

POST TO:

PO Box 102, Murwillumbah NSW 2484

(02) 6672 9800

ar@wgau.com.au

http://www.williamsgroupaustralia.com.au

APPLICATION FOR COMMERCIAL CREDIT

Office Use Only:

Salesperson: _____ No. _____

Received by: Store/hand Fax Post Email

PLEASE RETURN ORIGINAL APPLICATION TO HEAD OFFICE

The Customer described in this document (**Customer, you**) applies to Williams Group Australia Pty Ltd (ACN 128 744 990) (**Supplier, we, us**) to supply Goods and Services on credit on the terms set out in this document.

Please ensure you have completed all parts of this document before you submit your application. **A failure to complete any part of this document, or to sign this document, may result in delays in processing your application or its rejection.**

Customer Details

Operating Structure:	<input type="checkbox"/> Sole Trader	<input type="checkbox"/> Partnership	<input type="checkbox"/> Private Co.	<input type="checkbox"/> Public Co.	<input type="checkbox"/> Trust	<input type="checkbox"/> Other
Name of Entity / Trustee:						
Trading Name (if any):						
ACN (if applicable):			ABN:			
Business Address:						
Postal Address:						
Business Telephone:						
Business Email Address:						
Date Business Commenced:			Nature of Business:			
Purchasing Contact:			Telephone No.:			
Email Address:						
Accounts Payable Contact:			Telephone No.:			
Email Address:						

Details of Sole Trader / Directors / Partners

Full Name:			Date of Birth:		
Mobile No.:			Driver's Licence No.:		
Email Address:					
Residential Address:					
Full Name:			Date of Birth:		
Mobile No.:			Driver's Licence No.:		
Email Address:					
Residential Address:					

Please attach a list if there are additional partners or directors.

Credit Details

Estimated Monthly Spend:	\$	Credit Limit Requested:	\$
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Trade References

Business Name:		Telephone No.:	
Contact Person:			
Email Address:			

Business Name:		Telephone No.:	
Contact Person:			
Email Address:			

Business Name:		Telephone No.:	
Contact Person:			
Email Address:			

Declaration and Execution

Each signatory to this Application for Commercial Credit warrants that they, on behalf of the Customer:

- need only sign this application if they are seeking to trade on credit terms;
- have read, understand, and agree to the **Privacy Statement**;
- have read, understand, and agree to the **Credit Facility Terms**;
- have read, understand, and agree to the **Terms of Trade**, which are available upon request by email to ar@wgau.com.au;
- understand that if the Customer is a company that the establishment of a credit facility may be conditional upon the Customer's directors each executing the **Deed of Guarantee and Indemnity**; and
- have had the opportunity to obtain independent legal advice prior to signing this application and have either obtained that advice or chosen not to obtain it.

Declaration of Purpose for Which Credit is Sought

I/We declare that the credit sought by the Customer from the Supplier is to be applied wholly or predominantly for business purposes or investment purposes other than investment in residential property.

IMPORTANT

You should **only** sign this declaration if this credit is wholly or predominantly for business purposes or investment purposes other than investment in residential property.
By signing this declaration you may **lose** your protection under the National Credit Code

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

**WARNING: THIS IS AN IMPORTANT LEGAL DOCUMENT.
YOU SHOULD OBTAIN INDEPENDENT LEGAL ADVICE BEFORE SIGNING IT.**

Office Use Only

The Customer's application is approved. Signed on behalf of the Supplier:

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

Privacy Statement

1 Use of Personal Information

- 1.1 We cannot extend credit without acquiring and using personal information.
- 1.2 We may collect and use your personal information for:
 - (a) our primary purposes, which include, but are not limited to, providing goods and services to you, obtaining your credit report, contacting your trade references, assessing your application for commercial credit, reviewing your credit terms, assessing your credit worthiness, assessing credit guarantees (current and prospective), reporting upon overdue payments, and collecting overdue payments due to us, and matters reasonably necessary in complying with your requests (together, **Primary Purposes**); and
 - (b) purposes other than our Primary Purposes.
- 1.3 If you sign and send to us:
 - (a) this document as a Customer; or
 - (b) the Deed of Guarantee and Indemnity as a Guarantor; then:
 - (c) you will be providing personal information to us; and
 - (d) you are accepting the terms of this Privacy Statement.

2 Application of Privacy Statement

This Privacy Statement encompasses consents, notifications, and disclosures under, or in relation to, the *Privacy Act* 1988 (Cth) (**Privacy Act**).

3 Specific consents

- 3.1 You consent to us, to the extent permitted by law, collecting, using, and disclosing your personal information for our Primary Purposes.
- 3.2 You also consent to us undertaking the below enquiries and disclosures pursuant to the following sections and items of the Privacy Act:
 - (a) obtaining a copy of your credit report from a credit reporting body for a commercial credit related purpose (item 2 of section 20F(1));
 - (b) obtaining a copy of your credit report from a credit reporting body for a credit guarantee purpose (item 3 of section 20F(1));
 - (c) obtaining a copy of your credit report from a credit reporting body for a trade insurance purpose (item 8 of section 20F(1));
 - (d) disclosing credit eligibility information about you to other credit providers (section 21J(1) or 21K(1)); and
 - (e) disclosing credit eligibility information about you to another entity and/or its professional legal or financial advisers where the recipient proposes to use that information for the purposes described in section 21N(3) of the Privacy Act (section 21N(2)).
- 3.3 You also consent to us collecting, using, and disclosing your personal information (including sensitive information), for purposes other than our Primary Purposes, including, but not limited to, internal management purposes, marketing (including direct marketing), and sales and business development purposes.

4 Disclosure to credit reporting bodies

- 4.1 You consent to us, to the extent permitted by section 21D of the Privacy Act, disclosing your credit information to any or all of the following credit reporting bodies and their successors and assigns.
 - (a) Building Industry Credit Bureau: PO Box 2157, Fortitude Valley BC QLD 4006, <https://bicb.com.au/>, 1800 931 221.
 - (b) Equifax Australia: GPO Box 94, North Sydney NSW 2059, www.equifax.com.au, 13 83 32.
 - (c) Creditor Watch: GPO Box 276, Sydney NSW 2001, <https://creditorwatch.com.au>, 1300 501 312.
 - (d) NCI: PO Box 3315, Rundle Mall SA 5000, <https://nci.com.au>, 1800 882 820.
 - (e) Illion: PO Box 7405, St Kilda Road, Melbourne VIC 3004, <https://www.illion.com.au>, 13 23 33.
 - (f) Experian: GPO Box 1969, North Sydney NSW 2060, <https://www.experian.com.au>, (02) 8907 7200.
- 4.2 Our credit reporting policy contains a statement of notifiable matters in accordance with section 21C of the Privacy Act and items 4.1 and 4.2 of the *Privacy (Credit Reporting Code)* 2014 (Cth) (**Credit Reporting Code**).

5 Disclosure to third parties

- 5.1 You consent to us disclosing your personal information (including your credit information) to our subsidiaries, employees, agents, and related bodies corporate, past, present, the credit reporting bodies noted above, any trade credit bureau of which we are a member, your trade references, and the related bodies corporate of the preceding entities.
- 5.2 By reason of your consent to the disclosure to overseas recipients pursuant to clause 5.1 of this Privacy Statement, Australian Privacy Principle 8.1 will not apply to our dealings with your personal information.

6 Our privacy policy and credit reporting policy

- 6.1 A copy of our privacy policy and credit reporting policy can be obtained from our website (<http://williamsgroupaustralia.com.au>) or by making a request in writing directed to our privacy officer.
- 6.2 Our privacy policy and credit reporting policy contain information about how to access and seek correction of your personal information, or how to complain about a breach of the Privacy Act, the Credit Reporting Code, or the Australian Privacy Principles, and how we will deal with any such complaint.

Credit Facility Terms

1 The effect of this application

- 1.1 We may extend you credit if:
- we receive an Application for Commercial Credit in terms which are satisfactory to us; and
 - we consider, in our sole discretion, that your application ought to be approved.
- 1.2 If you wish to negotiate the terms of the credit facility or your contractual arrangements with us then you should respond to this document, Terms of Trade, and Privacy Statement, marking up the terms you seek, and drawing those changes to our attention and obtain our agreement in writing.

2 Incorporation of our Terms of Trade

By applying for a credit facility with us, you:

- warrant that you have read and understand our Terms of Trade, which are available upon request at any time by email to ar@wgau.com.au;
- acknowledge that our Terms of Trade are incorporated into this agreement and continue to apply to trade on your credit facility; and
- agree to be bound by our Terms of Trade.

3 Payment terms

Charges on your approved credit facility must be paid:

- thirty (30) days from the date of invoice or charge (or such other terms as nominated by us in writing at the time we establish your credit facility); and
- without deduction or setoff.

4 Unauthorised use of your credit facility

- 4.1 You are solely responsible for ensuring there is no unauthorised use of your credit account. You must keep details of your credit facility with us confidential, including your account number, and treat it like a banking PIN or password.
- 4.2 If you become aware that your credit facility is, or may be, the subject of unauthorised use, you must:
- notify us in writing as soon as possible via email to ar@wgau.com.au; and
 - provide us with any information you have regarding the misuse or potential unauthorised use of your credit account.
- 4.3 You will be liable for charges that you have not authorised to your credit account unless:
- we ought to have known that they were unauthorised; or
 - you have notified us in accordance with clause 4.2.

5 Credit remains at our discretion

- 5.1 Your account will be ascribed a credit limit, which you must not exceed.
- 5.2 At our sole discretion we may:
- extend, or refuse, credit to you for any reason;
 - provide you with credit in excess of your credit limit; and
 - cease to provide further credit even if your credit limit has not been, or will not be, exceeded.
- 5.3 We may close your credit facility if you do not use it for six (6) months.

6 Variations

- 6.1 We may increase or decrease your account credit limit by written notice to you effective immediately.
- 6.2 If:
- we decrease your credit limit by giving notice pursuant to subclause 6.1; and
 - your credit facility would fall into default as a consequence by reason of that notice,
- then we will not treat this as an event of default.
- 6.3 From time to time, we may otherwise amend our Credit Facility Terms with you, in which case:
- we will give you at least fourteen (14) days' written notice of the change; and
 - your credit facility will be subject to those amended terms in respect of any further supplies made after the fourteen (14) day period has expired unless you have issued a written notice to us objecting to the varied terms within the fourteen (14) day period.

7 Default

- 7.1 Your credit facility will be in default if any of the below events occur.
- You fail to pay any sums to us when they fall due.

- Your account balance exceeds the amount we have identified as your credit limit and subclause 6.2 does not apply.
- Any corporate entity that is a Customer or Guarantor is the subject of the appointment of administrators, liquidators, receivers, provisional liquidators or enters into an arrangement or compromise with creditors.
- Any individual person that is a Customer or Guarantor commits an act of bankruptcy.
- You have given us information in support of your credit account which is false or misleading.
- You breach an obligation under our Terms of Trade.

7.2 If your credit facility is in default, then:

- we may temporarily suspend your credit account;
- we may give you a notice requiring that all charges on your credit facility may, at our election, fall immediately due and payable, notwithstanding clause 3; and
- we may close your credit facility.

8 Charge over your real and personal property

- 8.1 As security for the sums you owe, or may owe, us, you charge in our favour all of your estate and interest in:
- any real property (i.e. any house or land); and
 - personal property (i.e. any assets),
- whether:
- such property is held in your own right or in your capacity as trustee;
 - you own the property at present or later acquire it; and
 - wherever it is situated.
- 8.2 You irrevocably appoint our company secretary from time to time as your duly constituted attorney to execute in your name a real property mortgage, general security agreement, bill of sale, or consent to any caveat upon written notice and demand to you.
- 8.3 If you have previously entered into an agreement with us by which you have granted a charge, mortgage, or other security interest in respect of your property then those security interests will continue and will co-exist with the security interests created in this Application for Commercial Credit and will secure all of your indebtedness and obligations hereunder. We may, at our election and upon the provision of written notice, vary the terms of such previous charges, mortgages, or other securities to reflect this agreement.

9 Trustees

- 9.1 If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:
- you enter into this Application for Commercial Credit in both your capacity as trustee and in your personal capacity;
 - you have the right to be reasonably indemnified out of trust assets;
 - you have the power under the trust deed to sign this agreement; and
 - you will not retire as trustee of the trust nor appoint any new or additional trustee without first notifying us in writing and having the new or additional trustee sign an agreement on substantially the same terms as this agreement.
- 9.2 You must give us a true and complete copy of the trust deed upon request.

10 Waiver

A waiver of any provision of this agreement will only be effective if made by the affected party in writing.

11 Entire agreement

- 11.1 You warrant that if you have entered into this agreement in reliance upon any oral understanding or representation that you have written such matters on this Application for Commercial Credit.
- 11.2 Otherwise, this Application for Commercial Credit:
- constitutes the entire agreement and understanding between the Parties in relation to its subject matter;
 - excludes all implied terms; and
 - supersedes all previous negotiations, understandings, representations, and warranties.
- 11.3 Notwithstanding subclauses 11.1 and 11.2, where you have previously entered into a credit agreement with us (**Original Agreement**), this document will constitute a variation of the Original Agreement whereby the terms the Original Agreement are deleted and replaced with these Credit Facility Terms, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by this document, in which case they will co-exist with this document and, to the extent of any inconsistency, this document will prevail.

Deed of Guarantee and Indemnity

To: Williams Group Australia Pty Ltd (ACN 128 744 99) (Supplier)

1 Consideration

The Guarantors warrant and agree that:

- (a) they have read and agree to:
 - (i) the Terms of Trade; and
 - (ii) the Application for Commercial Credit; and
- (b) credit sought by the Customer from the Supplier:
 - (i) was the subject of their request; and
 - (ii) would confer a direct or indirect benefit upon them, if granted.

2 Guarantee

- 2.1 The Guarantors unconditionally guarantee to the Supplier the due and punctual payment by the Customer of all monies and obligations which the Customer owes, or may owe, to the Supplier, either alone, jointly, severally, or jointly and severally with another person, now, or from time to time, including liabilities which the Customer owes actually or as contingent liabilities.
- 2.2 The Guarantors must pay such money immediately upon demand.
- 2.3 This guarantee is a continuing guarantee and remains in force until the Customer's obligations have been paid and performed in full and any contingent liability that might exist is otherwise secured.
- 2.4 This guarantee binds each of the persons executing it even if one or more of the persons named in this guarantee does not execute, or ceases to be bound by, this guarantee.

3 Guarantors' obligations

- 3.1 The Guarantors' obligations are principal obligations and are not ancillary or collateral to any other right or obligation.
- 3.2 The Supplier is not obligated to proceed against the Customer or exhaust its remedies against the Customer before proceeding under this guarantee.
- 3.3 The Guarantors' obligations are absolute, unconditional, and irrevocable, and are not affected by any act or omission which might otherwise affect it at law or in equity, including:
 - (a) any indulgence of time, waiver, or other concession granted to the Customer or any Guarantor;
 - (b) the release of any Guarantor;
 - (c) any incapacity of any Guarantor;
 - (d) any insolvency or similar proceedings;
 - (e) any person named in this deed as Guarantor failing to execute this deed;
 - (f) by any other act, matter, or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of their obligations under this deed;
 - (g) any security now or in the future held or contemplated to be held by the Supplier not being held by the Supplier; or
 - (h) any act or omission of the Supplier that has had the effect that the liability under this guarantee has increased.

4 Indemnity

As a separate obligation, the Guarantors indemnify the Supplier from and against all damage, loss, and costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that the Supplier may suffer or incur as a result of any liability the Supplier has to a liquidator or trustee appointed for any voidable or antecedent transactions for any payment received by the Supplier in respect of the Customer such that if such monies are to be repaid then that sum is to be treated as though it was never paid by the Customer.

5 Limitations on Guarantors' rights

- 5.1 Until the entirety of all obligations of the Customer have been paid or satisfied in full, the Guarantors must not (except with the Supplier's prior written consent), directly or indirectly:
 - (a) take any steps to recover or enforce any right or claim against the Customer relating to any sum paid by any Guarantor under this guarantee;
 - (b) claim any contribution from, or exercise any right of subrogation against, the Customer or any other Guarantor;
 - (c) claim or receive the benefit of any distribution, dividend, or payment arising out of, or relating to, the insolvency of the Customer or any other person liable jointly or severally with the Customer.
- 5.2 If the Guarantors receive any benefit, payment, or distribution, they undertake to hold that benefit, payment, or distribution for the benefit of the Supplier and to promptly pay or transfer the same to the Supplier.

6 Charge over real and personal property

- 6.1 As security for the sums the Guarantors owe the Supplier, the Guarantors charge in the Supplier's favour all their estate and interest in:
 - (a) any real property (i.e. any house or land); and
 - (b) personal property (i.e. any assets),whether:
 - (c) such property is held in the Guarantors' own right or in their capacity as trustee;
 - (d) such property is owned solely or jointly with another person;
 - (e) the Guarantors own the property at present or later acquire it; and
 - (f) wherever it is situated.
- 6.2 The Guarantors irrevocably appoint the Supplier's company secretary from time to time as their duly constituted attorney to execute in the name of the Guarantors a real property mortgage, general security agreement, bill of sale, or consent to any caveat upon written notice and demand to the Guarantors.
- 6.3 If the Guarantors have previously entered into an agreement with the Supplier conferring a security interest, then those security interests will continue and will co-exist with the security interests created in this guarantee and will secure all of the Guarantors' indebtedness and obligations hereunder.

7 Security interest

- 7.1 The Guarantors:
 - (a) waive their right to receive a copy of any verification statement in accordance with section 157 of the *Personal Property Securities Act 2009* (Cth) (PPS Act); and
 - (b) agree that, to the extent permitted by the PPS Act:
 - (i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and
 - (ii) waive their right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.
- 7.2 The Supplier needs not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.
- 7.3 Where the Supplier has rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

8 Severance

If any provision of this deed is illegal, invalid, or unenforceable, it must be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from this deed and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

9 Governing law and jurisdiction

This deed is governed by and must be construed according to the law applying in the State of New South Wales.

Declaration and Execution

Each signatory to this Deed of Guarantee and Indemnity warrants and agrees that they:

- need not sign the Deed of Guarantee and Indemnity if they are not seeking credit on behalf of the Customer;
- agree to the terms of the **Privacy Statement**, contained within this document, as if the references to "you" were a reference to each Guarantor;
- have read, understand, and agree to be bound by the **Credit Facility Terms**, which are contained in this document;
- have read, understand, and agree to be bound by the **Terms of Trade**, which are available upon request by email to ar@wgau.com.au; and
- have had the opportunity to obtain independent legal advice prior to signing this Deed of Guarantee and Indemnity and have either obtained that advice or chosen not to obtain it.

Signed Sealed, and Delivered as a Deed Poll by:

Signature:.....

Signature:.....

Full Name (please print):.....

Full Name (please print):.....

Witness Signature:.....

Witness Signature:.....

Witness Full Name (please print):.....

Witness Full Name (please print):.....

Date:.....

Date:.....

**WARNING: THIS IS AN IMPORTANT LEGAL DOCUMENT.
YOU SHOULD OBTAIN INDEPENDENT LEGAL ADVICE BEFORE SIGNING IT.**

Williams Group Australia Pty Ltd - Terms of Trade ("Terms")

10 Application of Terms

- 10.1 These Terms govern our supply of Goods and Services to you, including supplies on a cash basis.
- 10.2 If you wish to negotiate these Terms with us then you should respond to this document, marking up these Terms and drawing those changes to our attention and obtain our agreement in writing.
- 10.3 It is not our practice to otherwise review terms and conditions on documents that you issue to us.
- 10.4 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us like a purchase order.

11 Quotations

- 11.1 Each quotation that we issue:
 - (a) is an estimate only;
 - (b) is not an offer or obligation to supply any Goods or to perform any Services;
 - (c) is exclusive of GST;
 - (d) does not include the costs of delivering Goods;
 - (e) remains valid for acceptance for a period of thirty (30) days from the date of quotation, unless withdrawn by us before a contract for supply is formed,unless the quotation states otherwise.
- 11.2 Quotations provided orally are subject to written confirmation.
- 11.3 A quotation may include additional terms or conditions, which will supplement these Terms.

12 Formation of contract

- 12.1 We are not obliged to supply any Goods or provide Services until after a contract for supply is formed.
- 12.2 A contract for supply is formed, and you have accepted these Terms, when:
 - (a) you have placed an Order with us; and
 - (b) we have received any deposit we have required from you in respect of the Order before progressing it; andeither we have:
 - (c) accepted your Order in writing; or
 - (d) supplied you with any Goods or performed any Services following receipt of your Order.
- 12.3 If you revoke an Order:
 - (a) prior to the formation of a contract for supply then:
 - (i) we will refund you any deposit you have paid in respect of that Order; and
 - (ii) you will not be required to pay any fee for the cancellation of the Order; or alternatively
 - (b) after the formation of a contract for supply then unless we are in breach of the contract for supply:
 - (i) you must pay all our reasonable costs associated with fulfilment of your Order; and
 - (ii) we may apply any deposit you have paid towards those costs.

13 Price

- 13.1 The price payable for the Goods or Services will be:
 - (a) the price agreed in writing; or alternatively
 - (b) the price by our prevailing price list/rates as when you place your Order.
- 13.2 We may vary our price or rates by notice to you if you request:
 - (a) the Goods or Services be rendered outside Business Hours;
 - (b) different Goods or Services to be supplied to the contract for supply; or
 - (c) that we delay provision of the Goods or Services for sixty (60) days or more.
- 13.3 Where we vary the price or rates payable for the Goods or Services pursuant to subclause 13.2, we will notify you of the new price/rates. Thereafter you may reject the new price/rates within seven (7) days and terminate the contract for supply without any cost or penalty to you, otherwise you agree that the price/rates will apply to the contract.

- 13.4 Notwithstanding subclause 13.2, you acknowledge and agree that where Goods ordered are based on weights or quantities (**Ordered Amount**), such as soil or gravel, we may deliver to and charge you a weight or quantity of those Goods more or less than the Ordered Amount (provided it is no more or less than 5% of the Ordered Amount) which you must accept and pay for in full satisfaction of our obligations under the contract for the supply of Goods.
- 13.5 Where an amount payable by you for Goods is calculated on the weight of the Goods to be supplied by us, the records of the weight of the Goods generated by any government/public weighbridge will be conclusive evidence of the weight of the Goods supplied.
- 13.6 When Goods, such as soil or gravel products, are sold by volume rather than weight, the volume will be determined by the loose uncompacted volume as measured on the delivery vehicle at the time of loading.

14 Delivery and risk

- 14.1 We will use reasonable endeavours to deliver the Goods at the time and place agreed for delivery. You will make arrangements necessary to take delivery of the Goods.
- 14.2 You acknowledge and agree that:
 - (a) unless the contract for supply expressly states otherwise, time in respect of delivery is not of the essence; and
 - (b) any timeframe or date for delivery is an estimate only and is not a contractual commitment.
- 14.3 Risk of loss, damage, or deterioration to the Goods passes to you, and delivery is deemed to occur, at the time:
 - (a) you or any third party on your behalf collect the Goods from us;
 - (b) we or our nominated carrier deliver the Goods to the delivery location stated in your Order (or to such other location as agreed in writing); or
 - (c) your nominated carrier takes possession of the Goods.
- 14.4 You acknowledge and agree that:
 - (a) timber is a natural wood product and as such may exhibit variations in the texture, shade, colour, surface, finish, markings, veining, and contains natural fissures, occlusions, and indentations; and
 - (b) timber is a hygroscopic material subject to expansion and contraction, and as such, we, to the extent permitted by law, accept no liability whatsoever for damage, disfiguration, deterioration, or loss to Goods comprised of timber caused as a result of:
 - (i) natural expansion and contraction;
 - (ii) exposure to liquids, moisture or high humidity, or damaging substances;
 - (iii) exposure to sunlight or the elements; or
 - (iv) impact, abrasion, or scratching,after risk in the Goods has passed to you.
- 14.5 It is your responsibility to ensure suitable and clear access to the place agreed for delivery. If the site is deemed unsuitable or unsafe (at the delivery driver's sole discretion), then the delivery driver may:
 - (a) refuse to deliver the Goods and return the Goods to our premises (in which case an additional delivery fee will apply to any subsequent delivery attempt); or
 - (b) deliver the Goods to the location nearest to the agreed place for delivery where delivery can be safely effected.
- 14.6 You agree to sign our delivery docket or consignment note or that of our nominated carrier as confirmation that you have received the Goods, and if appropriate, certify that you have received the Goods in apparent good order and condition in the quantity or volume you have ordered.
- 14.7 If you authorise us to deliver the Goods to an unattended location or to leave them outside the agreed place for delivery, we may deliver the Goods as requested at your risk.
- 14.8 If the Goods are delivered on Pallets (other than junk pallets), the Pallets remain our property. You may be charged for the use of such Pallets. On the return of the Pallets to us:
 - (a) if the Pallets are returned to us in good condition (in our sole determination, acting reasonably), we agree to give you a credit in an amount equal to the fee charged by us in respect of the Pallets; or
 - (b) if the Pallets are returned to us in a damaged condition (in our sole determination, acting reasonably), you will be liable to pay to us the cost to repair or replace the Pallets.
- 14.9 If delivery of the Goods is deferred:
 - (a) at your request; or
 - (b) due to you being unable or unwilling to accept delivery of the Goods (other than as a result of the Goods delivered not being in accordance with the contract for supply);in circumstances where:
 - (c) we are ready to deliver the Goods and a delivery date has not

- been agreed; or
 - (d) the Goods are due to be delivered on an agreed delivery date, then you will pay to us:
 - (e) reasonable daily storage charges (which will continue to accrue until such time as the Goods are delivered); and
 - (f) any costs associated with us or our nominated carrier attempting to re-deliver the Goods (where we or our nominated carrier has previously attempted to deliver the Goods).
- 14.10 You acknowledge and agree that we may deliver the Goods in one or more lots and may invoice you for pro rata progress in respect thereof.

15 Terms applying to the sale of trusses and engineered Goods

- 15.1 To the extent permitted by law, we will not accept responsibility for, and will not be held liable for, the aesthetic appearance and structural integrity of finished Goods which have been manufactured to meet a delivery date in the current month and have then been deferred by you into the following month or beyond. Additional labour and/or material costs required to ensure the structural integrity of the finished Goods will be charged to you (including dismantling packs, repressing nail plates, the removal and replacement of deteriorated timber, and re-assembly) where you have deferred the delivery date of the Goods.
- 15.2 Where Goods have been on hold for an extended period (greater than one month), Goods may be in a condition such that they require replacement/re-manufacture, in which case this will be undertaken at your sole expense.
- 15.3 All remedial work will be at your expense and will not be undertaken until you provide us with a signed Order accepting the costs for remedial work to be undertaken.
- 15.4 Extra loads to roof trusses and wall frames, such as hot water systems, air conditioning units, or any other thing, must be brought to our attention to allow further design or certification modifications. To the extent permitted by law, we will not be liable for any loss or damage suffered or incurred by you or any third party in connection with the failure, deflection, or movement in any form of any members due to loads applied beyond which the Goods were designed for where you have failed to notify us as such.
- 15.5 You understand and agree that trusses supplied by us:
- (a) must be erected and braced to comply with Australian Standard AS 4440-2004 (or its replacement/successor);
 - (b) must be laden with covering as indicated in the quotation we issue to you (i.e. tiles, sheet, etc.);
 - (c) must be spaced correctly and in accordance with our requirements and local council ordinances;
 - (d) must only be slung by panel points;
 - (e) must not under any circumstances be cut or altered without our prior written consent; and
 - (f) must be effectively clad and weather protected at all times.
- 15.6 You further understand and agree that:
- (a) the lintels over all openings in external walls must comply with AS 1684 or and approved engineer's design;
 - (b) all other materials and construction methods used as part of the roof's structure must accord with AS 4440-2004, local council ordinances and accepted building standards;
 - (c) you must check with the fabricator as to any proposed method of construction of auxiliary roof timbers which could impair the structural efficiency of the roof trusses;
 - (d) concrete slabs must be properly waterproofed;
 - (e) bottom plates are to be blocked correctly where required on bearers;
 - (f) wall connectors are to be used at all junctions on top plates;
 - (g) all junction studs are to be nailed at mid-point to blocks provided; and
 - (h) all bracing elements are to be nailed finally after plumbing on site has occurred.
- 15.7 Engineered Goods, including glue laminated beams and joists, webbed floor joists, roof trusses, or critical members in wall frames must not be altered or used for purposes other than the intended design based on the information you have made known to us, nor may they be cut or bored in any way outside of tolerances relevantly specified by us, relevant Australian Standards, or the relevant manufacturer's tolerances.

16 Payment terms

- 16.1 Unless you have a Credit Facility with us which is not in default:
- (a) deposits we have requested must be paid before we commence providing Goods and Services;
 - (b) you must pay for all Goods before they are despatched (in cash or cleared funds); and

- (c) you must pay for all Services on a progressive hourly basis as performed.
- 16.2 Payment may be made by cash, cheque, electronic funds transfer, Visa, or Mastercard credit cards. We reserve the right to change the payment methods that we accept at any time.
- 16.3 We may charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.
- 16.4 You agree to pay GST on all taxable supplies upon us issuing you a tax invoice relating to the taxable supply.
- 16.5 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.

17 Claims

- 17.1 Subclauses 17.2 to 17.4 only apply if the contract for supply is not a Consumer Contract and not a Small Business Contract.
- 17.2 You must, within seven (7) days of the date of delivery:
- (a) give us notice in writing, with particulars, of any Claim that the Goods delivered are not in accordance with the contract for supply (including any Claim for shortfall, incorrect supply, or damage to the Goods); and
 - (b) at our request, provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods.
- 17.3 You must notify us in writing of any Claim for non-delivery within seven (7) days of the date of the invoice which relates to the Goods the subject of your Claim.
- 17.4 If you fail to notify us in accordance with subclause 17.2 and 17.3, then, to the extent permitted by law, the Goods are deemed to have been delivered in good condition and in accordance with the contract for supply.

18 Returns

- 18.1 We will accept the return of any Goods if:
- (a) the Goods supplied do not conform with the contract for supply;
 - (b) the Goods are defective; or
 - (c) we are required by law to accept the return of the Goods.
- 18.2 At our discretion, we may accept the return of Goods if you change your mind if:
- (a) you agree to:
 - (i) pay the lesser of a handling and administration charge of 20% of the purchase price of the returned Goods or \$200; and
 - (ii) reimburse us for all costs we incur in connection with the return of those Goods (except for Goods we have incorrectly supplied or we agree are defective);
 - (b) the Goods are in substantially the same condition to the condition in which they were delivered; and
 - (c) the Goods were not specifically produced or procured at your request.
- 18.3 You indemnify and release us from any damage that occurs to any Goods in return transit. You should ensure that any returned Goods are insured against such damage.

19 Retention of title

- 19.1 Until such time as you have made payment in full (in cash or cleared funds) for any Goods we have supplied:
- (a) title in the Goods does not pass to you and we retain the legal and equitable title in the Goods;
 - (b) you will hold the Goods as fiduciary and bailee for us and agree to store the Goods in such a manner as to enable them to be readily identifiable as our property;
 - (c) you undertake to not mix the Goods with similar goods;
 - (d) unless and until we notify you to the contrary, you will be entitled to sell the Goods in the ordinary course of your business (provided any such sale is at arm's length and on market terms) and will sell the Goods as our agent and bailee; and
 - (e) you undertake to hold any proceeds derived from the sale of the Goods on trust for us absolutely.
- 19.2 While title in the Goods remains with us, you permit us to enter upon any premises you occupy (or any premises any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours occupies) as your invitee to inspect the Goods and, when you are in default of payment of any invoice, to repossess any Goods in your possession, custody, or control.
- 19.3 Where we exercise our right of entry pursuant to subclause 19.2, you agree that us doing so will not give rise to any Claim for trespass or similar action against us or our officers, employees, and agents.

- 19.4 Where we have retaken Goods into our possession, we have the right to sell or deal with those Goods, and, if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell those Goods.
- 19.5 For the removal of doubt, our interest under this clause 19 constitutes a purchase money security interest for the purposes of the PPS Act.

20 Security interest

- 20.1 Unless you have obtained our prior written and fully informed consent, you undertake not to:
- (a) register a financing change statement in respect of a security interest in our favour; or
 - (b) create, or purport to create, any security interest in the Goods (or any proceeds derived from the sale of such Goods), nor register, nor permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of any third party.
- 20.2 You:
- (a) waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act; and
 - (b) agree that, to the extent permitted by the PPS Act:
 - (i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and
 - (ii) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.
- 20.3 We need not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.
- 20.4 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

21 Description of Goods

If you require any Goods for a particular purpose, you must advise us of that purpose prior to placing your Order and must obtain a written assurance from us that the Goods will meet your requirements. If you do not advise us of your requirements and we do not expressly warrant in writing that the Goods will be fit for your particular purpose, then you agree that you did not rely upon our skill or judgment in relation to the suitability of the Goods for that purpose.

22 Testing

If you require any testing or certification to be conducted, any such testing or certification will be at your sole expense.

23 Default

- 23.1 Subclauses 23.2 to 23.4 apply if you fail to pay sums to us when they fall due.
- 23.2 We may charge you interest on the outstanding debt (including any judgment debt) at the rate of 10% per annum.
- 23.3 We may suspend or cease the supply of any further Goods or Services to you.
- 23.4 We may require pre-payment in full for any Goods or Services which have not yet been supplied.

24 Indemnity

- 24.1 If you default in the performance or observance of your obligations under any contract of which these Terms form part, then:
- (a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and
 - (b) we will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and
 - (c) if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.
- 24.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.
- 24.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any contract of which these Terms form part.

25 Limitation of liability

- 25.1 No party is liable to the other party for any Consequential Loss, including under clause 24, however caused arising out of or in connection with any contract for supply of which these Terms form part.
- 25.2 While we will take reasonable endeavours to meet any estimated delivery date or estimated time for Goods and Services, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.
- 25.3 If the contract for supply is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, our liability is limited to:
- (a) (in the case of a supply of Goods):
 - (i) us repairing or replacing the Goods; or
 - (ii) us paying you the cost of having the Goods repaired or replaced.
 - (b) (in the case of a supply of Services):
 - (i) us supplying the Services again; or
 - (ii) us paying you the cost of having equivalent Services supplied.

26 Termination

A party may, with immediate effect, terminate any contract for supply of which these Terms form part by notice in writing, if the other party:

- (a) commits a material or persistent breach of these Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or
- (b) has failed to pay sums due to the party within seven (7) days; or
- (c) has indicated that it is, or may become, insolvent; or
- (d) ceases to carry on business; or
- (e) comprises an entity which is the subject of the appointment of receivers or managers; or
- (f) comprises a natural person who:
 - (i) has committed an act of bankruptcy; or
 - (ii) has been made bankrupt;
- (g) comprises a corporation which:
 - (i) enters into voluntary administration;
 - (ii) is subject to a deed of company arrangement; or
 - (iii) is subject to the appointment of liquidators or provisional liquidators.

27 Variation

We may amend these Terms in the future by notifying you in writing. The amended Terms will thereafter apply to each Order you place unless you earlier give us written notice in advance of placing a further Order.

28 Assignment

A party may only assign its rights under the contract for supply with the written consent of the other party.

29 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

- (a) any additional terms or conditions contained in our quotation applicable to the supply of Goods or Services;
- (b) any terms governing your Credit Facility; and
- (c) these Terms.

30 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

31 Governing law and jurisdiction

- 31.1 Our relationship is governed by and must be construed according to the law applying in the State of New South Wales.
- 31.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales with respect to any proceedings that may be brought at any time relating to our relationship.

32 Definitions

In these Terms, unless the context otherwise requires, the following definitions apply.

- 32.1 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.
- 32.2 **Business Hours** means between 07:00am to 5:00pm on a day that is not a Saturday, Sunday, or gazetted public holiday in the place where the Goods or Services are, or are to be, supplied.
- 32.3 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a contract for supply.
- 32.4 **Consequential Loss** includes any:
- (a) consequential loss;
 - (b) loss of anticipated or actual profits or revenue;
 - (c) loss of production or use;
 - (d) financial or holding costs;
 - (e) loss or failure to realise any anticipated savings;
 - (f) loss or denial of business or commercial opportunity;
 - (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
 - (h) loss or corruption of data;
 - (i) downtime costs or wasted overheads; or
 - (j) special, punitive, or exemplary damages.
- 32.5 **Consumer Contract** has the meaning given to this term in section 23(3) of the Australian Consumer Law.
- 32.6 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for our Goods and Services and associated charges.
- 32.7 **Goods** means all goods supplied by us, as described on our quotation, invoice, or any other form issued by us.
- 32.8 **Order** means a written or oral order placed by you requesting that we provide Goods or Services.
- 32.9 **Pallets** means any pallets, drums, bearers, or any other containers accompanying the Goods.
- 32.10 **PPS Act** means the *Personal Property Securities Act 2009* (Cth), as amended.
- 32.11 **Services** means all services performed by us, as described on our quotation, invoice, or any other form issued by us.
- 32.12 **Small Business Contract** has the meaning given to this term in section 23(4) of the Australian Consumer Law.
- 32.13 **Supplier, we, us** means Williams Group Australia Pty Ltd (ACN 128 744 990)

33 Interpretation

In these Terms, unless the context otherwise requires:

- 33.1 A time is a reference to the time zone of New South Wales, Australia unless otherwise specified.
- 33.2 \$, dollar, or AUD is a reference to the lawful currency of Australia.
- 33.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.
- 33.4 A right includes a benefit, remedy, authority, discretion, or power.
- 33.5 The singular includes the plural and vice versa, and a gender includes other genders.
- 33.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
- 33.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.
- 33.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
- 33.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.