

## TERMS OF CREDIT

For the purposes of this Credit Application, **W&B** means Wilson & Bradley Pty Ltd (ABN 56 630 675 375), and its associated or related entities, and **Applicant** means the business set out in the "Applicant Details" on page 1 of this Credit Application. The Applicant acknowledges and agrees that the goods supplied by W&B to the Applicant (including inventory) (**Goods**) and/or credit are provided pursuant to this Credit Application, the Terms of Credit set out below (**Terms of Credit**), Deed of Guarantee & Indemnity set out below and the Terms & Conditions of Trading attached to this Credit Application and any order and order confirmation thereunder (collectively, the **Contract**).

1. All persons signing this Credit Application acknowledge that the terms Contract cover each and every and all supply of Goods from W&B to the Applicant and constitutes a security agreement for the purposes of the *Personal Properties Securities Act 2009* (Cth) (**PPSA**) and that a security interest may arise in respect of the Goods.
2. *Application*; The Applicant agrees that W&B may obtain or receive information relating to credit worthiness (including credit standing/credit history and credit capacity), from a credit provider or reporting body (**CRB**) and W&B may also provide such information to other credit providers or CRBs in accordance with the Privacy Act 1988 (Cth) and Privacy (Credit Reporting) Code 2014. The Applicant also consents to W&B being given a credit report in respect of the Applicant to collect overdue payment on commercial credit.
3. *Orders*; The Applicant is liable to pay for all Goods received under a written or verbal order which is accepted by W&B. The Applicant acknowledges that any person who submits an order to W&B, has done so with the authority of the Applicant and the Applicant is liable to pay for all Goods received under such orders.
4. All persons signing the this Credit Application, represent and warrant that all information provided in this Credit Application is true and correct, that they are duly authorised to sign this Credit Application on behalf of the Applicant and acknowledge that W&B will rely upon and may be induced to grant credit and/or deal with the Applicant on that basis.
5. *Payment*; The Applicant shall pay W&B within 30 days of the end of month in which the Goods and Services are supplied or as otherwise notified by W&B. If the Applicant does not make payment within the specified period, then:
  - [a] the Applicant shall pay interest on the outstanding amount from the date payment becomes due until the date payment is made at 12% per annum, calculated monthly from the date payment becomes due and/or other agreed extension of such date until payment in full;
  - [b] W&B shall be entitled to recover from the Applicant all costs on a full indemnity basis (including costs of debt collectors and legal costs) incurred in recovering any debt from the Applicant;
  - [c] W&B shall have the right to suspend supply of any Goods until payment is made in full;
  - [d] W&B may terminate this Credit Application and any Contract by immediate notice in writing.
6. Where the person signing on behalf of the Applicant uses or authorises the use of his or her signature (**Signature**) in whatever form, including approving an authorised person to apply his or her Signature to this Credit Application or leaving an authorised person with his or her email address to provide authorisation to W&B, the person acknowledges and agrees that he/she:
  - [a] has full knowledge of this Credit Application and all material circumstances related to or as stated in the Credit Application, the Contract or any other agreement between the parties;
  - [b] has provided the requisite authority and consent in whatever form for the use of his or her Signature for the express purposes of this Credit Application, the Contract and any other agreement between the parties; and
  - [c] acknowledges that W&B has relied upon that Signature as having been duly signed with full and complete authority (express, implied or ostensible) by the person; and
  - [d] understands the nature and effect of the Credit Application, the Contract and any other agreement between the parties.
7. Credit will not be provided until the Applicant completes and signs this Credit Application, provides a copy of the Credit Application to W&B and W&B gives confirmation that it agrees to provide credit to the Applicant on the terms of the Credit Application.
8. *Applicant Trading through Trust*
  - [a] The Applicant agrees that it will be liable personally for the performance and observance of every term or covenant to be observed and performed by the Applicant, whether express or implied.
  - [b] The Applicant warrants that it has complete, valid and unfettered power to enter into the Credit Application and the Contract pursuant to the provisions of a trust where applicable and warrants that the Applicant enters into the due administration of the trust.
  - [c] The Applicant covenants it has an unrestricted and unlimited right of indemnity against the property of the trust.
  - [d] The Applicant warrants that all information provided to W&B is true and correct and acknowledges that W&B has relied on and has been induced on this basis to grant credit and/or deal with the Applicant.
  - [e] The Applicant indemnifies and will keep W&B indemnified against all loss incurred by W&B as a result of the failure to disclose the existence of any trust or trustee relationship, including any loss incurred as a result of registering a PPSA registration against the wrong entity or with the wrong identifiers.
9. *General*
  - [a] The Applicant will notify W&B in writing of any change in its structure or management including any change in director, shareholder or management or change in partnership or trusteeship and of sale of any part of its business within 5 days of any such change or sale.
  - [b] These Terms are governed by the laws of the State of Victoria. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia.
  - [c] This Agreement contains the entire agreement between the parties for the provision of credit and no other agreements, representations, warranties, promises or understandings express or implied will bind the parties or form part of the terms of this Credit Application.
  - [d] The Applicant shall not set off against any amounts due from W&B to the Applicant.
  - [e] Any waiver by W&B or any breach of this Credit Application by the Applicant will not be treated as waiving any subsequent breach of the same or any other provision.
  - [f] This Credit Application is binding on all heirs, successors and assigns of each party.

- [g] A waiver of any right or power under this Credit Application will only be valid if given in writing by the party granting the waiver.
- [h] If any provision of this Credit Application is found to be invalid or unenforceable, then the validity of such provision shall not affect the other provisions of this Credit Application and all provisions not affected by such invalidity shall remain in full force and effect.
- [i] Any variation of this Credit Application shall be made in writing signed by the parties.
- [j] Either party may send a notice or other communication in connection with this Credit Application by hand delivery, prepaid post, facsimile transmission or by electronic mail to the other party at the details set out above or in such other way as the other party may have last notified in writing. A notice or other communication is taken to have been given when (unless otherwise proved) **delivered personally**, at the time it is delivered to the party; sent by **prepaid post** to the address of the addressee specified in this Credit Application on the second business day after posting; sent by **fax** to the fax number of the addressee with acknowledgment of receipt from the fax machine of the addressee before 4pm on a business day at the place of receipt, on the day it is sent and otherwise on the next business day at the place of receipt; or sent by **email** to the email address of the addressee or such other email address notified as being the email address to use for the purposes of this clause where the email is sent during a business hour on a business day, upon the return of a receipt which confirms successful transmission of the

email to the email address of the recipient or, where no return receipt is produced by the recipient's email system, by the end of the last business hour on the day the email was sent; or where the email is sent after the end of the last business hour on a business day or on a non-business day, the email will be deemed to be received at the beginning of the first business hour on the next business day.

10. *By signing this Credit Application, the Applicant:*

- [a] acknowledges receipt of a copy of this Credit Application and upon written notice from W&B stating that credit facilities have been provided, agree to observe and be bound by this Credit Application;
- [b] acknowledges receipt of a copy of the Contract and acknowledges that all Goods provided are on the basis of the terms set out in those documents;
- [c] agrees that the terms of the Contract apply to the provision of Goods and all credit provided to it by W&B and that the terms of the Contract prevail over any terms and conditions of the Applicant;
- [d] acknowledges that the terms of the Credit Application replace any prior terms agreed between the parties and will apply to any credit arrangements already operating between the Applicant and W&B;
- [e] agrees that payment for credit accounts must be made in accordance with the Contract; and
- [g] acknowledges that a representative of the Applicant may be required to sign a Deed of Guarantee, Indemnity and Charge as a precondition for the provision of credit.

## EXECUTION SECTION

I/We agree that W&B may, in respect of the Applicant or any Guarantor, obtain any information from a credit provider or CRB about my/our credit worthiness, credit standing, credit history and credit capacity that CRB or credit providers are allowed to give or receive from each other under the Privacy Act 1988 (Cth) and Privacy (Credit Reporting ) Code 2014, including for the avoidance of doubt any commercial credit information. A copy of the W&B privacy policy can be found here <https://www.wilbrad.com.au/privacy-policy>.

The Applicant requests W&B open an account in accordance with all Credit Application between the Applicant and W&B and the Applicant agrees to be bound by the terms of the Credit Application.

The Applicant and the signatory to this Credit Application warrant that the information provided in this Credit Application is true and correct and has been relied upon by W&B to grant the Applicant credit and that the signatory has full authority to complete and sign this Credit Application on behalf of the Applicant.

Please note all directors, partners, or (if applicable) the sole trader must sign this Credit Application before credit is granted or extended.

FULL NAME:		FULL NAME:	
POSITION:		POSITION:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

FULL NAME:		FULL NAME:	
POSITION:		POSITION:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

## NATIONAL CREDIT CODE DECLARATION

I/We declare that the credit to be provided to me/us by W&B in connection with this Credit Application 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 the 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 for and on behalf of Applicant:

Signature		Date	
Full Name		Position	

## DEED OF GUARANTEE AND INDEMNITY

Applicant: means the applicant stated in the Credit Application set out above.

Background

A

Each person signing this Deed of Guarantee and Indemnity (**Guarantee**) as "guarantor" (collectively, the Guarantor) has requested that Wilson & Bradley Pty Ltd (**W&B**) (ABN 56 630 675 375) supply the Applicant with Goods under the terms of the Contract.

B The term W&B includes its successors and assigns, and the terms "Applicant" and "Guarantor" include their respective executors, administrators, and successors.

C In providing the Goods to the Applicant, W&B has relied on the Guarantor's undertakings and commitments in entering this Deed.

D Each person warrants that they have read and understood the Guarantee and agrees to be bound by its terms as set out below.

Terms

1. The Guarantor:

- guarantees the due and punctual payment of all money presently owing or that in the future may be owing by the Applicant under the Contract, including but not limited to any payment for Goods supplied, interest, debt collection related expenses incurred by W&B (**Guaranteed Money**);
- as a separate severable and additional covenant and obligation, indemnifies and will keep W&B indemnified from and against all losses, costs, charges and expenses whatsoever that W&B may suffer or incur in relation to the supply of Goods to the Applicant (including any loss incurred as a result of W&B registering a PPS registration against the wrong entity or with the wrong identifiers);
- agrees that the above guarantee and indemnity are continuing, and that neither will be discharged or deemed to be discharged in any way by any payment to W&B other than the payment in full of the whole of the guaranteed money;
- is liable to W&B as a principal and primary debtor for the payment of the Guaranteed Money; and
- The Guarantor's liability under this Guarantee and Indemnity is as an indemnifier or principal debtor and W&B's rights under this Guarantee and Indemnity are not

affected by anything which might otherwise affect them at law or in equity.

- The Guarantor freely charges all of its real and personal assets and agrees to execute on demand, a mortgage in registrable form in favour of W&B as mortgagee over all or any part of the Guarantor's real estate as W&B may require, including W&B placing a caveat on the title to any real estate the Guarantor(s) owns in respect of the grant of such mortgage.
- The Guarantor irrevocably appoints W&B as its attorney for the purpose of doing either in its own name or in its capacity as attorney all such acts, matters and things as W&B may consider necessary or expedient for the purpose of effecting all the powers and authorities contained in this Deed.
- The Guarantor understands that they are personally liable for payment of the Guaranteed Money.
- The Guarantor agrees to W&B obtaining from a credit reporting agency or CRB, a credit report containing information about the Guarantor for the purpose of assessing whether the Guarantor is acceptable to W&B and agrees that in so doing that W&B complies with the *Privacy Act 1988* (Cth).
- The Guarantor declares that:
  - it will make payments to W&B upon demand;
  - for the purpose of securing payment to W&B of the obligations and indebtedness and despite anything to the contrary contained in this Deed or any other rights which W&B may have, where the Guarantor is the owner of land, realty or any other asset capable of being charged, the Guarantor agrees to mortgage, charge or grant a security interest (as defined in the *Personal Property Securities Act 2009* (Cth) (PPSA)) in their joint or several interest in any asset or personal property to W&B to secure all amounts and any other monetary obligation payable under this Deed;
  - to the extent permitted by the PPSA, the Guarantor:
    - contracts out of the provisions of the PPSA which, under s115(1) and s157 of the PPSA, it is permitted to contract out of;

- (ii) waives its right to receive from W&B each notice or document which it is permitted to waive under s144 of the PPSA; and
  - (iii) waives its right to receive anything from W&B under s175 of the PPSA and agrees not to make any request of another company under that section;
  - (d) the Guarantor shall pay the costs, fees, charges and expenses including legal costs on a solicitor and own client basis incurred by W&B pursuant and incidental to this Deed or any matter arising out of or incidental to this Deed or the performance or failure to perform by the Guarantor of the covenants contained in this Deed;
  - (e) the Guarantor understands the nature and effect of the Guarantee and that the Guarantor has had the opportunity of obtaining independent legal advice before signing this Guarantee.
7. The singular includes the plural and if there is more than one Guarantor, their obligations are joint and several.
8. This Deed will be governed by the laws of the State of Victoria and that any proceedings to be taken by W&B may be taken in the courts of the State of Victoria.
9. The Guarantor consent to this Deed being produced, signed and retained solely in an electronic form.
10. Where the Guarantor uses or authorises the use of their signature in whatever form (such as electronically or via a password using the W&B online portal), including approving an authorised person to apply the Guarantor’s signature to a document, or leaving an authorised person with the Guarantor’s email address or password to provide authorisation to W&B , the Guarantor acknowledges and agrees that it:
- (a) has full knowledge, and understands the nature and effect, of all of the Credit Application, including the Terms of Credit, and all material circumstances related to or as stated in the Credit Application, any Contract and all other agreements between the Applicant and W&B;
  - (b) has provided the requisite authority and consent for the use of their signature or email address or password; and
  - (c) acknowledges that W&B will rely on any signature or email or password as having been used or applied with full and complete authority (express, implied, or ostensible).
11. Legal Advice;
- a) I/WE have either:
    - 1. Sought advice if necessary, as to the purport, effect, and consequences of and obligations created by this Deed of Guarantee and Indemnity from a solicitor or barrister independent of W&B; or
    - 2. Having had the opportunity to seek such advice, determined such advice was not necessary and the I/WE understand the effect and consequences of and obligations created by this Deed of Guarantee and Indemnity before executing the Deed of Guarantee and Indemnity; and
  - b) I/WE enter into this Deed of Guarantee and Indemnity freely after considering such advice or electing not to obtain such advice.

DATE this \_\_\_\_\_ day of \_\_\_\_\_ year \_\_\_\_\_

**EXECUTED AS A DEED BY:**

**If signed by an Individual**

If more spaces are required for a complete listing of Guarantors – please attach a separate sheet of paper with signed details

..... Signature of <u>Guarantor</u>	..... Full name of <u>Guarantor</u> (BLOCK LETTERS)
..... Signature of <u>Witness</u>	..... Full name of <u>Witness</u> (BLOCK LETTERS)
..... Signature of <u>Guarantor</u>	..... Full name of <u>Guarantor</u> (BLOCK LETTERS)
..... Signature of <u>Witness</u>	..... Full name of <u>Witness</u> (BLOCK LETTERS)

**If signed by a Company**

Executed as a deed in accordance with section 127 of Corporations Action 2001 (Cth)

..... Signature of <u>Director/Secretary</u>	..... Full name of <u>Director/Secretary</u> (BLOCK LETTERS)
..... Signature of <u>Witness</u>	..... Full name of <u>Witness</u> (BLOCK LETTERS)
..... Signature of <u>Director/Secretary</u>	..... Full name of <u>Director/Secretary</u> (BLOCK LETTERS)
..... Signature of <u>Witness</u>	..... Full name of <u>Witness</u> (BLOCK LETTERS)