

**CREDIT APPLICATION & TERMS AND CONDITIONS OF TRADE**

DATE: / /

To: Barwon Timber (the Company)  
 Bar-Truss (the Company)  
 Drysdale Timber & Hardware (the Company)

ABN 39 006 592 525  
 ABN 87 103 238 295  
 ABN 66 104 780 841

Business Addresses: 50 Fellmongers Road, Breakwater VIC 3219  
 36 Murradoc Road, Drysdale VIC 3222

Postal Address: 50 Fellmongers Road, Breakwater VIC 3216  
 Telephone (Bus): 03 5229 0080  
 Fax: 03 5229 0071

Email: ar@barwontimber.com.au  
 Website: www.barwontimber.com.au

<b>1 CUSTOMER:</b>					
Are you a (tick):	<input type="checkbox"/> Sole Trader	<input type="checkbox"/> Partnership	<input type="checkbox"/> Private Co (Pty Ltd)	<input type="checkbox"/> Public Co (Ltd)	
	<input type="checkbox"/> Trading as a Trust	Trustee Name:		Trust ABN:	
Registered and/or Trading Name:					
Registered Address:					
ACN:			ABN:		
Postal Address:				Postcode:	
Business Address:				Postcode:	
Telephone (Bus): ( )		Mobile:		Facsimile: ( )	
Email:					
Contact Person:			Position:		
Tel:			Email:		
<b>2 PURCHASING DETAILS:</b>					
Estimated monthly purchases: \$					
<b>3 FULL NAMES AND ADDRESSES OF DIRECTORS, PARTNERS AND SOLE TRADERS:</b>					
Name:			Telephone : ( )		
Address:					
Date of Birth: / /	Residence (tick) :	<input type="checkbox"/> Own	<input type="checkbox"/> Renting	<input type="checkbox"/> Mortgage	
Name:			Telephone : ( )		
Address:					
Date of Birth: / /	Residence (tick) :	<input type="checkbox"/> Own	<input type="checkbox"/> Renting	<input type="checkbox"/> Mortgage	

<b>4 DETAILS OF BUSINESS:</b>	
Bank Details: Account Name:	Bank:
Account No.:	BSB:
Type of Business:	How long established?
How long the current owner?	Company/Builders Registration No.
Previous Trading Name (if changed in the previous 2 years):	
Name of any related or subsidiary companies or partnerships:	
Are the Customer's business premises owned or leased?	
If leased, agent/landlord name and phone no.:	Expiry date of lease: / /
Do you (or any related companies) currently trade with the Company or hold an account with the Company, or have you (or any related companies) traded with the Company or held an account with the Company?	
If yes, give details:	
Have securities been given over of any assets of the Customer or any Guarantor: If yes, give details:	

Please attach certificate of incorporation and/or business name registration and financial records to support this application.

<b>5 TRADE REFERENCES Monthly purchases equal to or more than requested credit limit.</b>	
1 Supplier Name: Fax or Email:	Phone No: Avg Monthly Purchases \$
2 Supplier Name: Fax or Email:	Phone No: Avg Monthly Purchases
3 Supplier Name: Fax or Email:	Phone No: Avg Monthly Purchases
4 Supplier Name: Fax or Email:	Phone No: Avg Monthly Purchases

**DECLARATION & ACKNOWLEDGEMENT**  
**The Application**

I/we hereby represent and warrant that the information set out in this application is true and correct and acknowledge that the Company will rely upon the information provided and is hereby induced to grant credit to me/us.

I/We (the Customer) (variously in this application called "I/we" and "me/us") agree, declare and acknowledge that:

- (a) If this application is accepted by the Company, the Credit Terms below and the Terms and Conditions of Trade attached as amended from time to time (together the "Terms") will be binding on me/us;
- (b) I/We have been given, read and understood the current Terms prior to completing this application; and
- (c) The Company reserves the right to accept or reject this application in its absolute discretion;

**Credit Terms**

Upon the Company allowing me/us to trade on credit, I/we agree, declare and acknowledge that the following Credit Terms apply to all my/our dealings with the Company and I/we hereby agree to comply with such Credit Terms.

- 1. **Payments:** Unless otherwise specified in writing by the Company, all payments are without deduction unless otherwise agreed and all payments are due within 30 days after the end of the month in which delivery was made. If payment is not made within the agreed time, any rebate or settlement discount offered will be forfeited. Loss of the settlement discount is a penalty for late payment and is intended to discourage the Customer from late payment of accounts.
- 2. **Interest:** The Company will charge interest on overdue moneys owed at the annual rate of 4 percent above the annual rate of interest set out in the *Penalty Interest Rates Act 1983 (Vic)* from time to time. Interest will be calculated from the due date of the moneys owing to the date the Company receives payment in full.

3. **Orders:** The Company has the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure by the Company to deliver any instalment will automatically be deemed to be a back order and will not entitle the Customer to cancel the balance of the order. In the event of the Customer failing to take delivery of any instalment, the Company may elect to cancel the balance of the order.
4. **Notification of Change of Details:** Where any change takes place in the Customer's trading structure or management, including any change of director, shareholder or any change in partnership or trusteeship notwithstanding any advice by the Customer to Company, the Customer shall not continue to operate its credit account without the Company's prior written consent, and the Customer shall remain liable for all amounts owed to the Company until the whole amount (including interest and charges) has been paid in full to the Company.
5. **Other Terms and Conditions:** No terms and conditions sought to be imposed by the Customer upon the Company shall apply. These Terms supersede all previous terms and conditions and may only be varied if authorised in writing on behalf of the Company.
6. **Expenses:** The Customer must pay to the Company all costs, charges and expenses (including all stamp duty and legal fees on an indemnity basis) incurred by the Company, its legal advisers, mercantile agents and others in connection with entry into these Terms, the exercise or attempted exercise of any power, right or remedy under these Terms, the failure of the Customer to comply with these Terms; recovery of Monies Owed, possession of any products or otherwise.
7. **Set off:** The Company is entitled in its absolute discretion to set off any credits that may appear in the Customer's account with the Company against any other amounts owed by or debts of the Customer to the Company (and to give effect to this, the Customer irrevocably appoints the Company as the Customer's attorney).
8. **Credit Limit:** The grant of any credit facility and/or the nomination of any credit limit is an indication only of the Company's intention at that time and the Company may vary, reduce or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other person or entity. The Customer agrees to pay on demand all sums owing in connection with this credit facility in the event the credit facility is withdrawn. The Customer acknowledges that the Company may make additional periodic credit checks to ensure the Customer remains credit worthy.
9. **Electronic signatures binding:** Delivery of a signature page of this application by PDF file shall be effective as delivery of a manually executed version of this application and shall be deemed legally binding.
10. These Credit Terms are governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the Victorian Courts.
11. These Credit Terms bind the Customer both personally and as trustee of any trust which the Customer is trustee.
12. Each clause and subclause of these Credit Terms are separate and independent. If any clause or subclause is found to be invalid or ineffective, the other clauses or subclauses will not be adversely affected.
13. The Company can transfer its rights under these terms to a third party. If the Company does so, these Credit Terms will apply to the transferee as if it were the Company. If the Company wants to transfer its rights it can give the proposed transferee all information that privacy legislation allows it to give.
14. The Customer cannot assign its rights or obligations under these Credit Terms to any third party without the prior written consent of the Company, which may be withheld in the Company's absolute discretion.

I/we further acknowledge that if the Customer is a corporation, provision of credit pursuant to this application may, at the Company's absolute discretion, be subject to and conditional upon all of the directors of that corporation executing the attached Guarantee and Indemnity.  
I/we further acknowledge that if I am/we are a trustee for a trust, the Terms are binding on the trustee in its own capacity as well as in its capacity as trustee.

### The National Consumer Credit Code

I/We declare that the credit to be provided to me/us by the Company is to be applied wholly or predominantly for business and/or investment purposes.

Important: You should only sign this declaration if this credit is wholly or predominantly for business and/or investment purposes. Otherwise, in signing this declaration you may lose your protection under the National Consumer Credit Code.

### The Credit Information

I/We consent to and authorise the Company:

- (a) to request a credit report containing information about my/our consumer or commercial credit arrangements from a credit reporting agency for the purposes of assessing this application or in connection with the attached Guarantee and Indemnity;
- (b) to give a credit reporting agency or the Timber Merchants Association information to allow the credit reporting agency or Timber Merchants Association to create and maintain a credit information file containing information about me/us;
- (c) to disclose a credit report or any personal information derived from the credit report, and any information about my/our personal or commercial credit arrangements to the Company, any agent of the Company assisting in processing the application and any other provider of credit to me/us named in this application in a credit report from a credit reporting agency; and
- (d) to notify and exchange information with other credit providers and any collection agent of the Company.

**Privacy**

I/We understand that the information permitted to be disclosed under the Australian Privacy Principles under the Privacy Act 1988 (Cth) includes:

- (a) details to identify me/us, including that is, name, sex, date of birth, bank account details, tax file number, current and 2 previous addresses, current or last known employer, and driver's licence number (including copy of drivers licence);
- (b) the fact that I/we have applied for credit, the amount, or that the Company is a current credit provider to me/us;
- (c) advice that payments previously notified as unpaid are no longer overdue, payments overdue for at least 60 days and for which collection action has started, or cheques for more than \$100 drawn by me/us which have been dishonoured more than once;
- (d) in specified circumstances, that in the opinion of the Company I/we have committed a serious credit infringement; and
- (e) the fact that credit provided to me/us by the Company has been paid or otherwise discharged.

Further, in order to assess this application, I/we authorise the Company:

- (a) to obtain from a credit reporting agency a credit report containing personal information about me/us in relation to personal credit provided by the Company;
- (b) to obtain from a credit reporting agency a credit report containing personal information about me/us in relation to commercial credit provided by the Company;
- (c) to obtain a report containing information about my/our commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person in relation to personal credit provided by the Company;
- (d) to obtain a report from a credit reporting agency and other information in relation to my/our commercial credit activities.
- (e) to obtain and retain private information in accordance with the Company's Privacy Policy from time to time.

I/we authorise the Company to give and obtain from credit providers that may be named in this application and credit providers that may be named in a credit report issued by a credit reporting agency information about my/our credit arrangements.

I/we understand this information can include any information about my/our general credit history and credit worthiness that credit providers are allowed to give or receive from each other under the Privacy Act. I/we understand the information may be used for any of the following purposes:

- (a) to assess an application by me/us for credit;
- (b) to assist me to avoid defaulting on my/our credit obligations;
- (c) to notify other credit providers of a default by me/us;
- (d) to assess my/our creditworthiness.

*If signing on behalf of a company, I/we are duly authorised by the company to sign this application. A copy of a current valid driver's licence of the authorised representative/s signing this agreement must be provided with this application.*

Name (print): Position (print):	Signature:  (Signed for and on behalf of the Customer)
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Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Witness Name (print): Witness Address:	Witness Signature:
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## PERSONAL/DIRECTORS GUARANTEE AND INDEMNITY

IN CONSIDERATION of the Company at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to the Customer,

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. GUARANTEES the due and punctual payment to the Company of all moneys which are now owing to the Company by the Customer and all further sums of money from time to time owing to the Company by the Customer in respect of goods and services supplied or to be supplied by the Company to the Customer or any other liability of the Customer to the Company, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Company. If for any reason the Customer does not pay any amount owing to the Company the Guarantor will immediately on demand pay the relevant amount to the Company.
2. HOLD HARMLESS AND INDEMNIFY the Company on demand as a separate obligation against any liability (including but not limited to damages costs losses and legal fees (as defined hereunder in paragraph (b) hereof)) incurred by or assessed against the Company in connection with:
  - (a) the supply of goods and/or services to the Customer; or
  - (b) the recovery of moneys owing to the Company by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Company's nominees costs of collection and legal costs calculated on a solicitor and own client basis; or
  - (c) moneys paid by the Company with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Company, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Company to the Customer.
3. PROVIDES THE FOLLOWING SECURITY
  - (a) To secure payment of all monies which are or may become payable by the Guarantor to the Company under this Guarantee, the Guarantor hereby:
    - (i) charges with the due payment of all of those moneys all of the Guarantor's right, title and interest in any and all real property wherever located both present and future and the Guarantor consents to the Company lodging a caveat or caveats to protect the Company's interest therein; and
    - (ii) grants a *Security Interest* in all of the Guarantor's present and after-acquired *Personal Property* in favour of the Company and consents to the Company registering such *Security Interest* over the Guarantor on the *Register*;
  - (b) The Guarantor agrees that this Guarantee constitutes a *Security Agreement* under the PPSA.
  - (c) The Guarantor waives its right to receive any notice under the PPSA (including notice of a *Verification Statement* after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPSA.
  - (d) Upon demand by the Company, the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Company to further secure the Guarantor's indebtedness to the Company. Should the Guarantor fail within a reasonable time of such demand to execute such mortgage or other instrument then the Guarantor appoints irrevocably the credit manager or a duly authorised officer of the Company to be the Guarantor's lawful attorney to execute any such mortgage or other instrument.
4. I/WE FURTHER ACKNOWLEDGE AND AGREE THAT:
  - (a) this Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of all moneys owing to the Company and all obligations to be performed by the Customer have been fully paid satisfied and performed;
  - (b) no granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Company's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability of any Guarantor under this Guarantee and Indemnity. Without affecting the Customer's obligations to the Company, each Guarantor shall be a principal debtor and liable to the Company accordingly;
  - (c) If any payment received or recovered by the Company is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Company shall each be restored to the position in which they would have been had no such payment been made;
  - (d) this Guarantee and Indemnity shall bind each of the signatories notwithstanding that one or more of the persons named as a "Guarantor" may never execute this Guarantee and Indemnity;
  - (e) the term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
  - (f) I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Company;
  - (g) I/we irrevocably authorise the Company to obtain from any person or company any information which the Company may require for credit reference purposes. I/We further irrevocably authorise the Company to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Company as a result of this Guarantee and Indemnity being actioned by the Company;
  - (h) The information provided herein is to be used by the Company for all purposes in connection with the Company considering this Guarantee and Indemnity and the subsequent enforcement of the same and in accordance with the Company's Privacy Policy from time to time.

5. DEFINITIONS

In this Guarantee unless the context requires otherwise:

- Company means the company identified on page 1 of the Credit Application attached.  
Customer means the customer identified on page 1 of the Credit Application attached.  
Guaranteed Moneys means all moneys which are, will or may be at any time in the future, owing or payable to the Company by the Applicant for any reason whatsoever. It includes, without limitation, money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated damages. Where the Applicant would have been liable but for its Administration, it will still be taken to be liable.  
PPSA means the *Personal Property Securities Act 2009* (Cth) and all italicised and capitalised terms used above have the meaning given to them in the PPSA.

**SCHEDULE**

*I have read and understood this document. I have not relied on anything said to me by the Customer or the Company as to what it means or what its effect may be.*

*SIGNED by each Guarantor in the presence of the witnesses named below. A copy of a current valid driver's licence of the Guarantor/s signing this agreement must be provided with this application.*

Guarantor's Name (print):  Guarantor's Address:	Signature:
Witness' Name (print):  Witness Address:	Signature:
Dated this _____ day of _____ 20_____	

Guarantor's Name (print):  Guarantor's Address:	Signature:
Witness' Name (print):  Witness Address:	Signature:
Dated this _____ day of _____ 20_____	

Guarantor's Name (print):  Guarantor's Address:	Signature:
Witness' Name (print):  Witness Address:	Signature:
Dated this _____ day of _____ 20_____	

**IMPORTANT NOTICE:** This is an important document. It may require you to pay someone else's debts. You should ensure you read and understand the terms of this Guarantee. If necessary, seek independent legal advice.



**BAR-TRUSS  
DRYSDALE TIMBER & HARDWARE**

**I acknowledge that I have read and understand the credit application that I have signed and that it is a binding legal document.**

IN PARTICULAR I ALSO ACKNOWLEDGE THE FOLLOWING:

1. Credit may be withdrawn at any time and there is no obligation to give credit.
2. Credit is given on a 30 day basis. This means payment must be made on or before the last trading day of the month following the month of purchase.
3. If payment is not made within the agreed time, any rebate or settlement discount offered will be forfeited. Loss of the settlement discount is a penalty for late payment and is intended to discourage people from late payment of accounts.
4. If payment is not made in accordance with the above conditions, credit will be suspended without notice **across all Companies**. Goods will not be delivered and nothing can be picked up unless prior payment is made.
5. The vendor will take legal action to recover the debt and any personal guarantees will be pursued.
6. Any legal costs incurred by the vendor will be recovered by the purchaser.
7. Interest may be charged on overdue amounts. Refer to Credit Terms for interest rates.
8. The agreed credit limit will be enforced. You can elect how you would like to split requested credit between our Companies below.

1. Barwon Timber & Hardware: \_\_\_\_\_ %
2. Bar-Truss: *(Complete pages 11 - 19)* \_\_\_\_\_ %
3. Drysdale Timber & Hardware: \_\_\_\_\_ %

9. All sales are subject to the applicable trading terms and conditions of the Company making the sale which includes Barwon Timber & Hardware, Flooring Installation, Cladding Installation, Bar-Truss Trading Terms and Conditions and/ or any other applicable Terms of Trade. Trading terms and conditions are subject to change without notice. Trading terms are available on our website ([www.barwontimber.com.au](http://www.barwontimber.com.au)) or in store.
10. E-mail addresses supplied will be included in our newsletter and marketing database. Customers can unsubscribe from newsletters.

SIGNATURE OF APPLICANT \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / 20 \_\_\_\_

NAME: \_\_\_\_\_

## TERMS AND CONDITIONS OF TRADE

### 1. SUPPLY OF PRODUCTS

#### 1.1 Supply

- (a) The Company agrees to sell and the Customer agrees to buy Products in accordance with these Terms and Conditions.
- (b) If more than one person is the Customer those persons contract jointly and severally for themselves and each other.
- (c) Where the Customer is acting as trustee of a trust the Customer is bound both personally as well as in its capacity as trustee.

#### 1.2 Exclusion of all other terms and conditions

- (a) These Terms and Conditions:
  - (i) include and incorporate the terms of any Quote that is agreed between the Company and the Customer;
  - (ii) apply to the exclusion of all other terms and conditions and supersedes all terms and conditions previously issued by the Company or otherwise agreed between the Company and the Customer; and
  - (iii) override any terms of purchase order used by the Customer to order and purchase Products.
- (b) No variation of these Terms and Conditions is binding unless expressly agreed in writing by an authorised representative of the Company.

### 2. PRODUCT OFFERING

#### 2.1 Price of Products

- (a) The Company will provide a Quote to the Customer setting out the Purchase Price of the Products. Unless previously withdrawn, the Company quotations are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date. The Company reserves the right to refuse any order based on any Quote within 7 days after the receipt of the order.
- (b) Unless expressly stated otherwise, the Purchase Price is exclusive of GST and all other taxes, duties or government charges levied in respect of the Products.
- (c) If GST is imposed on any supply made under or in accordance with these Terms and Conditions, the Customer must pay to the Company an additional amount equal to the GST payable on the supply, subject to the Customer receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time and in the same manner as payment for the supply is required to be made in accordance with these Terms and Conditions.

- (d) Prices quoted are those ruling at the date of issue of the Quote and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, cartage, cost of materials and any other charges affecting the cost of production ruling on the date is made.
- (e) The Company reserves the right to change the Purchase Price in its absolute discretion. If the Company makes any alterations to the Purchase Price of the Products or to any of their inputs either before acceptance of or during the currency of an order, any such alterations are payable by the Customer.
- (f) It is the responsibility of the Customer to inform itself of the current ruling price. However, all orders exceeding 30 days duration are subject to rise and fall assessments on the material and labour rates prevailing at the time.

#### 2.2 Orders and Specifications

- (a) By accepting a Quote the Customer accepts these Terms and Conditions.
- (b) The Customer warrants the accuracy of all plans, specifications, drawings or other particulars supplied by the Customer. The Company accepts no responsibility or Liability for incomplete, conflicting, unclear or inaccurate specifications. The Customer undertakes to ensure its specifications have been received and understood by the Company.
- (c) The Customer acknowledges that the Purchase Price and Quote are prepared and the Products manufactured reliant on the Customer's warranty in clause 2.2(b).
- (d) If the Customer cancels an order for the Products for any reason, the Company will only accept such cancellation by notice in writing to the Company and on the basis that all costs incurred by the Company up to receiving such notice from the Customer will be a debt due to the Company in accordance with these Terms and Conditions.
- (e) Any variation to the Products ordered as required by the Customer will only be accepted by the Customer detailing such variation by notice in writing to the Company and by the Customer accepting any variation in the Purchase Price of the Products in writing.
- (f) Once accepted by the Company, orders cannot be cancelled or varied by the Customer without the written approval of the Company. The Company reserves the right to charge a reasonable cancellation fee.
- (g) the Company may change or substitute raw materials, components or products with equivalent strength and specification without notice.

### 3. INVOICING AND PAYMENT

#### 3.1 Details in invoice

All invoices issued by the Company will include details of the Purchase Price and any other costs and charges



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payable by the Customer in accordance with these Terms and Conditions, including (where relevant) all reasonable charges associated with the delivery of the Products, which will be paid by the Customer unless otherwise agreed.

### 3.2 Payment of Purchase Price

- (a) Fifty (50) percent of the Purchase Price in relation to Products is payable upon the Customer accepting a Quote and is payable as a deposit due prior to manufacture of the Products, SAVE AND EXCEPT for Customers having entered into a Credit Account pre- approved by the Company where the Purchase Price is payable strictly within agreed trading terms.
- (b) The balance of the Purchase Price is due strictly prior to delivery of the Products, SAVE AND EXCEPT for Customers having entered into a Credit Account pre-approved by The Company where the Purchase Price is payable strictly within agreed trading terms.
- (c) Customers with Credit Accounts may be eligible for settlement discounts where accounts are paid within agreed trading terms. This will be indicated on Quotes.
- (d) If the Customer has not paid for any Products by the due date, without prejudice to any other right or remedy, the Company may recover the Purchase Price together with all interest forthwith from the Customer as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim that the Customer may have against the Company for anything or matter related to the Products delivered under these Terms and Conditions.

### 3.3 Payment in cleared funds

Payment by cheque or other negotiable instrument is not regarded as received until funds are cleared.

### 3.4 Interest

Without in any way limiting the Company's right to require payment in full in accordance with clause 3.2, the Company may at its sole discretion charge interest on overdue accounts at a default rate of 2% per month or other such other rate as the Company notifies the Customer in writing from time to time.

### 3.5 Recovery Costs

The Customer must pay all costs and expenses incurred by the Company, its advisers, mercantile agents and any other person, in respect of any action instituted or considered against the Customer, whether for debt, possession of Products or otherwise.

### 3.6 No right to offset

No amount owing, whether present or future, actual, contingent or prospective and on any account

whatsoever by the Company to the Customer may be offset against any liability whether present, future, actual, contingent or prospective of the Customer to the Company under these Terms and Conditions or on any other account whatsoever.

## 4. DELIVERY OF PRODUCTS

### 4.1 Date for Delivery and Delay

- (a) The delivery times communicated to the Customer are estimates only. The Company will notify the Customer by telephone and/ or SMS the estimated date of delivery. An SMS or voice message left with the Customer or a Representative will be deemed notification to the Customer and the Customer should check the estimated delivery time for the Products at least 5 days prior to the estimated date delivery communicated.
- (b) The Company is not responsible for any Liabilities for any delay, failure or inability to deliver in accordance with a communicated delivery time, including any delay caused by a Manufacturer, and is not liable for any Liability occasioned to the Customer or its clients arising from late or non-delivery or late installation of Products.
- (c) A request by the Customer to amend the delivery time given by the Company will only be accepted if sufficient time is given to alter the Company's production program.
- (d) The Customer shall ensure that the Customer or a Representative is present at the delivery site to accept delivery and to provide clear access on the delivery site so that the delivery vehicle can unload the Products as close as practicable to the place the Products are to be erected. Clear access areas are to comply with Work Safe guidelines, including No go Zones for Overhead Electrical Powerlines.
- (e) The Customer agrees that the Company may attend the delivery site at the completion of the Products being installed to collect any surplus Products or part thereof.
- (f) The Customer is responsible for the payment of all costs incurred and associated with the delivery of the Products, including the lifting of trusses to plate height. Lifting to plate may be completed at the sole discretion of the Company and is subject to the Customer or a Representative providing to the Company a signed and completed authority. The Customer or a Representative must be present to complete lifting to plate and ensure it is safe to do so. This includes ensuring the building can take the weight of the lifted load. Any lifting to plate is done at the Customer's sole risk and to the maximum extent permitted by Law the Customer assumes sole responsibility for, and indemnifies the Company against, all Liabilities,

## TERMS AND CONDITIONS OF TRADE

including any Consequential Loss, arising from or in connection with lifting to plate. Note that portable crane hire is not included in any quotation provided to the Customer and must be paid in addition to the Purchase Price.

- (g) the Company will endeavour to include costs in Quotes for delivery escorts and permits required under Vic Roads and/ or National Heavy Vehicle Regulator guidelines for Oversize Load Carrying Vehicles (**Guidelines**). These costs are subject to the Guidelines and should extra costs be incurred owing to Guideline changes, these will be payable by the Customer.
- (h) The Customer is not relieved of an obligation to accept or pay for Products because of any delay in delivery.

### 4.2 Frustrated Delivery

A charge may be rendered to cover the Company's cost of any frustrated delivery.

### 4.3 Products damaged or lost in transit

If the Customer makes their own arrangements for freight of the Products risk in the Products passes to the Customer upon collection of the Products and the Company is not responsible to the Customer or any person claiming through the Customer for any Liabilities or loss or damage to the Products in transit caused by any event of any kind by any person (whether or not the Company is legally responsible for the person who caused or contributed to that loss or damage).

## 5. USE OF PRODUCTS

the Company is not responsible for any Liabilities resulting directly or indirectly from the use of a Product where:

- 5.1 the Product has not been correctly installed or maintained; or
- 5.2 the Customer has provided inaccurate or incomplete specifications or measurements.

## 6. DEFECTIVE PRODUCTS

### 6.1 Inspection

- (a) The Customer or a Representative must undertake an inspection of the Products upon delivery to determine if there has been a short delivery. If the Customer or a Representative accepts delivery without notifying the Company of a short delivery, or if the Customer or a Representative is not present to inspect the Products at the notified delivery time, the Customer will be deemed to have given proof of delivery and will have no claim against the Company in respect of short delivery.
- (b) The Customer must, within 7 Business Days of delivery of the Products, check whether the Products suffer from any defect.

### 6.2 Notice of Defect

- (a) The Customer must give the Company written notice including photographic images or video of any defect within 7 Business Days of delivery of the Products. All defect claims must accompany a request for credit quoting the Company's invoice number on which the Products were supplied. If no such notice is given the Customer is deemed to waive any claim that any of the Products delivered are defective.
- (b) If the Customer gives notice under clause 6.2(a), it must:
  - (i) preserve the Products in the state in which they were delivered to the Customer; and
  - (ii) at the Company's election either:
    - A. allow the Company (or its nominated agent) access to the Customer's premises to inspect Products; or
    - B. return the Product at the Customer's expense to the Company for inspection.

### 6.3 Customer's obligations

The Company will only accept Liability for any failure of floor and roof trusses (the **Trusses**) supplied to comply with the Nail Plate Suppliers engineering requirements provided the following conditions have been met by the Customer:

- (a) the Trusses must be erected and braced to comply with Australian Standard "Installation of Nail Plate Timber Trusses" AS 4440 1997;
- (b) the Trusses shall be laden with covering as indicated in the Quote provided to the Customer (i.e. tiles, sheet, etc.);
- (c) the Trusses are to be spaced correctly and in accordance with the Company requirements and Local Council Ordinances;
- (d) the lintels over all openings in external walls must comply with AS 1684 or Approved Engineers Design;
- (e) the Trusses shall be slung by panel points only;
- (f) the Trusses must not under any circumstances be cut or altered without the prior written permission of the Company;
- (g) all other materials and construction methods used as part of the roofs structure must accord with AS 4440 1997, Local Council Ordinances and accepted building standards;
- (h) the Customer must check with the Manufacturer as to any proposed method of construction of auxiliary roof timbers which could impair the structural efficiency of the roof trusses;
- (i) concrete slabs must be properly waterproofed.
- (j) bottom plates are to be blocked correctly where required on bearers;

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- (k) wall connectors are to be used at all junctions on top plates;
- (l) all junction studs are to be nailed at midpoint to blocks provided;
- (m) all bracing elements are to be nailed finally after plumbing on site has occurred;
- (n) roof trusses and wall frames must be effectively clad and weather protected at all times; and
- (o) the Company will not accept liability for tradesmen employed by the Customer.

### 6.4 Replacement of Products and Guarantee

- (a) All implied guarantees, warranties and conditions (including warranties as to the quality or fitness for purpose of Products) are excluded to the maximum extent permitted by Law.
- (b) To the maximum extent permitted by Law, the Company is not liable for:
  - (i) any Consequential Loss under or in connection with these Terms and Conditions; or
  - (ii) any Liability resulting from any action or omission on the part of the Company, or the employee, contractors or agents of the Company.
- (c) The Company's liability for any Products manufactured by it is limited to making good any defects by repairing the defects or at the Company's option by replacement, within a period not exceeding twelve (12) calendar months after the Products have been dispatched so long as:
  - (i) defects have arisen solely from faulty materials or workmanship;
  - (ii) the Products have not received maltreatment, inattention or interference;
  - (iii) the Products have not been incorrectly installed by the Customer; and
  - (iv) the Customer has complied with clause 6.3
- (d) If the Company elects to have the Products returned to the Company (or as the Company directs), the Products must be returned in the same condition as when first delivered to the Customer.
- (e) If the Products are not manufactured by the Company the guarantee of the Manufacturer of those Products is accepted by the Customer and is the only guarantee given to the Customer in respect of the Products. The Company agrees to assign to the Customer on request made by the Customer the benefit of any warranty or entitlement to the Products that the

Manufacturer has granted to the Company under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

- (f) The Company is not liable for and the Customer releases the Company from any claims in respect of faulty or defective design of any Products supplied unless such design has been wholly prepared by the Company and the responsibility for any claim has been specifically accepted by the Company in writing. In any event the Company's liability under this paragraph is limited strictly to the replacement of defective Products in accordance with clause 6.4(c).
- (g) Should a Product returned to the Company as defective be found on inspection by the Company not to be defective, such Product will be returned to the Customer and all charges for the freight and handling will be charged to and must be paid for by the Customer.

## 7. RISK, TITLE AND THE PPSA

### 7.1 Risk

- (a) Subject to clause 4.3, the risk in the Products passes to the Customer on delivery of the Products to the Customer's requested delivery location. The Company is not liable to the Customer for any loss or damage or deterioration of the Products after delivery, even if the Company arranges freight.
- (b) Where delivery is delayed for any reason beyond the reasonable control of the Company, and the delay continues for 14 days after the Company has notified the Customer that the Products or any part of them are ready to be delivered, the risk of the Products passes to the Customer. The Company may, at its option, store the Products at its premises or elsewhere and all costs of or incidental to such storage, including insurance, will be payable by the Customer from the date delivery instructions are requested.

### 7.2 Rights in relation to Products

- (a) The Company reserves the following rights in relation to the Products until all accounts owed by the Customer to the Company are fully paid:
  - (i) ownership of the Products;
  - (ii) to enter the Customers premises (or the premises of any associated company or agent where the Products are located) without liability for trespass or any resulting damage and retake possession of the Products; and
  - (iii) to keep or resell any Products repossessed pursuant to this clause. If the Products are

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resold, or products manufactured using the Products are sold, by the Customer, the Customer shall hold such part of the proceeds of any such sale as represents the invoice price of the Products sold or used in the manufacture of the Products sold in a separate identifiable account as the beneficial property of the Company and shall pay such amount to the Company upon request. Notwithstanding the provisions above The Company shall be entitled to maintain an action against the Customer for the Purchase Price.

- (b) The Company and the Customer agree:
- (i) that the Customer is bailee of the Products until such time as property in them passes to the Customer and that this bailment continues in relation to each of the Products until the Purchase Price has been paid in full;
  - (ii) that pending payment in full for the Products, the Customer must insure the Products for their full insurable or replacement value (whichever is the higher) with a reputable and competent insurer;
  - (iii) that the Customer will not supply any of the Products to any person outside its ordinary or usual course of business; and
  - (iv) that the Customer will not allow any person to have or acquire any security or interest in the Products.
- (c) In the event that the Customer fails to pay for the Products by the due date; commits an act of bankruptcy or becomes insolvent or bankrupt; or is placed in receivership or voluntary administration; enters into any type of arrangement with creditors; is the subject of a petition for winding up or is wound up; or otherwise fails to observe its obligations under these conditions, the Company may exercise its rights under clause 7.2(a) and terminate the further supply of Products.
- (d) The Customer hereby charges in favour of the Company all its respective right, title and interest in any land owned by the Customer, including any land the Customer may acquire in the future, ('the land') to better secure all amounts owing by the Customer to the Company and the performance of the Customers obligations under these conditions and the Customer agrees that the Company may register a caveat over the land in relation to this charge.
- (e) The Company may, at its discretion, apply amounts it receives from the Customer towards amounts owing to it in such order as the Company chooses.

### 7.3 Registration of Title under the PPSA

- (a) The Customer acknowledges and agrees that:
- (i) these Terms and Conditions constitute a Security Agreement for the purpose of the PPSA which creates a Security Interest in favour of the Company in the Products and in all present and after acquired property supplied by the Company to the Customer (or for the Customer's account). This Security Interest constitutes security for payment of all of the Customer's indebtedness to The Company under these Terms and Conditions or otherwise;
  - (ii) the Company may, without notice to the Customer, register its Security Interest in the Products (in any manner the Company considers appropriate), in all present and after acquired property and in their proceeds as a Purchase Money Security Interest on the Register; and
  - (iii) the Customer agrees to provide all assistance reasonably required to facilitate registration and perfection of the Company's Security Interest so that it has priority over all other Security Interests in the Products.
- (b) Where the PPSA applies to action taken by the Company in relation to the Products, the Customer waives its right to receive any notices required under sections 95, 118, 121, 130, 132 or 135 of the PPSA.
- (c) The Customer waives its rights under section 157 of the PPSA to receive a verification statement.
- (d) The Customer must reimburse the Company for all costs and/or expenses incurred or payable by the Company in relation to the registration of any Security Interest pursuant to these Terms and Conditions.

### 7.4 Customer's property

Any property of the Customer under the Company's possession, custody or control is completely at the Customer's risk as regards loss or damage caused to the property or by it.

## 8. CUSTOMER WARRANTIES

### 8.1 The Customer warrants:

- (a) that it is solvent and creditworthy;
- (b) that it is authorised under its constitution or charter to enter into these Terms and Conditions;
- (c) that, where it is the trustee of any trust or trusts, it is entering into these Terms and Conditions both in its capacity as trustee of that trust or trusts and in its own beneficial capacity;

## TERMS AND CONDITIONS OF TRADE

- (d) that any Representative that gives instructions to the Company in relation to the Products on behalf of the Customer is duly authorised to do so, that any such instructions are binding on the Customer and that the Company is entitled to rely on such instructions and is under no obligation to confirm such instructions with the Customer unless the Customer provides the Company with express notice in writing to the contrary; and
- (e) that it or its directors have had the opportunity to review and consider these Terms and Conditions and to seek legal advice as to their implications.

### 9. INTELLECTUAL PROPERTY

#### 9.1 No licence or assignment

The Customer's purchase of Products does not confer on the Customer any licence or assignment of any copyright, patent, design or trademark, or any other intellectual property right (whether registered, registrable or not) that subsists in the Products.

#### 9.2 No warranty

the Company makes no representation or warranty to the Customer of any kind, express or implied, that the Products will not infringe any intellectual property rights of a third party.

### 10. INDEMNITY

10.1 The Customer indemnifies the Company against any Liabilities which the Company suffers, incurs or is liable for as a result, directly or indirectly, of:

- (a) any breach of these Terms and Conditions by the Customer; or
- (b) any negligent act or omission by the Customer.

10.2 The Customer agrees, in the event of the Customer defaulting under its obligations under these Terms and Conditions, to:

- (a) pay interest on all money due by the Customer to the Company at the rate of 2% per month, compounding monthly; and
- (b) pay all recovery and enforcement costs incurred by the Company, on an indemnity basis, such enforcement costs include, but are not limited to, legal costs and disbursements and mercantile agent costs and charges.

### 11. PRIVACY INFORMATION

The Customer agrees that the Company may, to the extent permitted by law:

- 11.1 exchange the Customer's personal information with its Related Bodies Corporate; and
- 11.2 use or disclose personal information about the Customer in accordance with the Company's Privacy Policy from time to time, a copy of which is on the Company's website [www.barwontimber.com.au](http://www.barwontimber.com.au).

### 12. TERMINATION

#### 12.1 Breach of agreement

The Company may terminate these Terms and Conditions with immediate effect by giving written notice to the Customer if:

- (a) the Customer breaches any material provision of these Terms and Conditions (including without limitation any breach in respect of an obligation to pay money) and fails to remedy the breach within 7 days after receiving notice requiring it to do so; and
- (b) the Customer breaches a material provision of the Agreement where that breach is not capable of remedy.

#### 12.2 Termination events

The Customer must notify the Company immediately if:

- (a) it disposes of the whole or any material part of its assets, operations or business;
- (b) there is a change in ownership of the Customer;
- (c) it ceases to carry on business;
- (d) it ceases to be able to pay its debts as they become due;
- (e) any step is taken by a mortgagee to take possession or dispose of the whole or part of its assets, operations or business;
- (f) any step is taken to enter into any arrangement between it and its creditors; or
- (g) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person in relation to the whole or part of its assets, operations or business.

#### 12.3 Termination for termination events

The Company may terminate the Agreement immediately without notice if any event referred to in clause 12.2 occurs.

### 13. AFTER TERMINATION

If the Agreement is terminated the Customer must, within 5 Business Days of termination, pay the Company all amounts it owes the Company irrespective of whether those amounts have fallen due and whether or not an invoice has been issued by the Company.

### 14. FORCE MAJEURE

No party is liable for any failure to perform or delay in performing its obligations under these Terms and Conditions if that failure or delay is due to a Force Majeure Event. If that failure or delay exceeds 90 days, the other party may terminate the Agreement with immediate effect by giving written notice to the other party. This clause does not apply to any obligation to pay money.

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### 15. ASSIGNMENT

the Company may in its absolute discretion sub-contract the manufacture or delivery of the Products or otherwise assign these Terms and Conditions. The Customer must not otherwise assign or deal with the Agreement or any rights under the Agreement without the prior written consent of the Company.

### 16. GENERAL PROVISIONS

#### 16.1 Notice

A notice to be given by a party to another party under these Terms and Conditions must be in writing and sent to the address previously nominated by that party and will be deemed to be duly given:

- (a) in the case of hand delivery, on the day of delivery;
- (b) three Business Days after the date of posting by pre-paid registered post; or
- (c) if sent by email or SMS, when sent.

#### 16.2 Electronic signatures binding

Delivery of a signature page of an order by PDF file shall be effective as delivery of a manually executed version and shall be deemed legally binding.

#### 16.3 Governing Law

These Terms and Conditions are governed by the Law applicable in the State of Victoria, and the parties consent to the exclusive jurisdiction of the courts of the State of Victoria.

#### 16.4 Time

Time is not of the essence except in relation to payment.

#### 16.5 Business Day

Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the next Business Day.

#### 16.6 Waiver

The failure of a party at any time to require performance of any obligation under these Terms and Conditions is not a waiver of that party's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; or
- (b) at any other time to require performance of that or any other obligation under the Agreement.

#### 16.7 Unenforceable provision

- (a) If a provision of, or the application of a provision of, these Terms and Conditions is void, illegal or unenforceable in any jurisdiction, it does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

- (b) Where a clause in these Terms and Conditions is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in these Terms and Conditions.

### 16.8 Relationship between the parties

Nothing in these Terms and Conditions creates any fiduciary relationship, nor any partnership, joint venture or agency relationship between the parties.

### 17. INTERPRETATION

In interpreting these Terms and Conditions:

- 17.1 any reference to a party includes its successors and permitted assigns;
- 17.2 headings are for convenience only and have no legal effect;
- 17.3 the singular includes the plural and vice versa;
- 17.4 "including" and similar words do not imply any limitation;
- 17.5 a reference to '\$' is to the Australian dollar;
- 17.6 a reference to legislation or a legislative provision includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- 17.7 if the performance of an obligation under these Terms and Conditions falls due on a weekend or public holiday, it must be performed on the next Business Day.

### 18. DEFINITIONS

Unless otherwise inconsistent with the context:

- 18.1 All present and after acquired property, Purchase Money Security Interest, Registration, Security Agreement, Security Interest and Verification Statement have the meanings prescribed to them in the PPSA;
- 18.2 **Business Day** means a day on which trading banks are open for business in Melbourne, Australia, except a Saturday, Sunday or public holiday.
- 18.3 **Consequential Loss** means any loss or damage suffered by the Customer or any other person which is indirect or consequential; or which is by way of loss of revenue, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity.
- 18.4 **Company** means as the context requires either:
  - (a) Barwon Timber (ABN 39 006 592 525);
  - (b) Bar-Truss (ABN 87 103 238 295) or
  - (c) Drysdale Timber & Hardware (ABN 66 104 780 841);and each of their respective successors and assigns.

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- 18.5 **Customer** means a customer supplied or to be supplied Products by the Company.
- 18.6 **Force Majeure Event** means any failure or delay in the performance of a party's obligations under these Terms and Conditions as a result of a national strike, lockout, work stoppage, labour dispute, material shortage, utility outage, delay in transportation, fire, flood, earthquake, severe weather, pandemic, act of God, accident, trade sanction, embargo, act of war, act of terror, condition caused by national emergency, new or changed Law, or any other act or cause beyond the reasonable control and without fault of the delayed party, and whether affecting that party or its agents, subcontractors, dealers or suppliers, for as long as the circumstances prevail.
- 18.7 **GST** means any goods and services tax and any replacement or similar tax.
- 18.8 **Law** means any legislation, ordinance, regulation, bylaw, order, award, proclamation, direction and practice note of the Commonwealth, State or Territory or any government agency, certificate, licence, consent, permit, approval, qualification, registration, standard and requirement, or any other Law from which legal rights and obligations arise.
- 18.9 **Liabilities** means all damages, losses, liabilities, costs, charges, expenses, outgoings or payments (whether direct or indirect, consequential or incidental) including any damages, losses, liabilities, costs, charges, expenses, outgoings or payments in respect of any damage to property or injury to, or death of, any person.
- 18.10 **Manufacturer** means a third party entity engaged by the Company to manufacture Products.
- 18.11 **Representative** means any employee, contractor, sub-contractor, consultant, service provider or any other individual who is employed, sub-contracted or otherwise working for a contractor, sub-contractor, consultant or service provider who gives instructions to the Company in relation to the Products and/ or the delivery of the Products on behalf of the Customer.
- 18.12 **PPSA** means Personal Property Securities Act 2009 (Cth);
- 18.13 **Products** means products supplied by the Company to the Customer.
- 18.14 **Purchase Price** means the price of Products as specified in a Quote provided by the Company to the Customer.
- 18.15 **Quote** means a written statement of price given by the Company to the Customer for supplying specified Products, which may include specified terms and conditions such as packing and delivery requirements. Related Body Corporate has the meaning given in section 9 of the Corporations Act 2001 (Cth).
- 18.16 **Terms and Conditions** means these terms and conditions of trade and the applicable Quote.

I have read and understood this document. I have not relied on anything said to me by the Customer or the Company as to what it means or what its effect may be.

**Print signatory's name:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

**Signatory's capacity:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Print witness name:** \_\_\_\_\_

**Witness Signature:** \_\_\_\_\_