



Mesh & Bar Pty Ltd

To be completed for ALL account applications

DRIVERS LICENCE NUMBER: \_\_\_\_\_ EXPIRY: \_\_\_\_\_

NAME OF LICENCEE: \_\_\_\_\_ DOB: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

SIGHTED BY: \_\_\_\_\_

(To be signed by staff of Mesh & Bar Pty Ltd only)



PERSONAL GUARANTEE

Dated:.....200....

In consideration of the Company at my/our request (which I/we hereby make) agreeing to supply and/or to continue to supply goods and services to the Customer and at my/our express request forbearing to sue for any monies now owing to the Company by the Customer.

I/We .....
of (Address) .....
and I/We .....
of (Address) .....

("THE Guarantors") hereby JOINTLY AND SEVERALLY GUARANTEE to the Company the due and punctual payment of all moneys owing or remaining unpaid to the Company by the Customer, as follows:

- 1. The Guarantors will pay to the Company on demand without deduction or set-off, all moneys then owing or from time to time remaining unpaid by the Customer including without limitation all interest, administration, collection and legal costs for recovery of such moneys and the Company need not first take recovery proceedings against the Customer.
2. This Guarantee shall be a continuing Guarantee to the Company for the whole of the Customer's indebtedness or liability to the Company from time to time howsoever and whenever arising and shall not be wholly or partially discharged by any payment until payment in full of all monies due by the Customer and it will not be affected by:
(a) the Company granting any time or other indulgence, compounding or compromising with or releasing the Customer or any Guarantor or co-surety;
(b) the Company taking or failing to take or enforcing or failing to enforce or holding any other security for the Customer's indebtedness or varying or surrendering any such security;
(c) any change in the identity or proprietorship of the Customer;
(d) any failure to notify the Guarantors of any dealings between the Company and the Customer, including any variation in the amount of credit allowed to the Customer or any failure to pay by the Customer;
(e) the Company obtaining judgement against the Customer;
3. The Guarantors hereby indemnify the Company from any loss the Company may suffer by reason of the Customer becoming bankrupt or going into liquidation, or death, including any amount which might be paid to the Company by the Customer but required to be repaid to the trustee in bankruptcy or liquidator of the customer.
4. The Guarantors undertake to the Company that this Guarantee will not be vitiated by any act of a third party including without limitation any Deed of Arrangement unless the Company agrees in writing to such third party act and if this Guarantee howsoever ceases to be effective or is avoided then this Guarantee shall be reinstated as a guarantee given immediately after it has become ineffective or avoided as if it was a fresh guarantee.
5. I/We acknowledge and specifically agree that the Company may request a credit report on me/us and such report may contain consumer credit information to be given to it for the purposes of assessing this application by a credit reporting agency, bank or financial institution. I/We agree that a credit reporting agency, bank or financial institution may give a credit report on me/us to the Company.
6. I/We authorise the Company and its associated companies to obtain personal and/or confidential information about me/us from me/us or anyone else primarily for assessing the Customer's application for a credit account and the administration and collection of the account. I/We agree and consent to the Company, collecting, using, disclosing to the personnel of the Company and others my/our information for these purposes and for credit control generally.
7. The Guarantors hereby charge in favour of the Company as security for his/her/their obligations to the Company, all right title and interest in any land held by the guarantors alone or jointly with anyone or acquired by the Guarantors at any time hereafter.
8. Confirm I/we have obtained my/our solicitor's advice and understand the nature of the Guarantee and my/our obligations under this Guarantee.

Signed by the above mentioned Guarantor

Signed by the above mentioned Guarantor

.....
GUARANTOR'S SIGNATURE

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GUARANTOR'S SIGNATURE

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SIGNATURE OF WITNESS

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SIGNATURE OF WITNESS

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FULL NAME OF WITNESS

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FULL NAME OF WITNESS

.....
ADDRESS OF WITNESS

.....
ADDRESS OF WITNESS

## TERMS AND CONDITIONS OF SALE

All goods and services purchased from the Company and any of its divisions are sold subject to the following terms and conditions of sale and these terms and conditions of sale shall prevail notwithstanding any other document, terms and conditions and/or anything else except a written agreement signed by the Customer and the Company, except only for such terms as are implied by or under any law and which cannot be excluded.

**1. Price & Goods and Services Tax ("GST")**

Prices may be altered without notice and all goods will be charged at the price ruling at time of order. GST and/or any other Government imposts whatsoever applicable to the supply of goods and/or services will be payable by the Customer.

**2. Payment**

- (i) Payment for goods purchased from the Company shall be made on or before delivery or in the case of Customers who have an account with the Company within 30 days from the end of the month of delivery.
- (ii) The Customer shall not be entitled to retain any money owing to the Company notwithstanding any default or alleged default by the Company including the supply of defective or allegedly defective goods or delay or alleged delay in supply.
- (iii) If payment is not made on time, the Customer shall pay interest to the Company on any amount owing at the rate of 3% above Westpac Banking Corporation's Business Overdraft Indicator Lending Rate.
- (iv) A certificate signed by a responsible officer of the Company shall be prima facie evidence of the amount owed to the Company by the Customer at the date of such certificate.
- (v) The Customer will pay to the Company without deduction or set-off all moneys owing to the Company;
- (vi) The Company shall be entitled at any time to set-off any moneys then or contingently owed to the Company by the Customer against any debt the Company owes to the Customer.

**3. Default**

If the Customer defaults in any payment, or if in the opinion of the Company, the Customer is unlikely to be able to meet its liability as it falls due then the Company may at its option:

- (i) require payment forthwith of all amounts owing by the Customer to the Company, whether or not such amounts are then due for payment including without limitation, all interest, administration and collection charges and all legal costs and any payment by the Customer shall be first applied to such charges and costs;
- (ii) charge full list price for goods supplied without allowing discount;
- (iii) Terminate any contract or contracts in relation to goods which have not been delivered;
- (iv) Repossess any goods delivered to the Customer, payment for which has not been received.

**4. Reservation of title**

- (i) Property in any goods supplied by the Company shall remain the sole and absolute property of the Company as legal and equitable owner until the full purchase price for all goods supplied is received by the Company from the Customer.
- (ii) Risk in the goods shall pass to the Customer on delivery to the Customer or its agent.
- (iii) The Customer acknowledges that until payment in full to the Company for all goods supplied to the Customer by the Company, the Customer shall hold the goods as bailee for the Company and that the Customer has a fiduciary duty to the Company;
- (iv) The Customer irrevocably authorises the Company to repossess any goods supplied by the Company to the Customer, without any notice if the Customer fails to make any payment when it is due or if in the opinion of the Company the payment of any amount in respect of goods supplied by the Company is in jeopardy or the Customer commences to be wound up or is placed in administration or under official management or into liquidation or suffers a receiver and/or manager appointed in respect of any of its assets. The Customer in consideration of credit being given irrevocably authorises the Company to enter onto any land on which the goods are left and to which the Customer has a right of entry, to enter thereon and remove the goods.
- (v) When the Company retakes possession of goods pursuant to its rights hereunder the contract for sale between the Company and the Customer is thereby terminated and the Company has the right to sell such repossessed goods;
- (vi) Any moneys received by the Customer in payment in part or in full for the goods supplied by the Company to the Customer shall be held by the Customer in trust for the benefit of the Company and payable to the Company until the Customer has paid for all goods supplied to the Customer by the Company;
- (vii) The Customer will prior to attaching any goods onto any building notify the owner of the building that such goods are subject to this reservation of title clause, except only as provided by law;
- (viii) The Customer releases and indemnifies the Company and its servants or agents from all claims for loss or damage caused by the Company or its servants or agents in enforcing or attempting to enforce its rights under this clause 4.

**5. Caveat**

The Customer hereby charges in favour of the Company as security for the Customer's obligations to the Company, all right title and interest in any land held now by the Customer alone or jointly with anyone or acquired by the Customer at any time hereafter. If the Customer defaults in payment of any amount owed to the Company, the Customer specifically authorises the Company to lodge a caveat against any dealings with any such property and appoints the Company to be the Customer's Attorney for this purpose.

**6. Orders**

- (i) Should there be any discrepancy between the order by telephone as recorded and processed by the Company and later confirmation is in writing by the Customer, the Company's record of telephone order shall prevail;
- (ii) The Company may at its absolute discretion refuse to supply goods where goods are unavailable for any reason whatsoever or credit limits cannot be agreed or have been exceeded.

**7. Cancellations**

Once an order has been accepted by the Company, the Customer can only cancel, vary or suspend the order (whether in whole or in part) upon the following conditions:

- (i) No cancellation, variation or suspension will be effective or recognised unless, and only to the extent, that the Company agrees in writing to such a cancellation, variation or suspension;
- (ii) The Customer agrees to accept delivery of all goods held by and all goods in transit to the Company in respect of such order.
- (iii) The Customer agrees to pay all costs expenses and liabilities incurred by the Company in consequence of the cancellation, variation or suspension of the order and accepts consequential delay.

## 8. Limitation of Liability

- (i) The Company may compute an estimate of dimensions and quantities of goods based on plans or other information given by or on behalf of the Customer. The Company does not accept any liability as to the correct computation of any such estimate and the estimate is provided to the Customer as indicative only and the Company is not responsible for any mistakes in the estimate. The Customer undertakes to check any such estimate and in any event accepts full responsibility for the dimensions and quantities of goods ordered as independently computed by the Customer without relying on the estimate.
- (ii) The Customer warrants to the Company that it will not rely on representations made and/or advice given by the Company or its employees in connection with the design, dimension, installation or use of goods sold and agrees that the Company shall not be liable for the consequences of any mistakes in such representation or advice whether made or given innocently, deliberately and/or negligently.
- (iii) It is a condition of sale that any description or specification given by the Company or in printed literature of the Company is for general indicative purposes only and does not render the Company responsible howsoever and whatsoever except to the extent that the goods shall comply with the standards set out in such description or specification and that such description or specification shall not be taken as implying or giving any undertaking as to fitness for any particular purpose.
- (iv) If the goods are required for a particular purpose, the Customer must clearly specify that purpose in writing in the order placed with the Company and obtain written assurance from the Company that the goods were supplied will meet that requirement. If the Customer does not specify the particular purpose and the Company does not expressly undertake in writing that the goods will be fit for the specified purpose, then the Customer agrees that it did not rely on the skill or judgement of the Company in relation to the suitability of the goods for a particular purpose.
- (v) The Company shall not be liable for delay in delivery of the goods or delivery of part(s) of the goods in instalment due to any cause whatsoever. The Customer shall not be relieved from any obligation to accept or pay for goods by reason of any delay in, or the instalment delivery of the goods. Notwithstanding anything in no event shall the Company be responsible for any loss of profits, penalties, disruption, expenditure and/or damages incurred and/or sustained by the Customer due directly or indirectly because of any delay in or the instalment delivery of the goods.
- (vi) Any complaint by the Customer for failure to deliver, delayed delivery, short delivery, supply of incorrect and/or faulty goods must be made in writing by fax or email to the Company, within 8 hours of the agreed or reasonably expected time at which the Company failed to deliver such goods and/or any of the occurrences specified in this paragraph. If the Customer desires to make any claim whatsoever against the Company in respect of any such failure and/or occurrences, the Customer must notify the Company of such claim and its particulars in writing within three business days of the failure to deliver and/or of any of the occurrences. The Customer waives, foregoes, abandons and forgives forever any claim whatsoever the Customer may have against the Company unless it has strictly complied with the preceding notification requirements for the complaint and the claim.
- (vii) Any goods returned by the Customer will be held and/or disposed of by the Company on behalf of the Customer unless the return of the goods is preceded by the complaint and the claim in writing as specified in the preceding paragraph. The Customer must facilitate the inspection of the goods by a Company representative prior to return. The acceptance of any returned goods shall not imply any acceptance by the Company of the Customer's claim.
- (viii) If the goods are delivered by the Company to the Customer in a damaged state, The Customer must request the Company in writing for their replacement within 8 hours of the delivery of the damaged goods and the Customer must at the time of the delivery, specify in the delivery docket to be given to the deliverer that the goods are damaged and describe in the delivery docket the nature and extent of the damage.
- (ix) Any claim, whatsoever against the Company arising in contract or otherwise howsoever and whether directly or indirectly from the sale and delivery of goods including without limitation for failure to deliver, delayed delivery, short delivery, supply of incorrect goods and/or faulty goods shall be limited to the price of the goods which was agreed by the Customer and the Company or in the absence of such agreement reasonable price therefore confined to the quantity of the goods required to be delivered on the occasion by reference to which the claim arises.
- (x) The Customer will indemnify the Company for any claims whatsoever and howsoever made by a third party against the Company for any default of the Company in relation to or directly or indirectly arising from any contract or arrangement made between the Company and the Customer.

## 9. Delivery

- (i) Unless agreed otherwise in writing prior to delivery, unloading of goods shall be the Customer's responsibility and the Company will not be responsible for any damage resulting from the unloading of the goods by the Customer or by anyone on its behalf, or by the Company's employee or agent.
- (ii) The Customer indemnifies the Company from any claim whatsoever resulting from the Customer, its employee or agent loading goods supplied by the Company on any vehicle or unloading goods supplied by the Company from any vehicle.
- (iii) Where goods are delivered to a particular site, the goods will be entirely at the Customer's risk when delivered.
- (iv) A quantity, description, date, time and place of delivery as shown on the Company's invoice or delivery docket shall be conclusive evidence of quantity, description, date, time and place of delivery of such goods.
- (v) If the site is unattended goods will be unloaded on the site or if the site is not accessible as close to the site as is practicable and the delivery docket/manifest signed by the cartage contractor or the driver of the Company that the goods were delivered accordingly shall be conclusive evidence of due delivery of the goods.
- (vi) The Company if requested to enter a property accepts no responsibility for any damage caused by the Company or its agent.
- (vii) A standard delivery charge as published by the Company from time to time in its price list will apply.
- (viii) Where trucks are held on a site for more than 1 hour additional costs will apply.
- (ix) For delivery of lengths over 9 metres the Customer must enquire at time of ordering about additional costs.
- (x) Deferred delivery of goods already manufactured for the Customer will incur storage charge of 0.5% per week of invoice value.

## 10. Price Escalation

- i. Prices quoted or specified in the customer's order or the Mesh & Bar Price List shall be increased by and are subject to every percentage increase as may occur from time to time including in the period between the date of quotation or the customer's order and the date of supply in the cost of raw materials as our suppliers specify to us.
- ii. Under no circumstances will any terms and/or conditions specified in the customer's order or communication whether written or verbal shall replace or in any way modify the price increase and/or Mesh & Bar Standard Terms and Conditions.