

**Section 7 – Guarantee, Indemnity & Charge****Name of Credit Applicant:****ABN / ACN:**

In consideration of the Supplier agreeing to supply or continuing to supply goods and services on credit to the Customer named below and forbearing to sue the Customer (except where provided for by any statutory provision) for any payment currently due to the Supplier, each guarantor named below (the "Guarantor") unconditionally and irrevocably guarantees on demand to the Supplier the due and punctual payment of all debts and monetary liabilities, including without limitation, costs and expenses which are, or which may become, payable by the Customer to the Supplier or any related body corporate on any account and in any capacity (the "Guaranteed Moneys") and, as a separate and independent obligation, agrees to indemnify and keep the Supplier and any related body corporate indemnified from and against any claim, action, loss, damage, liability, cost, expense, outgoing or payment suffered, paid or incurred by the Supplier or such related body corporate in relation to the non payment or non recovery of the Guaranteed Moneys or as a result of any breach by the Customer of the Supplier's Conditions of Sale. The Guarantor hereby agrees with the Supplier that:

- 1) this guarantee, indemnity & charge (the 'Guarantee') shall be a continuing obligation of the Guarantor and that the Guarantor's obligations under this Guarantee are principal obligations and are not released, discharged or otherwise affected by anything which but for this provision might have that effect, including but not limited to:
  - a) any other guarantee or any security or instrument which the Supplier or any related body corporate may hold in respect of any Guaranteed Moneys or any judgement obtained by the Supplier or any related body corporate, or any release, discharge, surrender or modification of, or dealing with, any such guarantee, security, instrument or judgement;
  - b) any arrangement with, or release of, the Customer or any other guarantor or person by the Supplier or any related body corporate or by operation of law;
  - c) the fact that any of the Guaranteed Moneys are irrecoverable for any reason;
  - d) any change in the membership of or termination of any partnership or firm of which the Customer or Guarantor is a member or the death, liquidation or bankruptcy of the Customer or the assent of the Supplier or any related body corporate to any composition, arrangement or scheme in respect of the Customer or the acceptance by the Supplier or any related body corporate of any dividend or sum of money thereunder;
  - e) the failure of any other person named as a party to execute this Guarantee;
  - f) any variation of the terms upon which the goods and/or services are supplied to, or paid for by, the Customer;
  - g) any claim the Customer may have against the Supplier or any related body corporate;
  - h) any act or omission by the Supplier or any related body corporate which may result in prejudice to the Guarantor;
  - i) an increase in the amount of Guaranteed Moneys;
  - j) the fact that any credit was provided by the Supplier or any related body corporate before this Guarantee was signed;
  - k) payment to the Supplier or any related body corporate by any person which is later avoided by the application of any statutory provision;
  - l) the death, liquidation or bankruptcy of the Customer or the Guarantor;
  - m) the granting of any time, waiver, credit, any indulgence, concession to, composition with, release or discharge by novation of any person whatsoever by the Supplier or any related body corporate;
  - n) the assignment, novation, transfer or assumption of, or other dealing with, any rights or obligations under this Guarantee or any other document or agreement;
  - o) any other act, omission, matter or thing whatsoever.
- 2) until the Supplier has received all of the Guaranteed Moneys, the Guarantor agrees:
  - a) in the event of any bankruptcy or other administration of the Customer's estate or any winding up or scheme of arrangement of the Customer, that the Guarantor will not without the prior consent of the Supplier lodge any proof of debt or similar claim in respect of any debt or liability to the Guarantor on any account whatsoever, nor enforce any security held by the Guarantor in respect of the Customer and shall hold any such debt, liability or security and any rights or benefits in respect thereof on trust for the Supplier;
  - b) if requested by the Supplier, to lodge a proof of debt or similar claim in any such administration and enforce any such security and to execute all such documents and do all such things as the Supplier may require to enable the Supplier to have and receive the benefit of or arising from any such proof, claim or security;
  - c) not to attempt or purport to be subrogated to the Supplier; and
  - d) the Guarantor's liability under this Guarantee shall be that of principal debtor.
- 3) the Guarantor irrevocably appoints the Supplier as the Guarantor's attorney with authority to do on behalf of the Guarantor anything the Guarantor may lawfully authorise an attorney to do, including without limitation the following:
  - a) to make, sign, execute, seal and deliver any document; and
  - b) to take possession of, use, sell or otherwise dispose of any asset of the Guarantor.
- 4) the Guarantor further agrees that:
  - a) the Guarantor has signed this Guarantee voluntarily;
  - b) before entering this Guarantee, the Guarantor was advised by the Supplier to consult and receive advice as to the purport, effect and consequences of, and obligations created by, this Guarantee from a legal adviser independent of the Supplier;
  - c) the Guarantor understands the nature and effect of this Guarantee - in particular that the Guarantor has agreed to guarantee all amounts presently owed by the Customer to the Supplier and any related body corporate and all amounts that the Customer may in the future owe to the Supplier and any related body corporate and has also agreed, as a separate and independent obligation, to provide an indemnity to the Supplier and any related body corporate if any of the Guaranteed Moneys is not paid to, or recovered by, the Supplier; and
  - d) it has not entered into this Guarantee in reliance on any representation, warranty, promise or statement of the Supplier or any person on behalf of the Supplier or any related body corporate.
- 5) the Guarantor agrees that a certificate issued by the Supplier stating any moneys owed by the Customer or Guarantor to the Supplier or any related body corporate or under this Guarantee shall be conclusive evidence of such amounts owing by the Customer and Guarantor.

- 6) the Supplier may give the Customer more credit than the Customer has asked for in this application. The Supplier is not required to inform the Guarantor of the amount of credit given to the Customer at any time.
- 7) no payment shall operate to discharge or reduce a liability of the Guarantor if such payment is or becomes voidable under any law relating to bankruptcy or the winding up of companies, and no discharge or release consequent upon such payment shall discharge the liability of the Guarantor under this Guarantee.
- 8) where any provision of or application of any provision of this Guarantee is rendered ineffective by operation of law in any jurisdiction that shall not affect the validity, legality, enforceability or effectiveness of the remaining provisions or of that provision in any jurisdiction other than the jurisdiction where the provision is rendered ineffective.
- 9) the guarantee and indemnity contained in this Guarantee are separate and independent obligations of the Guarantor and neither limits the generality of the other.
- 10) to secure payment of the Guaranteed Moneys the Guarantor hereby charges with due payment of the Guaranteed Moneys all of the Guarantor's present and future interests in real property and the Guarantor consents to the Supplier lodging a caveat or caveats to note such interests. Upon demand by the Supplier the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure payment of the Guaranteed Moneys. The Guarantor hereby and by way of security irrevocably appoints every officer and legal practitioner of the Supplier jointly and each of them severally as the Guarantor's lawful attorney ("attorney") with the power and for the purpose of executing (including as a deed) a mortgage or other instrument of security in any form determined in the absolute discretion of the attorney over any real property of the Guarantor to secure the Guaranteed Moneys, if the Guarantor fails within a reasonable time of such demand to execute such mortgage or other instrument, and to procure the registration of such mortgage or other security. Where the Guarantor is a trustee of a trust the Guarantor is bound by this Guarantee and charges the Guarantor's land as trustee and warrants that it is a proper exercise of the Guarantor's authority and power under the trust instrument and at law to enter into this Guarantee.
- 11) all payments which the Guarantor is required to make under this Guarantee must be made without any set-off, counterclaim, condition or deduction and are payable on demand by the Supplier.
- 12) any demand or notice may be served on the Guarantor by delivering it to the Guarantor personally or by sending it by post to the Guarantor's last address.
- 13) the Guarantor must fully indemnify the Supplier for all expenses and legal costs that the Supplier incurs in enforcing this Guarantee.
- 14) the Guarantor must pay all taxes, duties, fees, costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration and discharge of this Guarantee. The Guarantor agrees to pay the GST inclusive amount of any taxable supply made under or in connection with this Guarantee.
- 15) in this Guarantee, 'Guarantor' means the Guarantor jointly and each person who is a Guarantor severally and their respective successors and assigns, and "Agreement" means all current and future supply agreements or arrangements.
- 16) in this Guarantee 'related body corporate' has the meaning in the Corporations Act and includes FNW Industries Pty Ltd t/as Fencing North West & FNW ABN 22 612 987 210, Bayfoyle Pty Ltd ACN 001 283 558 and all / any of its subsidiaries and associated companies including those under the 'Burgess Group Australia' (BGA) banner.
- 17) in this Guarantee, the following rules of interpretation apply unless the context otherwise requires:
  - a) words denoting the singular number include the plural (and vice versa);
  - b) words denoting natural persons include bodies corporate and unincorporate and their permitted assigns (and vice versa); and
  - c) references to any party to this Guarantee or any other agreement or instrument include the party's successors and permitted assigns.
- 18) This Guarantee is governed by the laws of the State or Territory in which it is executed and the Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts of that State or Territory.

Executed as an agreement

**GUARANTOR'S CONSENT**

- I/We have each read and agree to all parts and comments in this Credit Account Application.

#### **SIGNATURE OF GUARANTORS**

All company directors where the Customer is a company, all trustees where the Customer is a trust, all partners where the customer is a partnership must give this guarantee, indemnity and charge.

*Continues on following page...*

**Section 7 – Guarantee, Indemnity & Charge (Continued...)**

GUARANTOR 1	WITNESS
Signature	Signature
Name	Name
Position	Address
Date	Date

GUARANTOR 2	WITNESS
Signature	Signature
Name	Name
Position	Address
Date	Date

GUARANTOR 3	WITNESS
Signature	Signature
Name	Name
Position	Address
Date	Date

GUARANTOR 4	WITNESS
Signature	Signature
Name	Name
Position	Address
Date	Date

**THIS GUARANTEE SHOULD BE WITNESSED BY AN INDEPENDENT THIRD PARTY**

**IF YOU DO NOT UNDERSTAND YOUR LIABILITY UNDER THIS GUARANTEE  
YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE PRIOR TO SIGNING**

*END OF DIRECTORS GUARANTEE*