

APPLICATION TO OPEN AN ACCOUNT

I/we hereby apply to open/continue to operate an account with the Supplier

I/we acknowledge that I/we have read and understood the terms and conditions referred to this application ("the Terms"). Should the Supplier agree to supply me/us with goods then all transactions will be subject to the Terms unless the Supplier agrees otherwise in writing.

I/we warrant and represent that all of the information set out in this Credit Account Application is true and correct and that I/we have not omitted or withheld any information which would or might be material to the Supplier in making a decision to grant credit or supply goods to an intended customer.

I/we are not aware of any facts or circumstances which, if made known to the Supplier would result in the Supplier not opening an account for me/us or granting credit to me/us or supplying me/us with goods.

I/we hereby authorise the Supplier to make such enquiries as it considers relevant or necessary to decide whether or not to accept this application

I/we agree to the Supplier obtaining from a business which provides information (including personal information and/or sensitive information) about the commercial credit worthiness of persons, information concerning our commercial activities or commercial credit worthiness and using such information for the purpose of assessing this application:

I/we acknowledge and understand that the supplier:

- collects personal information about me/us so that it can provide me/us with its goods and that if it did not collect my/our personal information it may be unable to provide me/us with goods.
- may disclose my/our personal information to third parties and organisations that provide goods and or services to it in connection with its business relationship with me/us
- may disclose my/our personal information to regulatory bodies where this is required by law
- may use my/our personal information to let me/us know about any goods and services that it thinks may be of interest to me/us. I acknowledge that I/we may opt out of receiving any marketing information
- has a Privacy Policy that is available on its website that sets out its approach to management of personal information including how I/we can seek access to and make corrections of my/our personal information, and;
- how to make a complaint about a breach of privacy.

DIRECTOR, SECRETARY OR AUTHORISED REPRESENTATIVE SIGNATURE/S

Director / Secretary / Authorised Representative

(Print Name)

Director / Secretary / Authorised Representative

(Signature)

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TERMS & CONDITIONS

1. DEFINITIONS

- 1.1 **"Agreement"** means the agreement between the Supplier and the Customer for Goods.
- 1.2 **"Amount Owning"** means all amounts owed by the Customer to the Supplier.
- 1.3 **"Buyer/Customer"** means anyone whose order for the purchase of Goods is accepted by the Supplier.
- 1.4 **"Goods"** means all goods sold and delivered by the Supplier to the Customer.
- 1.5 **"GST"** has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time
- 1.6 **"PPSA"** means the PPS Act and any other legislation and regulations in respect of it and the following words have the respective meanings given to them in the PPS Act: collateral, financing change statement, financing statement, grantor, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement;
- 1.7 **"PPS Act"** means the Personal Property Securities Act 2009 (Cth) (as amended).
- 1.8 **"Price"** means the price of the Goods which the Supplier has agreed to charge the Customer.
- 1.9 **"Quoted Date"** means the date of delivery between the Supplier and the Customer.
- 1.10 **"Supplier/Company"** means Jaybro Group Pty Ltd and includes its successors and assigns.
- 1.11 **"Sale Agreement"** means any sale transaction between the Company and the Buyer.
- 1.12 **"Terms"** means these terms and conditions.

2. GENERAL

- 2.1 Unless otherwise agreed in writing by the Supplier, any terms and conditions of the Customer whether on the Customer's order or elsewhere, which are contrary to or inconsistent with these Terms are rejected by the Supplier.
- 2.2 The Supplier may vary these Terms by notice in writing to the Customer.
- 2.3 By placing an order or receiving delivery and or supply of all or a portion of the Goods supplied under the Terms, the Customer shall be deemed to have accepted these Terms unamended.
- 2.4 The Supplier and/or Customer agree and acknowledge that the customer Credit Account Application form may be completed by the Customer utilising the Supplier's online application process through the Supplier's website. Where the Customer has submitted a signed Credit Account Application Form, the terms and conditions of such form will continue to apply to the Customer provided that that if there is any inconsistency with the Terms then the provisions of the Terms will apply
- 2.5 These Terms and the supply of the Goods by the Supplier to the Customer shall be governed by and construed in accordance with the laws of New South Wales and the Customer submits to the non-exclusive jurisdiction of the courts of that state.

3. PRICES (INCLUDING OTHER CHARGES)

- 3.1 The prices of Goods shall be indicated on any invoice, tender, quotation, delivery docket or other commercial form provided by the Supplier to the Customer in respect of Goods, plus any transportation, freight, postage, packaging, handling, insurance and GST.
- 3.2 The price shall be increased by the amount of any GST and other taxes and duties which may be applicable.
- 3.3 The prices specified for Goods may at the Supplier's option be subject to the Supplier's prices and charges in effect at the time of delivery. Further, the Supplier is entitled to revise its prices and related charges without prior notice being given to the Customer.

4. PAYMENT AND ACCOUNT TERMS

- 4.1 The customer shall pay for all goods by no later than the
- 4.2 last day of the month following the month the goods were delivered in. These terms are also known as 30 days from end of month.
- 4.3 The Customer agrees that the Supplier may debit the Customer's credit card to satisfy any part or all of the monies payable by the Customer to the Supplier for Goods.
- 4.4 At the Supplier's sole discretion, a non-refundable deposit may be required from the Customer.
- 4.5 Credit extended to the Customer for all Goods will be provided in the absolute discretion of the Supplier.
- 4.6 The Supplier may withdraw the Customer's credit facilities at any time or vary the Customer's credit limit without notice to the Customer.
- 4.7 The Customer shall pay any legal costs (on a solicitor/client indemnity basis), lodgement and withdrawal of any caveat(s), stamp duties and other expenses payable on these Terms or any credit application, guarantee or other security documents signed by the Customer together with all collection costs including legal fees (on a solicitor/client indemnity basis) and dishonoured cheque fees suffered or incurred by the Supplier in connection with the supply of Goods by the Supplier.

5. TRUST AND TRUSTEES

- 5.1 Where the Customer is a trustee:
 - a. the Customer agrees to provide the Supplier with a stamped copy of the trust deed.
 - b. the Customer warrants that it has full power and authority to enter into this agreement on behalf of the trust and that it shall be bound by these Terms both personally and in their capacity as trustee.

6. DEFAULT BY CUSTOMER AND TERMINATION

- 6.1 In the event of:
 - a. any default or failure by the Customer in making due and punctual payment to the Supplier of any monies owing by the Customer;
 - b. an insolvency event;
 - c. the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its Amount Owning as and when they fall due;
 - d. there is a breach by the Customer of any of these Terms,
 - e. then all monies payable by the Customer to the Supplier shall become immediately due owing and payable and the Supplier may without prejudice to any other rights it may have do any or all of the following:
 - i. withdraw any credit facilities which may have been extended to the Customer;
 - ii. withhold any further deliveries of Goods;
 - iii. in respect of Goods already delivered onto the Customer's premises enter onto those premises and recover and resell the Goods;
 - iv. recover from the Customer the cost of materials or Goods acquired for the purposes of future deliveries;
 - v. cease to supply Goods to the Customer.
 - vi. The Supplier may also terminate the Agreement at any time for convenience by giving the Customer at least 24 hours' notice. In this clause 6 "insolvency event" means: (a) if the Customer is an individual and commits an act of bankruptcy; (b) if the Customer is a company and passes a resolution for its winding up or has an application for winding up filed against it or is placed under administration or a receiver or receiver and manager is appointed over any part of its assets.

7. SECURITY OBLIGATIONS

- 7.1 Security Obligations
 - a. For the purpose of securing payment of the Amount Owning, the Customer hereby charges in favour of the Supplier all legal, equitable and beneficial interest in real property which it, he or she now has or might subsequently acquire a legal or beneficial interest in, and authorises and consents to the Supplier lodging and maintaining a caveat on the title of the Customer's real property.
- 7.2 The Customer indemnifies the Supplier from and against all of the Supplier's costs and disbursements including legal costs on a solicitor and own Client basis incurred in exercising the Supplier's rights under this clause 7.

8. LIMITATION OF LIABILITY AND INDEMNITY

- 8.1 The Customer agrees that all Goods and their use shall be at the Customer's sole risk and the Supplier will not be liable for any loss, damage or injury that the Customer may incur or that may arise from any cause whatsoever including any fault or other defect in the Goods.
- 8.2 The Customer agrees that the Supplier is not liable for any special, indirect or consequential loss arising in any way in respect of the Goods or their use and this exclusion of liability applies whether that loss or liability arises at general law or under these Terms and whether or not including loss or liability arising as a consequence of negligence.
- 8.3 The Customer accepts full responsibility for, and indemnifies the Supplier against all claims in respect of any injury to persons, or damage to property, arising out of the use of the Goods however arising, whether from the Customer's negligence or that of the Supplier and without limiting the foregoing whether or not the Goods were being operated
- 8.4 or transported by an agent or servant of the Supplier or any other person for whose acts the Supplier may be held to be responsible for.
- 8.5 The Customer agrees to indemnify the Supplier for any costs or loss or damage incurred in recovering Goods, whether those Goods were abandoned, unlawfully detained or otherwise not returned to the Supplier in accordance with these Terms.
- 8.6 Without limiting the Supplier's liability at law or in tort, the Customer agrees to indemnify, and keep indemnified, the Supplier and its directors, officers, agents, employees and assigns against any liability for any claims made against the Supplier, or its directors, officers, agents, assigns and employees, arising out of or in connection with any breach by the Customer of these Terms, or any loss, damage or injury suffered by a third party, caused by any negligence, or deliberate act, by the Supplier and its directors, officers, agents, employees and assigns arising out of the supply of the Goods to the Customer.
- 8.7 Where the Supplier gives advice, recommendations, information, assistance and/or service to the Customer regarding the suitability or purpose of the Goods, or in connection with the design, delivery times, dimensions, installation or use of the Goods, then it is given in good faith and the Supplier shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on any such advice, recommendations, information, assistance and/or service.

9. GOODS

- 9.1 The Goods are as described on the Supplier's invoices, tenders and quotations, provided by the Supplier to the Customer.
- 9.2 The Customer agrees that it does not rely on the information, skill or judgment of the Supplier in relation to the suitability of the Goods for a particular purpose.
- 9.3 The Customer will have in place all necessary insurance for the supply of the Goods by the Supplier in order to cover any loss, damage or costs suffered or incurred by either the Customer or the Supplier as a result of the supply of the Goods.
- 9.4 If the Supplier is unable to supply the Goods to the Customer, the Supplier may in its discretion supply alternative goods to the Customer.
- 9.5 The Customer acknowledges that the Supplier may immediately cancel any particular supply of Goods by giving written notice to the Customer.

10. WARRANTIES

- 10.1 These Terms shall not exclude, or limit the application of any provisions of any statute including any implied condition or warranty the exclusion of which would contravene any statute (including the Australian Consumer Law) or cause any part of this clause to be void or unenforceable. To the extent permitted by law all conditions, warranties and undertakings are expressly excluded.
- 10.2 Unless the Goods supplied by the Supplier are of a kind ordinarily acquired for domestic household or personal use or consumption, the Supplier's liability under clause for breach of a non-excludable condition or warranty is limited at the Supplier's option, to any one of the following:
 - a. in the case of Goods:
 - i. the replacement of the Goods or the supply of equivalent Goods;
 - ii. the repair of the Goods;
 - iii. the payment of the cost of providing replacement Goods or of acquiring equivalent Goods; or
 - iv. the payment of the cost of having the Goods repaired.
 - b. in the case of services to:
 - i. the re-supply of the services; or
 - ii. the payment of the cost of having the services supplied again

11. COLLECTION AND DELIVERY OF GOODS

- 11.1 Goods will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer, included to any third party's address.
- 11.2 The Customer recognises that the Supplier is not a common carrier and does not accept the obligation as such.
- 11.3 The Customer shall pay to the Supplier packing, crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch.
- 11.4 The Supplier reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of request.
- 11.5 The Supplier reserves the right to deliver Goods by instalments and each instalment shall be deemed to be sold under a separate contract.
- 11.6 The Supplier shall not be liable to the Customer for any loss or damage attributable to failure by the Supplier to deliver the Goods.
- 11.7 Unless agreed otherwise in writing, prior to delivery, the unloading of Goods is the Customer's responsibility.

12. CLAIMS FROM CUSTOMER

- 12.1 All claims by the Customer relating to failure by the Supplier to comply with an order of the Customer must be made by written notice to the Supplier within seven (7) days of the date of delivery.
- 12.2 To the extent permitted by law all conditions, warranties and undertakings are expressly excluded.
- 12.3 The Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - a. The Customer failing to properly maintain or store any Goods;
 - b. The Customer using the Goods for any purpose other than that for which they were designed;
 - c. The Customer continuing the use of any the Goods after any defect became apparent or should have become apparent;
 - d. The Customer failing to follow any instructions or guidelines; or
 - e. Fair wear and tear, any accident or act of God.

13. TITLE AND RISK FOR GOODS

- 13.1 The Goods shall be at the sole risk of the Customer as soon as they are collected by the Customer or dispatched by the Supplier from the Supplier's premises.
- 13.2 Property in and title to Goods being sold to the Customer will not pass to the Customer until such time as the Price and all other amounts which are owed or which may become payable to the Supplier by the Customer have been paid for in full and the Customer has complied with these Terms and until then:
 - a. the Customer will hold the Goods as trustee and agent for the Supplier;
 - b. the Goods must be stored separately by the Customer and in a manner enabling them to be identified as Goods of the Supplier; and
 - c. the Supplier may require the Customer to return the Goods to the Supplier or its authorised representative on demand and the Supplier may enter upon the premises of the Customer or any other premises occupied or controlled by the Customer to inspect or repossess the Goods.

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- 13.3 If any of the Goods are damaged or destroyed prior to property in and title to the Goods passing to the Customer, the Customer hereby assigns to the Supplier all insurance proceeds payable to the Customer for the loss or damage of the Goods. Goods that are accepted for return by the Supplier will attract a charge to the Customer to cover restocking and repackaging charges.
- 14. PERSONAL PROPERTIES SECURITIES ACT**
- 14.1 The Buyer consents to the Company effecting and maintaining a registration on the register of the Personal Property Securities Register in terms of the PPSA (in any manner the Company considers appropriate) in relation to any security interest contemplated or constituted by the sale of the Goods and the proceeds arising in respect of any dealing in the Goods and the Buyer agrees to sign any documents and provide all assistance and information to the Company as may be necessary or required to facilitate the registration and maintenance of any security interest.
- 14.2 The Company may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest).
- 14.3 The Buyer waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Goods (Section 157(3)(b) of the PPSA).
- 14.4 The Buyer undertakes to:
- a. do anything (in each case, including executing any new document or providing any information) that is required by the Company;
 - i. so that the Company acquires and maintains one or more perfected security interests under the PPSA in respect of the Goods and its proceeds;
 - ii. to register a financing statement or financing change statement; and
 - iii. to ensure that the Company's security position and rights and obligations are not adversely affected by the PPSA.
 - b. not register a financing change statement in respect of a security interest contemplated or constituted by the sale of the Goods without the Company's prior written consent; and
 - c. not 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 without the Company's prior written consent.
- 14.5 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with the sale of the Goods, the following provisions of the PPS Act will not apply and the Buyer will have no rights under them: 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 130; section 132(4); section 135 and section 143.
- 14.6 Unless otherwise agreed and to the extent permitted by the PPSA the Buyer and the Company agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Buyer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
- 14.7 For the purposes of section 20(2) of the PPS Act, the collateral is any Goods which are described in any Sale Agreement provided by the Company to the Buyer from time to time.
- 14.8 This Sale Agreement is a security agreement for the purposes of the PPS Act.
- 14.9 The Company may apply amounts received in connection with this Sale Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Sale Agreement in any way it may in the Company's absolute discretion determine.
- 14.10 The Buyer agrees to notify the Company in writing of any change to its name or details within 7 days from the date of such change.

SECTION B – GUARANTEE & INDEMNITY

THIS GUARANTEE AND INDEMNITY is given by the Guarantor/s in favour of **HJD Industries Pty Ltd t/as Jaybro, and includes their successors and assigns (Supplier).**

INTRODUCTION

- A. The Guarantor/s have asked the Supplier to supply Goods and/or Hired Goods to the Customer and to extend (or continue to extend) credit to the Customer.
- B. The Supplier has agreed to the request of the Guarantor/s in consideration of their agreement as follows:

IT IS AGREED:

- The Guarantor/s guarantee to the Supplier the punctual payment of the monetary liabilities of the Customer (on any account and in any capacity whatsoever and including liabilities in respect of the Goods or Hired Goods) which are now owing, or may from time to time be owing by the Customer to the Supplier (Amount Owing). The Guarantor/s acknowledge and agree that the Amount Owing includes any legal and other costs and expenses incurred or to be incurred by the Supplier in seeking payment from the Customer or in enforcing this Guarantee and Indemnity against the Guarantor/s.
- If there is more than one (1) guarantor, the Guarantors are jointly and severally liable to the Supplier for the Amount Owing.
- For the purpose of securing payment of the Amount Owing, the Guarantor/s hereby charge in favour of the Supplier all legal, equitable and beneficial interest in real property which it, he or she now or might subsequently acquire a legal or beneficial interest in, and authorise and consent the Supplier to lodge a Caveat upon title of the Guarantor/s real property. The Guarantor/s shall not object to the lodgement or upholding of the said caveat or take any steps to have any such caveat removed from the Land Titles Office register
- The obligations of the Guarantor/s under this Guarantee and Indemnity are principal obligations and are not affected by:
 - any variation which may be agreed by the Supplier and the Customer in respect of the Terms on which the Goods are delivered and/or hire of Hired Goods are provided and paid for;
 - any waiver, extension of time or indulgence given by the Supplier to the Customer or a Guarantor;
 - any right or claim which the Customer may assert to resist making payment of any part of the Amount Owing;
 - any increase in the amount of the Amount Owing;
 - any failure or omission by the Supplier to give notice to the Guarantor/s of any default by the Customer; or
 - any act, omission, matter or other thing whatsoever.
- This Guarantee and Indemnity is a continuing obligation of each Guarantor/s for the amount of the Amount Owing which may be owing from time to time and, binds the successors and assigns of the Guarantor/s and will not be affected by:
 - the death, incapacity, bankruptcy, of a Guarantor or the Customer; or
 - a Guarantor or the Customer which is a company becoming an externally administered company pursuant to the Corporations Act 2001(C)
- If the obligation of any Guarantor in respect of any part of the Amount Owing is unenforceable, the Guarantor's obligations in respect of the balance of the Amount Owing will not be affected by such unenforceability.
- If any payment or other transaction relating to or affecting the Amount Owing is:
 - void, voidable or unenforceable in part or in whole; or
 - is claimed to be void, voidable or unenforceable and that claim is upheld, conceded or compromised in whole or in part; the liability of each of the Guarantor/s is the same as if:
 - that payment or transaction (or the void, voidable or unenforceable part of it); and any release, settlement or discharge made in reliance on anything referred to in paragraph (b) above, has not been made and the Guarantor/s must immediately take all action and sign all documents necessary or required by the Supplier to pay to or restore to the Supplier the Amount Owing in full.
- If all or any of the Amount Owing is:
 - not recoverable from the Customer; or
 - not recoverable from a Guarantor under this Guarantee and Indemnity;each of the Guarantor/s, as a separate and principal obligation, indemnifies the Supplier against any loss, liability, expense or outgoing suffered, paid or incurred by the Supplier in relation to such amounts and must pay the Supplier an amount equal to such amounts.
- For the avoidance of doubt it is expressly acknowledged by the Guarantor/s that the Guarantor/s' obligations extend to and may include Amount Owing and other obligations of the Customer which have arisen before or after the date of this Guarantee.

ACKNOWLEDGMENT

10. Each of the Guarantor/s hereby acknowledge, affirm and agree that he/she:
- had an opportunity to and sought independent legal advice before entering into the Guarantee and Indemnity;
 - the nature of the Guarantee and Indemnity;
 - the liability which the Guarantor would incur by executing the Guarantee and Indemnity; and
 - the manner in which such liability could be enforced.

ASSIGNMENT AND NOVATION

11. The Supplier may at any time assign, novate or otherwise dispose of or deal with its rights and obligations under these this Guarantee by notice in writing to the Guarantor/s. The Guarantor/s agrees that any order for Goods and/or Hired Goods submitted by the Customer to the Supplier after the date of a notice of assignment will be deemed to be an acceptance of such assignment.

LAWS TO GOVERN PROVISIONS OF THE GUARANTEE AND INDEMNITY

This Guarantee and Indemnity shall be governed by and construed in accordance with the laws of New South Wales.

Guarantor

(Signature)

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Witness

(Print Name)

Witness

(Signature)

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Guarantor

(Print Name)

Guarantor

(Signature)

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Witness

(Print Name)

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