

# BRICKWORKS LIMITED

## 30 Day Credit Application



BOWRAL BRICKS

Pronto Panel

# BRICKWORKS

(As at November 2017)

NAME	ABN
Brickworks Limited	17 000 028 526
Brickworks Building Products Pty Ltd	63 119 059 513
Austral Bricks (NSW ) Pty Ltd	60 125 934 849
Austral Bricks (QLD) Pty Ltd	62 125 934 858
Austral Bricks (SA) Pty Ltd	66 125 934 876
Austral Bricks (Tasmania) Pty Ltd	14 009 501 053
Austral Bricks (VIC) Pty Ltd	64 125 934 867
Austral Bricks (W A) Pty Ltd	34 079 711 603
Austral Masonry (NSW ) Pty Ltd	45 141 647 092
Austral Masonry (QLD) Pty Ltd	30 000 646 695
Austral Masonry (VIC) Pty Ltd	53 120 364 356
Austral Masonry Holdings Pty Ltd	97 141 629 996
Auswest Timbers (ACT) Pty Ltd	34 087 808 811
Auswest Timbers Pty Ltd	28 071 093 591
Brickworks Building Products (NZ) Pty Ltd	64 076 976 880
Brickworks Specialised Building Systems Pty Ltd	61 144 804 544
Bristile Guardians Pty Ltd aff The Clay Tile Trust	40 079 711 630
Bristile Roofing (East Coast) Pty Ltd	77 090 775 634
Clifton Brick Manufacturers Pty Ltd	63 004 529 104
Daniel Robertson Australia Pty Ltd	53 087 575 611
J. Hallett & Son Pty Ltd	40 007 870 779
Nubrik Concrete Masonry Pty Ltd	29 004 767 113
Nubrik Pty Ltd	59 004 028 559
The Austral Brick Company Pty Ltd	52 000 005 550
Austral Precast (NSW) Pty Ltd	81 125 934 938
Austral Precast (QLD) Pty Ltd	20 145 070 855
Austral Precast (VIC) Pty Ltd	16 145 070 837
Austral Precast (W A) Pty Ltd	22 145 070 864
AP Installations (NSW) Pty Ltd	19 165 402 602
AP Installations (QLD) Pty Ltd	21 165 402 611

## Completed applications or queries to be submitted to the following:

Division	State	Postal Address	Phone	Fax	E-mail
<b>Austral Bricks</b>	NSW				
	QLD				
	SA	PO Box 6550, Wetherill Park, NSW, 1851	02 9830 7800	02 9620 2209	bwct@brickworks.com.au
	TAS				
	VIC				
	WA	Locked Bag 100 Midland, WA, 6936			creditwa@brickworks.com.au
<b>Austral Masonry</b>	ALL	PO Box 6550, Wetherill Park, NSW, 1851	02 9830 7800	02 9620 2209	
<b>Austral Precast</b>	NSW				
	QLD	PO Box 6550, Wetherill Park, NSW, 1851	02 9830 7800	02 9620 2209	bwct@brickworks.com.au
	VIC				
<b>Brickworks Specialised Building Systems</b>	ALL	PO Box 6550, Wetherill Park, NSW, 1851	02 9830 7800	02 9620 2209	
<b>Bristile Roofing</b>	NSW				
	QLD	PO Box 3040, Darra, QLD, 4076	07 3212 2415	07 3212 2499	
	VIC				
	WA	Locked Bag 100, Midland, WA 6936	08 9261 9999	08 9379 2649	
<b>Austral Precast</b>	WA	Locked Bag 100, Midland, WA 6937	08 9261 9999	08 9379 2649	creditwa@
<b>Auswest Timbers</b>	ALL	Locked Bag 100, Midland, WA 6938	08 9261 9999	08 9379 2649	brickworks.com.au
<b>Urbanstone</b>	ALL	PO Box 3853, Success, WA, 6964	08 9417 2444	08 9417 7060	

# APPLICATION FOR COMMERCIAL CREDIT ACCOUNT

Caution: Omissions may cause delays in approving credit

To: **Brickworks Building Products Pty Ltd ABN 63 119 059 513** and each member of the Brickworks Group of Companies listed on the preceding page (and any new member admitted to the Brickworks' Group from time to time by Brickworks whether with notice or not to the Customer) and each of their subsidiaries, divisions, affiliates, associated companies and related entities and any successors and assigns ("**Brickworks**").

## 1. MEANS AND ABILITY TO PAY

The Customer warrants that it is solvent and has the future ability to pay all of its debts as when they fall due

## 2. ACCEPTANCE

Brickworks will be deemed to have accepted this Application if it allows the Customer to trade with it on credit with any division or part of Brickworks.

## 3. OTHER DIVISIONS

The Customer agrees that this Application relates to all dealings with Brickworks and any part or member of the Brickworks Group.

## 4. PURPOSE

The Customer declares and warrants that any credit will be used wholly or predominantly for commercial, business and/or investment purposes (or both) and not for the Customer's personal, domestic or household purposes.

**IMPORTANT: Personal Consumers:** You should **not** sign this Application (which includes the declarations and warranties in this part 18 unless credit is wholly or predominantly for business or investment purposes. By signing, **you may lose** protection under the applicable Consumer Credit Code (or the equivalent) and/or the Trade Practices Act 1974 etc. You should cross-out item 18 unless credit is predominantly for commercial and/or investment purposes (or both).

## 5. INACTIVE ACCOUNTS

If a Customer has not used a credit facility for 24 months, a new Application for Commercial Credit Account may be required to be completed and submitted, but this will be in addition to (and will not derogate from nor affect) any obligation of the Customer, the Agent or any Guarantor which arose under any preceding Application for Commercial Credit Account or Agreement to Guarantee and Indemnify.

## 6. CREDIT INFORMATION and PRIVACY ACT 1988 (Cth)

The Customer and the Agent irrevocably authorise Brickworks their servants and agents to (subject to the requirements of the Privacy Act, the Credit Reporting Privacy Code and Brickworks' privacy policy) make such enquiries as they deem necessary to investigate the credit worthiness of the Customer and the Agent from time to time, including the making of enquiries with (without limitation) persons nominated as trade references, other entity's which in Brickworks' opinion the Customer may have had dealings with, the bankers of the Customer any credit provider or Credit Reporting Agency and including personal credit and consumer credit information and Land Data/property inquiries and name searches (hereinafter called "**the Sources**"). The Customer and the Agent hereby authorise the Sources (subject to the requirements of the Privacy Act and the Credit Reporting Privacy Code) agree to disclose to Brickworks such information concerning the Customer and the Agent which is within their possession. The Customer and the Agent agree that the information provided on this Credit Application concerning the Customer and the Agent and any relevant trading information arising from any dealings between the Customer and Brickworks may (subject to the requirements of the Privacy Act and the Credit Reporting Privacy) be disclosed to a Credit Reporting Agency or any other interested person, subject to Brickworks' Privacy Policy and can be obtained by writing to the Brickworks' company secretary at PO Box 6550 Wetherill Park, New South Wales 1851.

### PERSON COMPLETING THIS APPLICATION

("Agent") Name:		
Position:		
Address (Private):		
Telephone: ( )	Facsimile: ( )	Mobile:
Signed: .....		
(Signed for and on behalf of the Customer)		
Date: .....		
The Agent on behalf of the Customer <b>HEREBY REPRESENTS and WARRANTS</b> that the information set out in this application is true and correct and the Agent is duly authorised to sign this Application on behalf of the Customer and <b>ACKNOWLEDGES</b> that Brickworks will rely upon and be induced thereby to grant credit and/or to deal with the Customer.		

## TERMS AND CONDITIONS OF TRADE

**To the fullest extent legally possible, all dealings between any Customer ("Customer") and any member of the Brickworks' Group ("Brickworks") relating to any goods ("goods") or services ("services") are subject to the following Terms and Conditions of Trade ("these Terms") unless otherwise agreed in writing.**

### 1. Payments

- (a) Payments to be within 30 days of end of month of invoice date without deduction or set-off of any kind.
- (b) Brickworks may apply a payment received from the Customer to any amounts owed by the Customer (including interest, part payment of an invoice, administration, collection and other costs) in any order.
- (c) Brickworks is entitled to set-off or deduct any amount payable by Brickworks to the Customer.
- (d) Brickworks' may require the Customer to pay a credit card surcharge (in addition to any payment) of up to 3% plus GST of the payment amount where the Customer pays by credit card.
- (e) A payment dishonour fee may be charged by Brickworks if a Customer's payment is dishonoured in any way. This fee will be in addition to any fees the Customer's financial institution or credit provider may charge the Customer.
- (f) In its absolute discretion Brickworks may at any time and without needing to obtain the consent of the Customer, assign:
  - (i) any overdue debt owed by the Customer; and/or
  - (ii) Brickworks' rights under these Terms and/or any other document or registration effected in accordance with these Terms (including but not limited to a security interest registration under clause 49 and a mortgage under clause 23),to another member of the Brickworks Group.

### 2. Interest:

Interest is payable on overdue accounts at a rate of 2% per calendar month (calculated daily), plus a monthly administration fee of \$25 will apply.

### 3. Property:

- (a) Property in goods will not pass until payment in full of all monies owed to Brickworks on any basis ("**Full Payment**").
- (b) Brickworks reserves the right to take possession and dispose of goods as it sees fit at any time until Full Payment and the Customer grants permission to Brickworks to enter any property (whether owned by it or otherwise) where any goods are, in order to do so and with such force as is necessary.
- (c) Immediately upon delivery the Customer accepts liability for the goods.
- (d) A document signed by an officer of Brickworks identifying goods and certifying that monies are owing to Brickworks will be conclusive evidence of Brickworks' title thereto.
- (e) Until Full Payment the Customer agrees:
  - (i) to keep all goods as fiduciary for Brickworks and to store them in a manner which:
    - A. shows Brickworks as owner; and
    - B. will keep them safe and free from deterioration, destruction, loss or harm.
  - (ii) only to sell goods in the usual course of business; and
  - (iii) sale on terms, at cost or less than cost will not be "in the usual course"
- (f) Clause 3 is not intended to create a charge and must be read down to the extent necessary to avoid being a charge.

### 4. Limitation of Liability:

To the extent permissible at law (including under the schedule 2 to the Competition and Consumer Act 2010 (Cth) – "Australian Consumer Law") and without purporting to limit its obligations thereunder and subject to clause 51:

- (a) Brickworks will not be liable for any claim arising after 7

days from delivery of goods or performance of services (or at all once goods have been unpacked, modified, on-sold or otherwise used or applied) after which there will be deemed to be unqualified acceptance.

- (b) Brickworks will not be liable in any way for any contingent, consequential, direct, indirect, special or punitive damage arising whether due to Brickworks' negligence or otherwise and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly.
- (c) no other term, condition, agreement, warranty, representation or understanding whether express or implied in any way extending to or otherwise relating to or binding upon Brickworks is made or given.
- (d) Brickworks will not be liable for any claim relating to or arising from any alleged fault or defect, whether caused or contributed to by Brickworks, the Customer or any 3rd party or otherwise.

### 5. Returns

To the extent permissible at law (including under the Australian Consumer Law) and without purporting to limit its obligations thereunder:

- (a) if Brickworks agrees to take back product it must be in as new and saleable condition and upon terms agreed and a re-stocking fee will apply.
- (b) custom made or custom processed goods or goods acquired by Brickworks specifically for the Customer will not be returnable.
- (c) any goods which are accepted by Brickworks as defective may be returned and will be replaced free of charge or be the subject of a credit for the invoiced value. "Free of charge" does not include labour, transport or material costs.

### 6. Specific Orders:

Customer specific orders may be rejected by Brickworks at its election, unless accompanied by a non-refundable deposit of at least 50% of the total order price.

### 7. Placement of Orders:

- (a) If any dispute arises concerning any order (and including any measurement, quality, quantity, identity, or authority or any telephone, facsimile, e-mail or computer generated order) the internal records of Brickworks will be conclusive evidence of what was ordered.
- (b) Each order placed will be and be deemed to be a representation made by the Customer at the time that it is solvent and able to pay all of its debts as and when they fall due.
- (c) Failure to pay in accordance with these Terms will be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in 7(b) and that the representations were unconscionable, misleading and deceptive.
- (d) When any order is placed, the Customer must inform Brickworks of any material facts which would or might reasonably affect the commercial decision by Brickworks to accept the order and/or grant credit in relation thereto. Any failure to do so will create and be deemed to create an inequality of bargaining position and will constitute and be deemed to constitute the taking of an unfair advantage of Brickworks and to be unconscionable, misleading and deceptive.

### 8. Delivery

- (a) Brickworks accepts no responsibility for delivery but may

elect to arrange delivery at its discretion and without any liability and at the Customer's costs and responsibility in all things.

- (b) Brickworks reserves the right to charge for any delivery.
- (c) The Customer will be deemed to have accepted delivery and liability for the goods immediately Brickworks notifies that they are ready for collection or when they are delivered to a carrier or to the Customer's business premises or site whether attended or not.
- (d) A document (including without limitation a consignment note) purporting to be signed by an officer(s) of Brickworks confirming delivery will be conclusive evidence of delivery as will any signed delivery docket.
- (e) Brickworks will not be liable for delay, failure or inability to deliver any goods.
- (f) Once the Customer has been notified that goods are ready for collection, the Customer agrees to pay all costs of holding or handling goods.
- (g) Frustrated Delivery: If time spent delivering exceeds 30 minutes or requires more than one attempt, the Customer agrees to pay all costs relating thereto plus a loading of 10% to cover administration costs.
- (h) Brickworks Group is not liable for damage to driveways, footpaths, drains or common property. Debris shifted onto the road(s) as a result of a delivery being made to an adjoining site.

#### **9. Variation:**

Variation or cancellation of any order, dealing or arrangement must be agreed in writing.

#### **10. Exclusions**

To the extent permissible at law (including under the Australian Consumer Law) and without purporting to limit Brickworks' obligations thereunder :

- (a) no dealing with the Customer will be or be deemed to be a sale by sample or description.
- (b) if Brickworks publishes material about its goods and prices, any part which is incompatible with these Terms is expressly
- (c) excluded.
- (d) the Customer will rely on its own knowledge and expertise in choosing any product for any purpose.
- (e) any advice or assistance given for or on behalf of Brickworks must be accepted at the Customer's risk and must not be or be deemed given as expert or adviser nor to have been relied upon.

#### **11. No misrepresentations:**

The Customer agrees not to make any misrepresentations to third parties about the goods.

#### **12. Severability:**

Any part of these Terms can be severed without affecting any other part.

#### **13. Purchase Price:**

- (a) All sales are made by Brickworks at its ruling price at the time of delivery.
- (b) All Government imposts and any GST ("Imposts") will be to
- (c) the Customer's account.
- (d) Brickworks' price lists exclude Imposts unless expressly noted thereon.

#### **14. Default:**

To the extent permissible at law (including under the Australian Consumer Law) and without purporting to limit Brickworks' obligations thereunder:

- (a) default or breach by the Customer of these Terms or in any dealings with Brickworks will entitle Brickworks to retain all monies paid, call-up all monies due or owing (whether currently due and owing or not), cease further deliveries, recover from the Customer all loss of profits and/or take immediate possession of any product, without prejudice to any other of its rights and without liability to any party;

- (b) the Customer agrees not to commence or continue or permit to be commenced or continued any action against Brickworks whilst the Customer is in default under any part of these Terms; and
- (c) if the Customer on-sells any product, the Customer agrees to pay to a stakeholder nominated by Brickworks, the cost price incurred or payable by Brickworks for the acquisition of the product for supply to the Customer (estimated at 75% of the amount invoiced to the Customer by Brickworks), before the Customer is entitled to take any step in any proceedings commenced by Brickworks for payment for that product. The Customer agrees that this clause may be pleaded as a bar to any action by the Customer until payment to the stakeholder has been made. The stakeholder nominated is authorised to invest the moneys at 30 day call with any major banking institution in Australia. The money so held to be applied in accordance with any appropriate Court determination or agreement between the parties resolving the proceedings.

#### **15. Goods and Services:**

- (a) To the extent permissible at law (including under the Australian Consumer Law) and without purporting to limit its obligations thereunder:
  - (i) Brickworks disclaims any responsibility or liability whatsoever relating to suitability for any particular purpose or process;
  - (ii) Brickworks disclaims any responsibility or liability relating to any goods:
    - A. processed or made to designs, drawings, specifications or measurements etc. or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer; and/or
    - B. utilised, stored, handled or used incorrectly or inappropriately.
- (b) The Customer agrees to check all goods prior to use alteration or any application thereof whether in relation to suitability for any particular purpose, process or otherwise.
- (c) The Customer agrees to check and test all goods for compliance with all relevant applicable standards and regulatory bodies before use, on-sale or application and to use or apply same in accordance with all applicable standards, regulations and guidelines, with all manufacturers and/or Brickworks recommendations and directions as well as with good commercial practice.
- (d) Brickworks may update, modify, make substitution or alter any of its goods or any component or raw material incorporated in or used in forming any part of any goods as part of its ongoing business.
- (e) The Customer agrees to accept current goods in substitution for any goods ordered provided they are not materially different.

#### **16. Other Terms and Conditions and Notice:**

- (a) Terms and/or conditions sought to be imposed by the Customer upon Brickworks will not apply unless agreed in writing by Brickworks.
- (b) The Customer will be deemed to have notice of any change to these Terms, immediately Brickworks adopts them.

#### **17. Recovery Costs:**

The Customer will pay (on a full indemnity basis) all costs and expenses of Brickworks, its legal advisers, mercantile agents and others acting on its behalf in respect of anything instituted or being considered as a result of any breach of these Terms or breach of any dealings with Brickworks.

#### **18. Attornment:**

To give effect to its obligations arising under these Terms (and especially clause 23) the Customer hereby irrevocably appoints any officer or manager of Brickworks from time to time, as its attorney.

#### **19. Customer Restructure:**

- (a) The Customer will notify Brickworks of any change in its

structure or management including any sale or disposition of any part of the business of the Customer, any change in director, shareholder, management, partnership or trusteeship or sale of any material part of its business ("Restructure") within 7 days of any such change.

- (b) The Customer agrees it will:
- (i) cause any new entity created by virtue of a Restructure ("New Entity") to be bound by these Terms;
  - (ii) continue to be bound by these Terms despite a Restructure and will indemnify Brickworks for any loss or damage it suffers as a result of a breach of these Terms by the New Entity.

#### **20. Jurisdiction:**

All contracts and dealings with Brickworks shall be deemed to be in the State/Territory nominated by Brickworks & the Customer agrees to submit to the jurisdiction of the appropriate Courts in or nearest Capital of that State/Territory.

#### **21. Credit Line:**

Brickworks can vary or withdraw any credit facility or limit it at any time at its discretion and without any liability to the Customer or any other party. The Customer acknowledges and agrees that credit granted by a Brickworks Group member does not entitle the Customer to trade on credit with any other Brickworks Group member. Where credit is sought from another Brickworks Group member, Brickworks may require the Customer to complete a separate Credit Application.

#### **22. Waiver:**

If Brickworks elects not to exercise any rights arising as a result of breach of these Terms it will not constitute a waiver of any rights relating to any subsequent or other breach.

#### **23. Security for Payment:**

The Customer agrees that:

- (a) despite anything to the contrary contained herein or any other rights which Brickworks may have howsoever, where the Customer is the owner of property (tangible or intangible), land, realty or any other asset capable of being charged and/or over which a security interest may be created ("Asset"), the Customer agrees, upon Brickworks' written request, to mortgage and/or charge all of their joint and/or several interest in the Asset to Brickworks to secure all amounts and other monetary obligations payable by the Customer to Brickworks;
- (b) it grants a lien to Brickworks over any of its property in the possession or control of Brickworks until Full Payment;
- (c) it will execute any documents and to do all things requested by Brickworks to register a mortgage (or such other security Brickworks requires) over any current or later acquired real property the Customer has an interest in;
- (d) it consents unconditionally to Brickworks lodging a caveat noting Brickworks' interest in any current or later acquired real property the Customer has an interest in;
- (e) any officer of Brickworks may (without limitation) sign documentation to effect the Customer's compliance with this clause 23 by virtue of the provisions of clause 18.
- (f) agrees that if it is in default of any part of these Terms, Brickworks may, in order to make good any default (in whole or in part), garnishee moneys:
  - (i) held by third parties on behalf of the Customer; and/or
  - (ii) which the Customer is entitled to payment of (whether that entitlement is past, present or future).

#### **24. Force Majeure:**

Brickworks will not be in default or breach of any dealing with the Customer as a result of Force Majeure (i.e: anything beyond Brickworks' reasonable control).

#### **25. Sampling:**

The Customer must pay for all goods provided to or ordered by the Customer as "sampling" unless otherwise agreed in writing.

#### **26. Intellectual Property:**

- (a) If Brickworks utilises any design, patent, copyright material

or other intellectual property or follows any instruction provided by or on behalf of the Customer, the Customer indemnifies Brickworks against any claim, proceeding, damages or liability for any loss, cost or expense arising as a result whether for any alleged infringement of any intellectual property or otherwise.

- (b) The Customer must not reproduce, communicate to the public or, use any material in which copyright subsists and which is owned by Brickworks without the prior written consent of Brickworks.

- (c) If the Customer breaches or permits any breach of this clause, it acknowledges Brickworks may suffer claims by third parties as a result and clause 35 will apply.

#### **27. Discounts:**

- (a) Any discount offered by Brickworks is at its complete discretion and will only be available provided the Customer is not in breach of any part of these terms nor in default in any of its dealings with Brickworks.
- (b) Unless otherwise agreed in writing, early payment discounts (if any) will be noted on the face of the relevant invoice and are subject to these Terms.

#### **28. Specifications:**

- (a) To the extent permissible at law (including under the Australian Consumer Law), any illustration drawing or specification supplied by Brickworks ("Specs") are drafts and approximates and are for illustration purposes and the Customer should not rely on the accuracy of such Specs in any way.
- (b) Any tangible or intellectual property rights in Specs remain the property of Brickworks and may be recalled at any time.
- (c) Specs are to be treated at all times as confidential and not made use of without the prior written consent of Brickworks.

#### **29. No Set-Off:**

No Set-off or counterclaim will be made or applied by the Customer until payment in full of all bona fide invoices raised by Brickworks (whether current or overdue) and this clause may be pleaded as a bar to any action taken prior to such payment in full.

#### **30. Trusts:**

The Customer agrees that these Terms binds it not only in its own capacity but also as the Trustee of every trust of which it is a trustee.

#### **31. No Merger:**

Termination of these Terms and/or dealings between the Customer and Brickworks ("Cessation") will not end those provisions of these Terms that are capable of surviving Cessation.

#### **32. Stock Discretion:**

Brickworks has a continuing discretion to allocate available stock and gives no warranty as to certainty of supply unless expressly agreed in writing in advance.

#### **33. Partial Delivery/Forward Orders:**

If the Customer places forward orders or request partial or instalment delivery, the Customer agrees:

- (a) to pay for so much of any order as is from time to time delivered by Brickworks; and
- (b) that no delay or failure to fulfil any part of any order will entitle the Customer to cancel or vary any order or delay or reduce any payment.

#### **34. Acceptable Variation:**

The Customer will accept variation in quantities at plus or minus 5% and will pay pro-rata for the actual quantity delivered.

#### **35. Indemnify:**

The Customer indemnifies Brickworks against any claim or loss arising from or related in any way to any contract or dealing between Brickworks and the Customer or anything arising therefrom or arising as a result of or subsequent to any breach of these Terms.



### 36. Insolvency:

- (a) If the Customer commits or is involved in any act of insolvency, it will be deemed in default under these Terms.
- (b) An act of insolvency includes bankruptcy, liquidation, receivership, administration or the like and failure to pay in accordance with these Terms.

### 37. Exports:

Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) are expressly excluded unless otherwise stipulated in these Terms or on Brickworks' invoice for the goods.

### 38. Quotations:

The Customer agrees:

- (a) quotations must be in writing;
- (b) Brickworks shall not be bound by any quotation if an order is placed outside the period of the quotation's validity noted thereon and in the absence of such period being noted, 14 days from the date of the quotation;
- (c) prior to receipt of any order Brickworks may amend a quote;
- (d) Brickworks shall not be bound by any quote if:
  - (i) it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and those circumstances have materially changed; or
  - (ii) the Customer is in breach of these Terms;
- (e) to pay any reasonable charges Brickworks claims for holding any goods referred to in any quote pending placement of an order.

### 39. Credit Information and Privacy Act 1988 (Cth):

- (a) The Customer and the Agent irrevocably authorise Brickworks, its servants and agents to make (subject to the requirements of the Privacy Act, the Credit Reporting Privacy Code and Brickworks' privacy policy) such enquiries as they deem necessary to investigate the credit worthiness of the Customer (and its directors if a company) and the Agent from time to time, including the making of enquiries with (without limitation) persons nominated as trade references, other entities which in Brickworks' opinion the Customer may have had dealings with, the bankers of the Customer (and its directors if a company), any credit provider or Credit Reporting Agency or Credit Reporting Bodies ("CRBs") such as Veda Advantage and Creditor Watch and including personal credit and consumer credit information and Land Data/property inquiries and name searches (hereinafter called "Sources").
- (b) The Customer (and its directors if a company) and the Agent (subject to the requirements of the Privacy Act, the Credit Reporting Privacy Code and Brickworks' privacy policy) hereby authorise the Sources to disclose to Brickworks such information concerning the Customer (and its directors if a company) and the Agent which is within their possession. The Customer (and its directors if a company) and the Agent agree that the information provided on this Credit Application concerning the Customer (and its directors if a company) and the Agent and any relevant trading information arising from any dealings between the Customer and Brickworks may (subject to the requirements of the Privacy Act, the Credit Reporting Privacy Code and Brickworks' privacy policy) be disclosed to a Credit Reporting Agency or CRB subject to Brickworks' Privacy Policy and can be obtained by writing to the Credit Manager, Brickworks Ltd, PO Box 6550 Wetherill Park, New South Wales 1851. Where Brickworks collects personal information that Brickworks is likely to disclose to a CRB please note:
  - (i) the CRB may include that information in reports provided to Brickworks to assist it to assess the Customer's creditworthiness;
  - (ii) if the Customer fails to meet payment obligations in

relation to consumer credit or commits a serious credit infringement, Brickworks may be entitled to disclose this to the CRB;

- (iii) the Customer – if an individual- may access information from Brickworks in accordance with Brickworks' privacy policy at [www.brickworks.com.au](http://www.brickworks.com.au); and
  - (iv) the Customer – if an individual - may access this information for the purpose of requesting Brickworks to correct the information and make a complaint to Brickworks; and
  - (v) other notifiable matters (as defined in the Credit Reporting Privacy Code) are posted on Brickworks' website at [www.brickworks.com.au](http://www.brickworks.com.au).
- (c) The Customer warrants to Brickworks that it has (where it is a company) obtained the consent of its directors to Brickworks carrying out the searches specified in subclause (a) and (b) above.

### 40. Silica Warning:

Always "wet" cut, saw, drill, chase etc. goods as dust from goods may contain silica and/or other material which is harmful to health. Avoid inhaling any dust to avoid the risk of respiratory impairment etc. Brickworks will provide further information on request.

### 41. Products and Services:

To the extent permissible at law (including under the Australian Consumer Law) and without purporting to limit Brickworks' obligations thereunder

- (a) Delamination, Failure etc: The Customer acknowledges and accepts all risks associated with any delamination or failure relating to any laminated, veneered, plywood and decorated goods sold which are not manufactured/produced by Brickworks.
- (b) Timber: The Customer acknowledges that Brickworks' timber goods have (inter alia) the following characteristics:
  - (i) it is a natural product and variations in colour, texture and inherent quality occur;
  - (ii) it is susceptible to exposure to the elements;
  - (iii) it is susceptible to bending, warping, crushing, swelling, delamination and fungal growth etc., if not stored or used properly;
  - (iv) it is susceptible to damage and size variations which may be caused (inter alia) by relative humidity and/or moisture content;
  - (v) it may contain or be treated with poisons and/or potentially toxic chemicals (formaldehyde, preservatives, adhesives etc.) and should be stored and worked upon in well ventilated areas with proper exhaust systems and not burned; and
  - (vii) product related dust and saw dust are inherently dangerous if inhaled and may be associated with Nasal Cancer.
- (c) Due to variations in colour and texture of materials (including without limitation, natural materials) used in manufacture, to the extent permissible at law (including under the Australian Consumer Law), no warranty, condition or guarantee is given by Brickworks that any goods and/or services will correspond (including without limitation, in glaze, colour, texture, appearance, blend or otherwise) with any sample, display or any previous goods and/services sold or displayed or any other batch of similarly described goods and/or services.

### 42. All Divisions:

- (a) The Customer agrees that these Terms will apply to all dealings between the Customer and Brickworks and any part or member of the Brickworks' Group.
- (b) While these Terms will cover all dealings the Customer will have with any member of the Brickworks' Group, any claim the Customer may have against any member of the Brickworks' Group will be limited to that member of the Brickworks' Group that supplied the goods and/or services to the Customer and the Customer agrees to limit any claim accordingly.

#### 43. Recalls:

In the event of a product recall ("**Recall**"), the Customer must give Brickworks such assistance as Brickworks reasonably requires in relation to that Recall.

#### 44. Pallets:

The Customer will return all pallets and any re-useable packaging provided with goods and indemnifies Brickworks for the full replacement cost thereof, if not returned to Brickworks promptly and in good order.

#### 45. Adverse Environments:

The Customer acknowledges and agrees that goods can be adversely affected by severe environments, temperature extremes, frost, wind borne salt or abrasives which cause flaking, eat-away glaze or finish and reduce expected operating life especially in seaside locations.

#### 46. Industry Levies etc:

The Customer must pay any industry or legally imposed levy which applies to any goods from time to time in addition to the purchase price.

#### 47. Exclusion of warranty:

To the extent permissible at law (including under the Australian Consumer Law), Brickworks is not bound by any warranty (and the Customer agrees not to make any claim against Brickworks in relation to any warranty) in respect of goods or services unless all goods and services have been paid for in full without set-off or deduction of any kind.

#### 48. Definitions:

In these Terms and Credit Application:

- (a) "**Brickworks' Group**" means jointly and severally the entities listed on page 2 of the Credit Application and any new member admitted to the Brickworks' Group from time to time by Brickworks (whether with notice or not to the Customer) and each of their subsidiaries, divisions, affiliates, associated and related entities and their successors and assigns; and
- (b) "**Credit Application**" means Brickworks Credit Application as used by Brickworks from time to time.

#### 49. Personal Property Securities Act 2009:

- (a) The Customer acknowledges that these Terms create a security interest under the Personal Property Securities Act 2009 ("**PPSA**") in favour of Brickworks in all goods supplied by Brickworks to the Customer (and all goods previously supplied by Brickworks to the Customer), and for avoidance of doubt, the proceeds of sale of those goods.
- (b) The Customer consents to Brickworks effecting a registration on the PPSA register (in any manner Brickworks considers appropriate) in relation to any security interest contemplated by these Terms (including but not limited to an interest under clause 3 in relation to retention of title) and further agrees:
  - (i) to do all things necessary and required by Brickworks to make sure that the security interest is a
  - (ii) perfected "purchase money security interest" under the
  - (iii) PPSA; and
  - (iv) not to allow any third party to acquire a security interest in the goods.
- (c) To the extent that the goods are for the Customer's business use, the Customer agrees to the extent permitted under the PPSA, that the Customer has no right:
  - (i) to receive notice of removal of an accession under the PPSA;
  - (ii) under Chapter 4 of the PPSA; or
  - (iii) under the PPSA to receive a copy of any verification statement of financing change statement under the
  - (iv) PPSA.
- (d) Without in any way limiting clause 49(c), the Customer agrees that to the extent permitted under the PPSA, the Customer hereby waives its rights under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142 and 143 of the PPSA.
- (e) Unless otherwise agreed to in writing by Brickworks, the

Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

- (f) The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (g) The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the goods without Brickworks' prior written consent.
- (h) Without limiting any other provision of these Terms, if the Customer makes a payment to Brickworks at any time whether in connection with the supply of goods or otherwise, Brickworks may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.
- (i) Everything the Customer is required to do under this clause 49 is at the Customer's expense. The Customer agrees to pay or reimburse Brickworks' costs and expenses in connection with anything Brickworks does under this clause 49.

#### 50. The Competition and Consumer Act 2010 (Cth) and Fair Trading Acts:

- (a) Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- (b) If the Customer is a consumer for the purposes of the Australian Consumer Law ("**ACL**") nothing in these Terms limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

#### 51. Limitation of Liability:

- (a) This clause 51 is subject to any contrary provisions of any applicable law (including without limitation the Australian Consumer Law, the operation of which cannot be excluded.
- (b) Except as provided in subclause (c), Brickworks' liability for a breach of these terms, a condition, warranty or a guarantee of supply or in relation to defective goods and services is limited to (at Brickworks' election):
  - (i) in the case of goods Brickworks supplies:
    - A. the replacement of the goods or the supply of equivalent goods;
    - B. the repair of the goods; or
    - C. the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - (ii) in the case of services Brickworks supplies, the supplying of the services again,and the Customer will limit any claim upon Brickworks accordingly.
- (c) If goods or services Brickworks supplies are of a kind ordinarily acquired for personal, domestic or household use or consumption, and there is a "major" failure of the goods or services to meet any consumer guarantee under the Australian Consumer Law then the Customer may choose one of the following remedies:
  - (i) in the case of goods Brickworks supplies:
    - A. ask for a refund;
    - B. return the goods and ask for an identical replacement, or one of similar value if reasonably available; or
    - C. keep the goods and ask for compensation for the drop in value caused by the problem; or
  - (ii) in the case of services Brickworks supplies:
    - A. cancel the contract and pay a reasonable amount for the work done, or seek a refund; or
    - B. for money already paid, keep the contract and negotiate a reduced price for the drop in value of the



service — this may mean asking for some of the money back the Customer has already paid.

## **52. Building and General**

The rights, powers and remedies available to Brickworks under these Terms are in addition to and are not in derogation of Brickworks' powers, rights and remedies existing at common law, or given by any law at any time in force (including but not limited to the Building and Construction Industry Security of Payment Act 2002 (Vic) and similar legislation in other states and territories of Australia).

### **Australian Consumer Law Warranty**

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

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## AGREEMENT TO GUARANTEE AND INDEMNIFY

To: **Brickworks Building Products Pty Ltd ABN 63 119 059 513** and each of its subsidiaries, divisions, affiliates, associated companies and related entities and any successors and assigns including but not limited to the Brickworks Group ("**Brickworks**").

1. **We Guarantee** payment to You of all monies (without set-off of any kind) and performance of all obligations including any past, present and future indebtedness or obligation by the Customer or any of Us arising from any past, present or future dealing with You and any GST applicable thereto.
2. **We Indemnify You** against all loss or damage arising from any past, present or future dealing You have or have had with the Customer or any of Us or arising from any breach of any part of this Agreement to Guarantee and Indemnify ("this **Guarantee**") by any of Us.
3. **We Agree:**
  - a) to pay to a stake-holder nominated by You the amount You certify is payable, before being entitled to dispute whether that amount is payable;
  - b) this **Guarantee** shall be effective despite any conduct or event (including any later agreement to guarantee or indemnify and any other security taken or any Deed of Company Arrangement whether or not You agreed) which may have released or varied any obligation of the Customer or any of Us;
  - c) any payment by the Customer or Us which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid;
  - d) that We sign both in our personal capacity and as Trustee of every trust of which We are trustee;
  - e) to notify You within 7 days, of any change in the Customer's structure, management or position, including any sale or disposition of any part of the business of the Customer, any change in director, shareholder, management, partnership or trusteeship, any new charge, mortgage or security given to any party by the Customer and any involvement in any franchise or licensed business in any capacity;
  - f) You may make any arrangement or compromise with any of Us, obtain additional guarantees, indemnities or securities from any of Us or any other party or release or compromise with any of Us or any other party and any amount may be extinguished or compromised without affecting our liability to You;
  - g) to not recover (or seek to recover) any money from the Customer until You are fully paid;
  - h) this **Guarantee** is a continuing guarantee and indemnity and it continues until You have given Us a written release from this guarantee and indemnity; and
  - i) that a release of any security by You does not preclude and will not be a barrier to You seeking or registering any other security (including security that is the same or similar to that released) and for the avoidance of doubt, a withdrawal of a caveat does not preclude or prevent You registering another caveat over the same property.
4. **We hereby:**
  - a) agree despite anything to the contrary contained herein or any other rights which You may have howsoever, where We (jointly or severally) are the owner of land, realty or any other asset capable of being charged and/or over which a security interest may be created ("**Asset**"), We agree, upon Your written request, to mortgage and/or charge all of our joint and/or several interest in the **Asset** to You to secure all amounts and other monetary obligations payable by the Customer to You;
  - b) agree to execute any documents and to do all things requested by You to register a mortgage (or such other security You require) over any current or later acquired real property any of Us have an interest in;
  - c) consent unconditionally to You lodging a caveat noting Your interest in any current or later acquired real property any of Us have an interest in; and
  - d) agree that You may (without limitation) exercise Your rights under clause 15 to effect compliance with this clause where We fail to do so.
5. **Consideration:** We enter into this **Guarantee** in consideration of You agreeing to grant credit at Your discretion to the Customer and/or to forbear from taking any legal action against the Customer for one month.
6. **Proper Law:** This agreement and any claim or dispute between You, the Customer or any of Us shall be governed by the law of the State/Territory nominated by You & the Customer & Us agree to submit to the jurisdiction of the appropriate Courts in or nearest the Capital of that State/Territory.
7. **Signatures:**
  - a) If more than one of Us is intended to sign, We each agree to be liable for the full amount owed, even if We are the only one to sign.
  - b) Neither You nor the Customer is required to sign this **Guarantee**. It is a separate obligation of each of Us.
8. **Credit Limit:** We agree that any credit limit You grant or apply to the Customer is at Your discretion and will not limit our liability to You.
9. **Privacy Act 1988 (Cth):** Subject to the requirements of the Privacy Act, the Privacy Reporting Code and Your Privacy Policy:
  - a) You may make any enquiries You deem necessary to investigate Us including enquiry with our bankers, any credit provider or credit reporter and any personal credit and consumer credit information, ("**Sources**").
  - b) We authorise the **Sources** to disclose anything about Us which is in their possession. We agree that You may disclose information You have about Us to the **Sources**.
10. **Severability:** Any part of anything herein shall be severable without affecting any other part hereof.
11. **Acknowledgment:** We acknowledge and agree that Our liability under this **Guarantee** is unlimited.
12. **Definitions:**
  - a) "**You**" means Brickworks;
  - b) "**We**" and "**Us**" means jointly and severally, each of the persons and entities listed as guarantors in Part A of the Schedule to this **Guarantee**;
  - c) "**Customer**" means each of the parties listed in Part C of the Schedule to this **Guarantee** jointly and severally and any party who acquires and/or conducts any part of the business of the Customer or has any beneficial interest therein until notice is given pursuant to clause 3.e) and also each member of any franchise/licensed network of which the Customer is a member;)
  - d) "**Credit Application**" means the Brickworks Credit Application to which this **Guarantee** is included; and
  - e) "**Brickworks Group**" means jointly and severally the entities listed on page 2 of the Credit Application to which this **Guarantee** is included and any new member admitted to the Brickworks' Group from time to time (whether with notice or not to the Customer or Guarantors) and each of their subsidiaries, divisions, affiliates, associated and related entities and their successors and assigns.
13. **Demand:** We agree that our liability to You arises without any demand upon the Customer or any of Us.
14. **Stamp Duty:** We agree to pay any stamp duty applicable to this **Guarantee** or any charge or security created pursuant to clause 4 or otherwise.
15. **Attornment:** To give effect to all obligations arising under this **Guarantee**, We irrevocably appoint any officer or manager of You from time to time, as our attorney.
16. **Other Guarantees:** We will provide details of all guarantees and/or indemnities We have given or subsequently give to any party which You ought reasonably to have knowledge of, in dealing with the Customer in reliance (in part or in full) upon this **Guarantee**.
17. **Read and Understood:** We have each read and understood this document before signing and accepting it. (\*refer below).
18. **Dating:** This **Guarantee** is made on the last "date signed" in Part A of the Schedule to this **Guarantee** except if any of Us fail to note the date We signed, then the date inserted in the **Guarantee** by You at Part B of the Schedule will be the date of the **Guarantee**.
19. **Personal Property Securities Act 2009 ("PPSA"):**
  - a) If You determine that this **Guarantee** (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, We agree to do anything (such as

obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which You ask and consider necessary for the purposes of:

- (i) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (ii) enabling You to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by You; and

(iii) enabling You to exercise Your rights in connection with the security interest.

- b) Everything We are required to do under this clause 19 is at our expense. We agree to pay or reimburse Your costs and expenses in connection with anything You do under this clause 19.
- c) You need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

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**EXECUTED AS A DEED POLL BY THE GUARANTORS NAMED IN PART A OF THE SCHEDULE BELOW:  
SCHEDULE TO AGREEMENT TO GUARANTEE AND INDEMNIFY**

**Part A: GUARANTORS:**

1. ..... of ..... <i>(Print name of 1<sup>st</sup> Guarantor)</i> <i>(Address of 1<sup>st</sup> Guarantor)</i>	
Email Address: .....	
Signature of 1 <sup>st</sup> Guarantor and dating:	..... <i>(signature of 1<sup>st</sup> Guarantor)</i> <i>(date signed)</i>
Witness Signature:  Witness Name (print):	Witness Address:

  

2. ..... of ..... <i>(Print name of 2<sup>nd</sup> Guarantor)</i> <i>(Address of 2<sup>nd</sup> Guarantor)</i>	
Email Address: .....	
Signature of 2 <sup>nd</sup> Guarantor and dating:	..... <i>(signature of 2<sup>nd</sup> Guarantor)</i> <i>(date signed)</i>
Witness Signature:  Witness Name (print):	Witness Address:

  

3. ..... of ..... <i>(Print name of 3<sup>rd</sup> Guarantor)</i> <i>(Address of 3<sup>rd</sup> Guarantor)</i>	
Email Address: .....	
Signature of 3 <sup>rd</sup> Guarantor and dating:	..... <i>(signature of 3<sup>rd</sup> Guarantor)</i> <i>(date signed)</i>
Witness Signature:  Witness Name (print):	Witness Address:

**EXECUTED BY:** ....., ACN .....  
*(Insert Company Name)* *(Print ACN)*

In accordance with section 127(1) of the Corporations Act 2001, on .....  
*(Print Date)*

\_\_\_\_\_  
*Signature of director*

\_\_\_\_\_  
*Signature of company secretary/director*

\_\_\_\_\_  
*Full name of director*

\_\_\_\_\_  
*Full name of company secretary/director*

**\*IMPORTANT NOTICE: If you sign this Agreement to Guarantee and indemnify you may be required to pay someone else's debts. You should ensure that you read and understand its terms. If necessary, seek independent professional advice.**

**Part B: DATING BY BRICKWORKS:**

DATED in acceptance by Brickworks on ...../...../..... by:  
 .....  
*(Print name and position)*

**Part C: CUSTOMER'S DETAILS:**

Customer: ..... ACN/ABN .....