

APPLICATION FOR COMMERCIAL CREDIT

Customer

Trading name			
Name of company, trust, person(s) or partnership operating business			
ACN		ABN	
Business street address			
Business postal address			
Contact Person - Purchasing		Phone:	Email:
Contact Person - Accounts		Phone:	Email:
Name of bank		Branch:	
Branch		BSB:	
Credit limit required		Expected monthly purchases:	

Details of partner/director

Name		DOB	
Address		Drivers licence	
Title		Mobile	
Name		DOB	
Address		Drivers licence	
Title		Mobile	

Date business commenced		Type of business	
How long established		How long current owner	
Name of related or subsidiary companies or partnerships			
Are the business premises owned	Yes <input type="checkbox"/>	No <input type="checkbox"/>	OR leased Yes <input type="checkbox"/> No <input type="checkbox"/>
Do you currently trade with any other SMYA company or division	Yes <input type="checkbox"/>	No <input type="checkbox"/>	If yes, which ones
Do you require a monthly statement?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Email:

Trade references (must have traded for at least 12 months)

Name		Telephone	
Address		Email:	
Name		Telephone	
Address		Email:	
Name		Telephone	
Address		Email:	

STANDARD TERMS AND CONDITIONS

- 1 Definitions**
- Seller** means SMYBB Pty Ltd ABN 45 096 514 788 or any Related Body Corporate as defined by the *Corporations Act (2001)* (Cth).
- Customer** means the entity which orders Goods from the Seller or to which Goods are delivered by the Seller.
- Contract** means the contract formed between the Seller and the Customer in accordance with these Terms and Conditions.
- Goods** means the goods purchased or ordered by the Customer from the Seller.
- GST** means goods and services tax imposed in Australia by the GST law.
- GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Order** means an order by the Customer to the Seller requesting the supply of Goods.
- Permitted Security Interest** means any security interest which the Seller consents to or otherwise agrees in writing with the Customer will be a Permitted Security Interest for the purposes of these terms and conditions.
- PPSA** means the *Personal Property Securities Act 2009* (Cth).
- PPSR** means the Personal Property Security Register.
- PPS Regulations** means the *Personal Property Securities Regulations 2010* (Cth).
- Purchase Money Security Interest** that has the meaning prescribed to it in the PPSA.
- Security Interest** includes any security interest under the PPS Act.
- In these terms and conditions, unless the context otherwise requires, the following terms and expressions have the same meanings given to them in the PPSA or the PPS Regulations (as applicable): after-acquired property, circulating asset, collateral, control, commingled goods, financial property, financing change statement, financing statement, possession, purchase money security interest, security agreement and verification statement
- 2 General**
- 2.1 Any quotation made by the Seller to the Customer is not an offer to sell or provide Goods to the Customer, nor does it give rise to any obligation on the Seller to sell Goods to the Customer.
- 2.2 An Order constitutes an offer by the Customer to purchase Goods from the Seller in accordance with the Order and these Terms and Conditions.
- 2.3 An Order is accepted on the first to occur of:
- (1) the Seller signing the Order; and
 - (2) any act undertaken by the Seller consistent with fulfilling the Order.
- 2.4 Upon acceptance of an Order, a binding Contract is formed between the Seller and the Customer on the terms set out in the Order and these Terms and Conditions.
- 2.5 If there is an inconsistency between these Terms and Conditions and any Order, these Terms and Conditions prevail to the extent of that inconsistency, unless expressly agreed in writing by a duly authorised officer of the Seller.
- 2.6 It is the Customer's responsibility when placing an Order to ensure that the Goods ordered conform to the Customer's requirements and are suitable and sufficient for the Customer's purpose.
- 2.7 To the extent permitted by law, the Seller will not accept the return of, or give credit for, any Goods supplied to the Customer.
- 2.8 It is the Customer's responsibility to obtain any approvals, licences or permits necessary for:
- (1) the Customer to perform its obligations under the Contract; and
 - (2) the use or sale of the Goods by the Customer.
- 2.9 All descriptive specifications, performance figures, drawings, data, dimensions and weights furnished by the Seller or contained in catalogues, price lists or advertisements are by way of general description of the Goods only and do not form part of the Contract.
- 2.10 It is the Customer's responsibility to provide all information necessary to enable the Seller to provide the Goods in accordance with the Customer's requirements and the Customer is responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.
- 2.11 For Orders of a specified quantity of Goods with a non-specified delivery date, if the Customer does not specify a delivery date for any of the Goods within six (6) months of the date of the Order then the delivery date for the Order will be six (6) months from the date of the Order, unless otherwise agreed in writing between the Customer and the Seller.
- 2.12 If at any time after the Contract has been formed, the Customer cancels or alters an Order, or any part of an Order, including by requesting standard Goods with non-standard materials then without prejudice to any other rights the Seller has against the Customer, the Seller may charge the Customer any costs incurred by the Seller in fulfilling the Order, including materials already acquired for the Order together with the cost of any labour and tooling.
- 2.13 In the event of any dispute concerning any Order (including any question of identity, delegation or authority or any telephone, facsimile, email, ecommerce or computer generated order) the internal records of the Seller will be conclusive evidence of what was ordered.
- 2.14 Each order the Customer places is, a representation by it made at the time that it is, and will remain in the future, solvent and able to pay all of its debts as and when they fall due.
- 2.15 The Customer acknowledges and agrees that any failure to pay the Seller in accordance with these terms and conditions is conclusive evidence that the Customer has no reasonable grounds for making the representation referred to in clause 2.14 and that the representations were unconscionable, misleading and deceptive.
- 2.16 When any order is placed, the Customer must inform the Seller of any material facts which would or might reasonably affect the commercial decision by the Seller to accept the Order.
- 3 Price**
- 3.1 Prices quoted by the Seller for Goods are based on the full quantities specified and do not necessarily operate pro rata for any greater or less quantities.
- 3.2 Prices quoted by the Seller for Goods are exclusive of GST and the Customer is required to pay any GST payable by the Seller in respect to the supply of Goods at the same time that the price is required to be paid by the Customer to the Seller.
- 3.3 Prices quoted by the Seller for Goods are based on the then present rates and costs of materials including resin, labour, freight, currency exchange rates insurance, customs agents and carriers' fees, government tariffs, duties and taxes and are subject to increase in respect of any variation in such rates or costs or the method of assessment of the same occurring during the term of the Contract before delivery of the Goods to the Customer. Otherwise prices quoted are not subject to change within thirty (30) days from the date of quotation.
- 3.4 If the manufacture or supply of Goods is suspended on the Customer's instruction, or due to any act or omission of the Customer, including a failure of the Customer to accept the Goods for any reason on or after the date on which they are ready for delivery, then the Customer is liable for all extra costs and losses incurred by the Seller as a result.
- 3.5 The Customer acknowledges that in order to manufacture the Goods, the Seller must acquire or develop a mould for the Goods and that as a result, the Seller may require the Customer to acquire a minimum quantity of the Goods.
- 4 Minimum Charge**
- The Seller reserves the right to increase the amount charged on any invoice up to the minimum charge as established by the Seller at the date of the invoice.
- 5 Terms of payment**
- 5.1 The Seller may require a deposit on Order and any balance of the price owing must be paid either before or on delivery of the Goods to the Customer (or on the date that delivery is deemed to have taken place in accordance with these Terms and Conditions), unless the Seller has agreed to provide the Goods to the Customer on credit terms.
- 5.2 Prices quoted are strictly net and payment in full must be made in accordance with the Contract and within the times stated on either the quotation or the invoice with respect to the relevant Goods. If the times for payment are stated on both the quotation and the invoice, then the time stated on the invoice applies.
- 5.3 Interest must be paid by the Customer on overdue accounts calculated daily from the day following the day upon which payment should have been made, at the rate of eighteen (18%) per cent per annum and without any demand being necessary.
- 5.4 Upon demand being made by the Seller, the Customer must indemnify the Seller against all costs (including legal costs on a solicitor/client basis), expenses or other sums incurred by the Seller in exercising any right or remedy available to it upon default by the Customer, which sum will also carry interest at the rate specified above if unpaid within one (1) calendar month of demand having been made.
- 5.5 Any quotation provided which contains a provision to supply Goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the Customer's Order.
- 6 Retention of title, delivery, risk and property**
- 6.1 Any date quoted by the Seller for delivery of Goods is an estimate only. Unless a guaranteed date for delivery is given by the Company in writing providing for liquidated damages for failure to deliver by the quoted date, the Seller is not liable to the Customer for any loss or damage howsoever arising even if arising out of the negligence of the Seller for failure to deliver on or before the quoted date.
- 6.2 The Seller will provide reasonable written notice to the Customer as to when the Goods will be delivered.
- 6.3 The Customer must accept and pay for Goods on the date for delivery advised to it by the Seller.
- 6.4 Unless as set out otherwise in this agreement, the Goods will be delivered to Customer ex Works or EXW (Incoterms 2010 Rules).
- 6.5 The Seller, at its discretion, may agree to act as agent for the Customer for delivery beyond the Seller's premises and in that regard:
- (1) all costs of carriage and insurance must be paid by the Customer;
 - (2) the Seller is not liable for any damages caused to the Goods whilst they are in transit; and
 - (3) the Customer, at its expense must provide labour, cranes or forklift at the point of delivery as well as reasonable access to point of delivery for offloading of Goods without delay.
- 6.6 Where the Seller agrees to deliver the Goods to the premises of the Customer and where the Seller contracts with a carrier to do so, delivery of the Goods to the carrier in all circumstances constitutes delivery to the Customer.
- 6.7 Delivery of Goods to the Customer or to the carrier at the point of delivery constitutes delivery to the Customer and upon delivery to the Customer risk of loss passes to the Customer. A certificate purporting to be signed by an officer of the Seller, or any signed delivery docket, confirming delivery is conclusive evidence of delivery.
- 6.8 As long as the Customer owes the Seller any part of the sale price for Goods supplied at any time the Seller retains the legal title in all Goods supplied and not yet used or resold by the Customer. The Customer must keep such Goods stored separately during the time it has them in such a way that the Goods remain identifiable and must hold such Goods as bailee for the Seller. When such Goods are filled or used, even with loss of identity, legal title to the resultant product vests in the Seller.
- 6.9 The Seller has:
- (1) the right to re-entry and inspection to support the property reservation; and
 - (2) the power to repossess any Good to which it retains title when any payment due to the Seller by the Customer is overdue.
- 6.10 If the Customer resells the Goods referred to above before all moneys payable by the Customer to the Seller have been paid, the Customer agrees that it holds the proceeds of re-supply of the Goods on trust for, and as agent for, the Seller immediately when they are receivable or received, such proceeds to be kept in a separate account.
- 6.11 Seller, at its discretion, may deliver the Goods ordered by instalments (in which case each instalment is subject to a separate agreement for sale) without any liability to the Customer arising whatsoever.
- 6.12 If after fourteen (14) days from the date on which the Goods are ready for despatch, delivery is delayed for any reason beyond the Seller's reasonable control, the Seller may store the Goods at its premises or elsewhere and the

- cost of storage, handling and insurance is payable by the Customer on demand by the Seller.
- 6.13 No delivery may be deferred except with the written consent of the Seller.
- 6.14 It is further acknowledged and agreed that:
- (1) the retention of title clause in these Terms and Conditions constitutes a security agreement for the purposes of the PPSA which creates a Security Interest in all Goods, including any Commingled Goods. It is the intention of the Seller and the Customer that upon registration of the Seller's Security Interest on the PPSR a Purchase Money Security Interest will result; and
 - (2) until such time as ownership of the Goods passes from the Seller to the Customer, the Seller may give notice in writing to the Customer to return the Goods to the Seller. Upon such notice the Customer's rights to obtain ownership or any other interest in the Goods ceases.
- 7 Cancellation**
Subject to any applicable law, any Order may only be cancelled, varied or suspended with the written consent of the Seller and in the event of such cancellation, variation or suspension the Customer undertakes to reimburse and indemnify the Seller for any costs expenses or charges incurred by the Seller in preparation for, and in the execution of, an Order which may include an amount equal to 50% of the net profits lost by the Seller as a result of the cancellation, variation or suspension.
- 8 Quantities**
No claim for shortage of delivery or shortfall or excess in capacity or performance of less than 10% of that ordered will be made by the Customer, and in any event may not exceed the invoiced unit price of the Goods in respect of which the claim is made. Excess delivery of up to 10% of quantities ordered will be accepted by the Customer and payment made for such excess quantities.
- 9 Containers**
This clause 9 applies to any pallets and/or dividers (**Pallets**) in or on which Goods are delivered to the Customer.
If the Customer returns any Pallet to the Seller in good order and condition and within twelve (12) months of the original delivery of the relevant Pallet to the Customer, the Seller will refund any amount paid by the Customer for the relevant Pallet. If any Pallet is returned by the Customer other than in good order and condition, the Seller will only refund to the Customer part of the amount originally paid by the Customer for that Pallet having regard to its actual condition upon return to the Seller.
Pallets will be deemed to be not returned by the Customer until received into the Seller's premises.
- 10 Description and Specification**
- 10.1 The Customer warrants that any Goods manufactured, constructed or supplied by the Seller which are based in whole or in part upon designs drawings or specifications supplied to the Seller by or on behalf of the Customer do not breach the intellectual property rights of any third party. The Customer indemnifies and keeps indemnified and hold harmless the Seller against any action loss cost claim or damage that may be brought against or suffered by the Seller for any breach of this warranty by the Customer.
- 10.2 The Seller does not warrant or guarantee, and it is not a term of the Contract that any Goods manufactured constructed or supplied by the Seller which are based upon any designs, drawings or specifications supplied to the Customer by or on behalf of the Customer will achieve any standard of performance or capacity whatsoever and the Customer acknowledges that it does not rely on the skill and judgment of the Seller for the fitness for any purpose of any Goods so manufactured constructed or supplied.
- 11 Access**
- 11.1 In respect of any work done on the Customer's premises or elsewhere other than at the Seller's premises, subject to any written agreement to the contrary, it is the duty of the Customer to ensure that the conditions under which the work has to be performed, the layout, means of access, accessibility of the different parts of the subject matter being worked upon or handled and other material circumstances are suitable to the Seller failing which the Seller is entitled to charge a reasonable increase in the price having regard to the prevailing circumstances.
- 12 Inspection and Acceptance**
- 12.1 Upon delivery of Goods, the Customer may inspect those Goods at its expense.
- 12.2 If the Customer, acting reasonably, believes that the some or all of the Goods have not been provided in accordance with the Contract, the Customer may provide written notice to the Seller specifying the details of the non-conformance. If the Customer fails to give any such written notice to the Seller within seven (7) days of the date of delivery, the Customer has accepted that the Goods have been provided in accordance with the Contract.
- 12.3 The Seller reserves the right to apply a restocking fee of \$25.00 or 15% of Invoice value (whichever is greater) for Goods returned as a result of an error in purchasing by the Purchaser.
- 13 Force Majeure**
The Seller is not liable for failure or delay in the supply of the Goods due in any substantial part to any cause beyond the control of the Seller such as, but not limited to, any act or neglect of any carrier, sub-contractor, manufacturer or supplier of the Seller, acts of God, strikes, lock-outs, bans or other industrial disturbances, fire, flood, explosion, civil riot, or commotion, government interference or request, by-laws, rules or regulations or order of any competent authority. No such failure or delay entitles the Customer to terminate the Contract and the Seller's obligations to the Customer under this Contract will be suspended without liability on the part of the Seller while such cause exists.
- 14 Intellectual Property**
The Seller is not liable to the Customer for any infringement or unauthorised use of any patent, trademark, design, copyright or any other intellectual property right arising out of performance of the Contract. If any dispute or claim arises with respect to any such matter then the Seller may terminate the Contract by notice in writing to the Customer without any liability on the part of the Seller.
- 15 Default**
- 15.1 If any of the following events occur then there is a **Default**:
- (1) The Customer goes into administration, receivership or liquidation.
 - (2) The Customer assigns its property for the benefit of creditors, or has a receiver or official manager appointed to any of its assets.
 - (3) Execution is levied upon the assets of the Customer for an amount in excess of \$1,000.00 and is not within seven days satisfied.
 - (4) The Customer fails to make any payment to the Seller under the Contract on the due date for that payment.
 - (5) The Customer breaches any provision of the Contract.
- 15.2 If a Default occurs then the Seller, without prejudice to any other remedies available to it, may do any one or more of the following:
- (1) Suspend production of the Goods.
 - (2) Decline to deliver the Goods, or any balance of the Goods still due under the contract.
 - (3) Stop any Goods in transit and have them returned, at the expense of the Customer, to the Seller.
 - (4) Otherwise cease to perform any of its obligations to Customer, under the Contract or otherwise.
 - (5) Terminate the Contract without incurring any liability at law or in equity and without prejudice to the rights to recover amounts owing to it by Customer and/or other damages.
 - (6) Enter onto any premises and repossess any Goods already delivered and whether or not property in such Goods has passed to the Customer in respect of which entry the Customer indemnifies the Seller and will keep the Seller indemnified for all damages for which the Seller may be responsible.
 - (7) Recover from the Customer the contract price together with default interest in accordance with clause 5.3 for all Goods delivered and for freight storage handling and any other expenses incurred by the Seller.
 - (8) To sell the Goods elsewhere and require the Customer to pay as damages any difference between the sale price received in that regard and the contract price for those Goods.
 - (9) For Orders of a specified quantity of Goods with a non-specified delivery date, require immediate payment for all Goods the subject of that Order.
- 16 Warranty and liability of Seller**
- 16.1 To the extent permitted by law, liability of the Seller for any breach of the Contract by the Seller, arising as a result of the negligence of the Seller or for breach of any conditions or warranty implied in the Contract by law is limited to one of the following at the Seller's option:
- (1) In the case of Goods:
 - (a) the replacement of the Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or
 - (d) the payment of the cost of having the Goods repaired.
 - (2) In the case of services:
 - (a) the supplying of the services again, or
 - (b) the payment of the cost of having the services supplied again.
- 16.2 To the full extent permitted by law all other warranties or liabilities imposed or implied whether by law or by statute are expressly negated.
- 16.3 The Customer assumes all risk and liability resulting from the use of the Goods either alone or in conjunction with other Goods or materials even if the Seller had or should have had prior knowledge of use to which the Goods would be put.
- 16.4 To the extent permitted by law, the Seller is not liable to the Customer for any indirect or consequential losses, loss of profits or use, any rectification costs or third party claims in connection with providing the Goods.
- 16.5 In the event that the Goods are covered by insurance taken out by the Seller, the Seller will only be liable to the extent of any indemnity provided.
- 16.6 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the Customer, the Customer must within fourteen days notify the Seller in writing of those facts or matters.
- 16.7 The Seller is not liable in any circumstances for any:
- (1) defects or damage caused in whole or in part by misuse, abuse, neglect, electrical or other overload, non suitable lubricant, improper installation repair or alteration (other than by the Seller) or accident;
 - (2) any transport installation removal labour or other costs;
 - (3) Goods not manufactured by it, but the Seller will endeavour to pass on to the Customer the benefit of any claim made by the Seller and accepted by the Customer and the benefit of any claim made by the Seller and accepted by the manufacturer of such Goods under a warranty given by the manufacturer;
 - (4) technical advice or assistance given or rendered by it to the Customer whether or not in connection with the manufacture construction or supply of Goods for or to the Customer, provided always that the Seller has rendered such services with due care and skill and that any materials supplied in connection with those services are reasonably fit for the purpose for which they are supplied; or
 - (5) tooling and dies.
- 16.8 To the full extent permitted by law, the Seller is not liable for any claim, loss or expense which is made after fourteen (14) days from date of delivery or performance (or at all once the goods have been unpacked, on- sold or otherwise used or applied).
- 16.9 Except to the extent caused by the negligence of the Seller, the Customer agrees to indemnify the Seller and keep the Seller indemnified against any claim, including any legal fees and expenses the Seller incurs in order to enforce it rights, for any loss or damage to the Goods or property, personal injury or death, or infringement of third party rights in connection with the provision and use of the Goods including, but not limited to:
- (1) information upon a label or carton used under the Contract;
 - (2) a defect in the specifications or requirements the Customer provides for with respect to the Contract;
 - (3) the Seller acting upon specifications or requirements the Customer provides for the Contract;
 - (4) the Seller using, or being unable to use, any of the specifications or requirements the Customer provided for the Contract; or

- (5) the Customer's, or a third party's, improper storage, handling, transport, sale or consumption of the Goods, or anything they contain, previously handled by the Seller.
- 16.10 All patterns, dies, moulds or other tooling manufactured or obtained by the Seller on behalf of the Customer will be at the sole cost of the Customer.
- 16.11 The Seller will use its best endeavours to maintain all such items in good order and condition unless the Seller in its sole discretion determines that the effective working life of such items has expired in which case the Seller will notify the Customer accordingly. The Customer must insure such items against all risks whilst in the Seller's custody.
- 16.12 The Seller is not responsible for any loss damage or injury occurring to such items unless such loss damage or injury has been occasioned by the negligence of the Seller. Any claim for such loss damage or injury may not exceed the cost of restoring them to good order or condition or replacing them, whichever may be the less expensive.
- 16.13 The Seller may dispose of such items as it sees fit after the expiration of three months written notice to the Customer of its intention to dispose if during such period the Customer fails to claim possession of them.
- 16.14 The Seller is not responsible for any loss damage or injury occurring to any patterns, dies, moulds or other tooling supplied by the Customer unless such loss damage or injury has been occasioned by the negligence of the Seller. Any claim for any such loss damage or injury may not exceed the cost of restoring them to good order or condition or replacing them, whichever may be the less expensive. The Customer must insure such items against all risks whilst in the Seller's custody. The Seller will return such items to the Customer on completion of the Contract or as otherwise directed by the Customer.
- 16.15 The Customer is not entitled to claim possession of any Goods or any items and products or materials provided by the Customer to the Seller until payment in full of all amounts owing for any reason to the Seller by the Customer has been made, including any amount owing under the Contract (or any other arrangement), and in addition to any right of lien to which the Seller may by law be entitled.
- 16.16 The Seller is entitled to a general lien on the Goods or all such items and products or materials provided by the Customer to the Seller and which are in the Seller's possession for the unpaid price of any Goods sold by the Seller under the Contract or any other contract and any moneys owing by the Customer to the Seller.
- 17 Miscellaneous**
- 17.1 The Contract is governed and construed in accordance with the law of the State in which the Goods are delivered.
- 17.2 This Contract is the only agreement between the parties with respect to the supply of Goods to the Customer by the Seller, notwithstanding any terms and conditions submitted by the Customer to the Seller.
- 17.3 All notices to be served upon the Customer will be duly served if left at or sent by ordinary prepaid post to the last known address of the Customer. The Customer will be deemed to have received any notice two (2) days after posting.
- 17.4 The Customer may not assign any of its rights or obligations under the Contract without the prior written consent of the Seller.
- 17.5 No conduct by the Seller with respect to any default of the Customer in the performance of any obligation or condition of the Contract will be a waiver of that or any other obligations or condition.
- 17.6 The singular includes the plural and vice versa, words importing any gender include every other gender and where there is more than one Customer, those Customers are bound to the Seller jointly and severally.
- 17.7 If the Customer is a corporation (with the exception of a public listed company), it must advise the Seller of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Seller may ask for new guarantors to sign a guarantee and indemnity.
- 17.8 If the Customer is a corporation, the Customer warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Seller in relation to the Customer's obligations to the Seller.
- 18 Credit**
- 18.1 If any Goods are supplied to the Customer on credit, the Seller may need to disclose to a credit reporting agency certain information about the Customer when assessing the Customer's application for credit and managing the Customer's account with the Seller. The Customer authorises the Seller to disclose such information to a credit reporting agency.
- 18.2 The Customer agrees that the Seller may obtain information about the Customer from any business which provides information about the commercial creditworthiness of persons for the purposes of assessing the Customer's application to purchase the Goods on credit and collecting any overdue amounts.
- 18.3 The Seller may refuse to supply the Goods to the Customer on credit on the basis of the Seller's credit assessment of the Customer.
- 18.4 The Customer represents to the Seller, and acknowledges, that any credit provided to the Customer by the Seller is provided and will be applied wholly or predominantly for commercial purposes.
- 18.5 The Seller reserves the right to vary the terms of credit or withdraw credit provided under this agreement at any time, whether the Customer is in default under the terms of this agreement or not, at its sole discretion without liability to the Customer or any other party.
- 18.6 Upon cancellation with or without notice all liabilities incurred by the Customer become immediately due and payable to the Seller.
- 19 Privacy**
- The Customer acknowledges the Privacy Policy of the Seller located on the Seller's website and agrees to the Seller collecting, using and disclosing personal information of the Customer for various purposes, including to:
- (1) assess creditworthiness in the above paragraph "Credit Assessment";
 - (2) supply the Goods to the Customer and the management of the Customer's account;
 - (3) communicate to the Customer about the Goods which the Seller or its partners or affiliates may provide to the Customer;
 - (4) implement the Contract; and
 - (5) comply with relevant laws.

20 Security

- 20.1 The Customer hereby acknowledges that these Terms and Conditions constitute a security agreement which creates a Security Interest in favour of the Seller and in all Goods supplied by the Seller to the Customer and all after acquired Goods supplied to the Customer by the Seller (or for the Customer's account) to secure the payment from time to time for Goods, including future advances. The Customer agrees to grant to the Seller a Purchase Money Security Interest.
- 20.2 The Customer gives the Seller a Security Interest in all of its present and after acquired property in which Goods supplied or financed by the Seller have been attached or incorporated, including any Commingled Goods and in any proceeds of sale of Goods.
- 20.3 The Customer charges in favour of the Seller all of its estate and interest in any real property that the Customer owns at present and in the future with the amount it owes to the Seller under this agreement from time to time.
- 20.4 The Customer charges in favour of the Seller all of its estate and interest in any personal property that the Customer owns at present and in the future with the amount it owes to the Seller under this agreement from time to time.
- 20.5 The Customer appoints as its duly constituted attorney the Seller's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat the Seller may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations under this agreement.
- 20.6 Where the Customer has previously entered into an agreement with the Seller by which the Customer has granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this agreement. The Seller may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms in this agreement.
- 21 Costs**
- 21.1 The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Seller relating to any default by the Customer.
- 21.2 The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).
- 21.3 The Customer will pay the Seller's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to the Seller irrespective of whether pursuit of the recovery action, claim or remedy is successful.
- 21.4 The Customer acknowledges and agrees that payments by the Customer will be applied by the Seller as follows.
- (1) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 21.3.
 - (2) Secondly, in payment of any interest required to be paid under this agreement.
 - (3) Thirdly, in payment of the outstanding invoice(s).
- 22 Set-off**
- 22.1 All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
- 22.2 Any amount due to the Seller from time to time may be deducted from any monies which may be or may become payable to the Customer by the Seller.
- 23 General Covenants**
- 23.1 Until such time as payment in full has been received by the Seller from the Customer in respect to an Order, the Customer covenants to the Seller not to create, cause or permit to exist any other Security Interest over any Goods the subject of the applicable Order, other than a Permitted Security Interest. The Customer further covenants that it will comply with the terms of each Permitted Security Interest binding on it in respect of the relevant Goods from time to time and will ensure that:
- (1) there is no increase in the amount secured under a Permitted Security Interest (excluding any part of a Permitted Security Interest which is a purchase money security interest); and
 - (2) there is no variation to a Permitted Security Interest that increases the collateral the subject of the Permitted Security Interest, other than in the case of a purchase money security interest, without obtaining the prior written consent of the Seller.
- 23.2 The Customer covenants to the Seller that it will sign anything and do anything the Seller requires to further or more effectively secure the Seller's rights over the applicable Goods or under these terms and conditions. This includes anything the Seller requires in order for it to:
- (1) register and maintain (including renew before expiry) one or more financing statements in relation to any Security Interest in the relevant Goods created by these terms and conditions and/or any Order;
 - (2) remove any financing statement which is registered against the Customer or in relation to a Security Interest which is not a Permitted Security Interest; and
 - (3) obtain possession or control of any Goods for the purposes of perfecting any Security Interest in that property by possession or control for the purposes of the PPS Act.
- 23.3 The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of the Seller under the PPSA to the extent permitted by the PPSA and agrees to that as between the Seller and the Customer, to the extent permitted by the PPSA, the Customer will have no rights under (or by reference to) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA.
- 24 Trustee capacity**
- 24.1 If the Customer is the trustee of a trust (whether disclosed to the Seller or not), the Customer warrants to the Seller that:
- (1) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
 - (2) the Customer has the right to be indemnified out of trust assets;
 - (3) the Customer has the power under the trust deed to sign this agreement; and

- (4) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Seller.
- 24.2 The Customer must give the Seller a copy of the trust deed upon request.
- 25 Partnership**
- 25.1 If the Customer enters into this agreement as partners, the Customer warrants that all of the partners have signed this agreement and that all of the

- partners will enter into a guarantee and indemnity with the Seller in relation to the Customer's obligations to the Seller.
- 25.2 If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Seller. In the case of a change of partners, the Seller may ask for new guarantors to sign a guarantee and indemnity.

The Customer hereby applies for the opening of an account and provides the above information in support thereof. I am/We are authorised to sign this credit application form on behalf of the Customer and the information given is true and correct to the best of my/our knowledge.

Declaration and agreement to Terms and Conditions

By executing this document, I/We confirm that I/We have read, and agree to be bound by, the Terms and Conditions set out above and confirm that I/We will conduct all trading in accordance with them.

Signature		Name (print)	
Position		Date	
Signature		Name (print)	
Position		Date	

FOR COMPLETION BY THE SUPPLIER

The Customer's credit application is accepted. Signed for and on behalf of the Seller.

Signature		Date	
Credit Limit		Debtors Insurance	

PRIVACY ACT 1988 AUTHORISATION

- (1) This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*) (Act).
- (2) The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
- (3) For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
- (4) The Supplier may collect personal information about the Customer and/or Guarantor(s) for the Supplier's primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
- (5) The Customer and/or Guarantor(s) consent to the Supplier collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
- (6) The Supplier may collect, and may already have collected, Information from the Customer and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purposes of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the Information was not collected by the Supplier it may restrict or impede upon the Supplier trading with, extending credit to, continuing to extend credit to or extending further credit to the Customer and/or Guarantor(s) or their related bodies corporate.
- (7) The Customer and/or Guarantor(s) consent to the Supplier obtaining and making disclosure of Information about the Customer and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. The Supplier notifies the Customer and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Act.
- (8) The Supplier may provide personal information about the Customer and/or Guarantor(s) to any or all of the credit reporting bodies nominated below. The Supplier intends to disclose default information to any or all of the credit

reporting bodies listed below. The Customer and/or Guarantor(s) consent to such disclosure. The Supplier's credit reporting policy contains a statement of notifiable matters in accordance s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what the Supplier may disclose and the Customer's and/or Guarantor(s)' right to request limitations to the use of their information.

- | | | |
|--|---|--|
| Equifax
Level 15, 100 Arthur Street
NORTH SYDNEY NSW 2060
Tel: 1300 921 621 | Creditor Watch
Level 13, 109 Pitt Street
SYDNEY NSW 2000
Tel: 1300 501 312 | NCI
Level 2, 165 Grenfell St
ADELAIDE SA 5000
Tel: 1800 882 820 |
| illion (formerly Dunn & Bradstreet)
Level 2, 143 Coronation Drive
MILTON QLD 4064
Tel: 07 3360 0600 | | |
| Experian
Level 6, 549 St Kilda Rd
MELBOURNE VIC 3004
Tel: 03 9699 0100 | | |
- (9) The Supplier may disclose information to, and about them and the Customer and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to the Supplier's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Customer and/or Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit, and/or overseas recipients and recipients who do not have an Australian link.
- (10) By reason of the Customer's and/or Guarantor(s)' consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to the Supplier's dealing with the Customer's and/or Guarantor(s)' Information.
- (11) A full copy of the Suppliers privacy policy and credit reporting policy can be obtained from the Supplier's website (details above) or by making a request in writing directed to the Supplier's privacy officer. The Supplier's privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how the Supplier will deal with any such complaint.
- (12) The Customer and/or Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to the Supplier within 14 days of receipt of this statement that its terms are not accepted, continuing to trade with the Supplier after receipt of this Statement or, if the Customer and/or Guarantor(s) are directors or guarantors of a customer, by not taking steps to prevent the customer from continuing to trade with the Supplier after receipt of this statement.

DEED OF GUARANTEE & INDEMNITY

To **SMYBB Pty Ltd (ABN 45 096 514 788)**

(Seller)

Name		Address	
Name		Address	

(Guarantors) hereby covenant and undertake and if more than one, jointly and severally, as follows.

- 1 Jurisdiction**
1.1 The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
- 2 Consideration**
In consideration of the Seller extending or agreeing to extend credit or further credit to the Customer at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold or to be sold from time to time, the Guarantors guarantee payment to the Seller of all money which is now or at any time in the future becomes due and payable to the Seller by the Customer on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Customer to the Seller arising out of a relationship of trustee and beneficiary.
- 3 Guarantee and indemnity**
3.1 The Guarantors agree to guarantee and indemnify the Seller against all losses, damages or expenses that the Seller suffers as a result of, directly or indirectly, any failure by the Customer to make payment of any money owing to the Seller for goods sold or otherwise or to observe the terms of any agreement between the Customer and the Seller, including costs on an indemnity basis of any attempt or attempts to recover from the Customer or any Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by the Seller to the Customer or to any Guarantor including the costs of lodging and withdrawing caveats, obtaining injunctions and enforcing any security over real and personal property given to the Seller.
3.2 This guarantee and indemnity will be a continuing guarantee and indemnity.
3.3 Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and severally.
3.4 The Seller will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Customer to pay and with or without notice to the Customer, as if the primary liability for any money owing was the Guarantors' own. The Sellers will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
3.5 This guarantee and indemnity will continue in force until such time as the Seller releases the Guarantors in writing.
3.6 This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Seller against the Guarantors or any of the Guarantors be in any way prejudiced or affected by any other security taken by the Seller from the Customer or from any other person, any waiver or indulgence, whether as to time or otherwise, given to the Customer or to the Guarantors or any one or more of the Guarantors, 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 the Guarantors obligations contained in this guarantee and indemnity, or any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.
- 4 Right of subrogation**
4.1 In the event of the Guarantors making any payment in respect to an obligation of the Customer whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Customer unless and until the Seller has been paid in full.
4.2 If the Customer goes into liquidation, the Guarantors will be prohibited from proving in competition with the Customer unless and until the Seller has been paid in full.
- 5 Insolvency of Customer**
No sum of money which the Customer pays to the Seller and the Seller later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Customer by reason of the *Corporations Act 2001, Bankruptcy Act 1966* or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the sum(s) had at all times remained owing by the Customer.
- 6 Costs**
6.1 The Seller is at liberty to charge the account of the Customer with all costs, charges and expenses, legal or otherwise that the Seller incurs in connection with the account of the Customer; this guarantee and indemnity, any other security in respect of the indebtedness of the Customer to the Seller, the preparation, completion and stamping of this deed or the exercise or attempted exercise of any right, power or remedy conferred on the Seller under this deed and the same will be part of the monies secured by this deed.
6.2 The Guarantors agree to pay the Seller's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.
6.3 The Guarantors appoint as their duly constituted attorney the Seller's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat the Seller may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.
- 7 Variation**
7.1 The Guarantors authorise the Seller to give time or any other indulgence or consideration to the Customer in respect of compliance with its obligations to the Seller, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
7.2 The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Seller making any variation or alteration in the terms of its agreement(s) with the Customer.
- 8 Severance**
If any provision of this guarantee and indemnity is not enforceable, all other provisions which are self-sustaining continue to be enforceable.
- 9 Security/charge**
9.1 The Guarantors charge in favour of the Seller all of their estate and interest in any real or personal property that the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 0 and 3.1.
9.2 This guarantee and indemnity secures the repayment of all monies owed by the Customer whatsoever, and this deed constitutes the entire guarantee.
9.3 Where the Guarantors have previously entered into an agreement with the Seller by which the Guarantors have granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this deed. The Seller may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.
- 10 Personal Property Securities Act**
10.1 The security interest(s) created by this instrument constitutes security interests pursuant to the *Personal Property Securities Act 2009*.
10.2 The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.
- 11 Privacy Act**
The Guarantors agree to the terms of the *Privacy Act 1988* authorisation contained in this document.

Dated

Signed, sealed and delivered by the guarantor	Signature		
	Name		
	Position		
	Witness signature		Name:
Signed, sealed and delivered by the guarantor	Signature		Name:
	Position		
	Witness signature		Name: