed Poll on (Date):	
Signed, Sealed, and Delivered by the Guarantor	Signature:
	Full Name (please print):
	Title / Position:
	Witness Signature:
	Witness Name (please print):
Signed, Sealed, and Delivered by the Guarantor	Signature:
	Full Name (please print):
	Title / Position:
	Witness Signature:
	Witness Name (please print):