

APPLICATION FOR COMMERCIAL CREDIT 30 DAY TRADING ACCOUNT

Referred By:

Date:



To: **Mt. Marrow Blue Metal Quarries Pty. Ltd. ACN 004 879 930 and any subsidiary or associated entity and as trustee of any trust ("Mt. Marrow")**

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

- If this application is accepted by Mt. Marrow, all the provisions of the application (including the General Credit Terms) **plus** Mt. Marrow's General Conditions of Sale and Delivery of Raw Materials as may be amended by Mt. Marrow from time to time which are available on Mt. Marrow's website ("**Terms of Sale**") will be binding on me/us; and
- I/We have been given and have read and understood Mt. Marrow's current Terms of Sale prior to completing this application.

CUSTOMER (please BLOCK print)

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"/> Trust
Registered Name:					
Trading Name:					
If a Trust, name of Trustee:					
Registered Address:					
ACN:		ABN:			
Postal Address:				Post Code:	
Business Address:				Post Code:	
Telephone (Bus):	()	Mobile:		Facsimile:	()

CUSTOMER CONTACT DETAILS

Purchasing Contact:			Email:	
Telephone :	()	Mobile:	Facsimile:	()
Accounts Payable Contact:			Email:	
Telephone:	()	Mobile:	Facsimile:	()

DECLARATION FOR THE NATIONAL CREDIT CODE:

I/We (including all directors) declare that the credit to be provided to me/us by MT. MARROW is to be applied wholly or predominately for:

- business and/or investment purposes;
- other than investment in residential property.

IMPORTANT

You should **only** sign this declaration if this loan is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

By signing this declaration you may **lose** your protection under the National Credit Code.

By signing this application, I/We (including all directors) declare that the credit to be provided to me/us by MT. MARROW is to be applied wholly or predominately for business purposes or investment purposes other than investment in residential property.

PRIVACY AND COLLECTION NOTICE (APP 5)

Mt. Marrow's Collection Notice (APP 5) and Privacy Policy are published on Mt. Marrow's website at www.mtmarrow.com. Copies can also be obtained in an alternative form (such as hard copy) and free of charge by contacting Mt. Marrow's Privacy Officer on (07) 5464 4644.

CREDIT REPORTING AND STATEMENT OF NOTIFIABLE MATTERS

Mt. Marrow's Statement of Notifiable Matters and Credit Reporting Policy are published on Mt. Marrow's website at www.mtmarrow.com. Copies can also be obtained in an alternative form (such as hard copy) and free of charge by contacting Mt. Marrow's Privacy Officer on (07) 5464 4644.

I/We (including all directors) give consent to and authorisation for Mt. Marrow to do the following at any time:-

- Request credit reports containing credit-related information about my/our consumer and/or commercial credit arrangements from Credit Reporting Bodies ("**CRBs**") for the purpose of assessing this application and/or my credit worthiness and/or in connection with any related purpose or the attached Guarantee and Indemnity and/or from time to time as reasonably required;
- Disclose personal information and/or credit-related information about me/us to CRBs to enable CRBs to create and maintain credit information files containing credit-related information about me/us;
- Disclose to any related bodies corporate of Mt. Marrow and/or any agents of Mt. Marrow and/or any of my/our current or potential guarantors and/or any other current or potential provider of credit to me/us, for the purposes set out in this application and/or Mt. Marrow's Credit Reporting Policy:-
 - credit reports containing credit-related information about me/us;
 - personal information and/or credit-related information about me/us that is derived from credit reports obtained from CRBs;
 - any other information about my/our consumer credit and/or commercial credit arrangements.

- (d) Collect personal information and/or credit-related information about me/us from any entity to which I/we have granted security (including my/our bank or financial institution) for the purposes set out in this application and/or in Mt. Marrow's Credit Reporting Policy; and
- (e) Exchange my/our credit-related information with any collection agents of Mt. Marrow and/or any of Mt. Marrow's related bodies corporate and/or any current or potential provider of credit to me/us for the purposes set out in this application and/or Mt. Marrow's Credit Reporting Policy.

I/We (including all directors) understand that the information permitted to be disclosed to or by Mt. Marrow under the Privacy Act will include:

- (a) Details to identify me/us - that is, name, sex, date of birth, current / last known and 2 previous addresses, current or last known employer, and driver's license number;
- (b) The fact that I/we have applied for credit, the amount of the credit, and/or that Mt. Marrow is a current provider of credit to me/us;
- (c) Advice that payments previously notified as unpaid are no longer overdue;
- (d) Payments of \$150 or more overdue for at least 60 days and for which collection action has started;
- (e) In specified circumstances, that in the opinion of Mt. Marrow I/we have committed a serious credit infringement; and
- (f) The fact that credit provided to me/us by Mt. Marrow has been paid or otherwise discharged.

1. APPLICATION:

Upon Mt. Marrow allowing me/us to trade on credit, I/we agree, declare and acknowledge that Mt. Marrow's Terms of Sale apply to all my/our dealings with Mt. Marrow and I/we hereby agree to comply with the Terms of Sale.

I/We further acknowledge that if I am/we are a corporation, provision of credit pursuant to this application may, at Mt. Marrow's absolute discretion, be subject to and conditional upon all of my/our directors executing the attached Guarantee and Indemnity.

2.	ESTIMATED ANNUAL PURCHASES	\$
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3. REPRESENTATION WARRANTY AND ACKNOWLEDGEMENT:

I/We **HEREBY REPRESENT AND WARRANT** that the information set out in this application is true and correct **AND ACKNOWLEDGE** that Mt. Marrow will rely upon the information provided and is hereby induced to grant credit to me/us.

FULL NAMES AND ADDRESSES OF DIRECTORS, PARTNERS AND SOLE TRADERS (please BLOCK print)

Each director authorises and consents to requests for credit reports as detailed on the previous page

1.	Full Name:	Telephone:	()
	Date of Birth:	Driver's Licence:	
	Residential Address:	Driver's Lic:	
	Residence: (tick)	<input type="checkbox"/> Own <input type="checkbox"/> Renting <input type="checkbox"/> Mortgage To:	
	Spouse Full Name:		

2.	Full Name:	Telephone:	()
	Date of Birth:	Driver's Licence:	
	Residential Address:	Driver's Lic:	
	Residence: (tick)	<input type="checkbox"/> Own <input type="checkbox"/> Renting <input type="checkbox"/> Mortgage To:	
	Spouse Full Name:		

3.	Full Name:	Telephone:	()
	Date of Birth:	Driver's Licence:	
	Residential Address:	Driver's Lic:	
	Residence: (tick)	<input type="checkbox"/> Own <input type="checkbox"/> Renting <input type="checkbox"/> Mortgage To:	
	Spouse Full Name:		

4.	Full Name:	Telephone:	()
	Date of Birth:	Driver's Licence:	
	Residential Address:	Driver's Lic:	
	Residence: (tick)	<input type="checkbox"/> Own <input type="checkbox"/> Renting <input type="checkbox"/> Mortgage To:	
	Spouse Full Name:		

Bank:		Branch:		Account No:	
Type of Business:				How long established?	
How long have the current proprietors (shareholder(s), partners and sole traders) and directors (if any) been proprietors and/or directors?					
Name of any Related or Subsidiary Companies or Partnerships:					
Are the Business Premises Owned or Leased?					
Would the applicant be willing to produce on request copies of their latest balance sheet and profit and loss statement for perusal?					<input type="checkbox"/> Yes <input type="checkbox"/> No
Have any of the applicants, directors or proprietors previously been declared bankrupt, entered into an insolvency agreement, or been involved in a Company which has been insolvent, liquidated or placed into any form of external administration?					

Please attach financial records to support this application.

TRADE REFERENCES - Monthly equal to requested credit limit.

Previous Supplier					
1.		Fax No:		Phone No:	
2.		Fax No:		Phone No:	
3.		Fax No:		Phone No:	
4.		Fax No:		Phone No:	

GENERAL CREDIT TERMS

1. **Payment:** The Customer must pay for all Products and Services supplied by Mt. Marrow within 30 days after the end of the month of supply or within any alternative credit period granted in writing by Mt. Marrow.
2. **Interest:** Mt. Marrow is entitled to charge the Customer interest on amounts not paid within the credit period specified by Mt. Marrow at a rate equivalent to 6% more than the business overdraft commercial interest rate of Mt. Marrow's principal bankers per annum from the invoice date until the payment of the debt.
3. **GST:** Each amount payable by the Customer under these Credit Terms in respect of a Taxable Supply by Mt. Marrow is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the A New Tax System (Goods and Products and services) Act 1999 (Cth).
4. **Withdrawal or Variation of Credit:** Mt. Marrow may at any time, without the need to provide a reason, vary or withdraw any credit granted to the Customer. Where the Customer completes a further Application for Commercial Credit, that Application will not be in derogation of but in addition to any previous general credit terms existing except as notified by Mt. Marrow in writing and any of its related entities, subsidiaries and assigns and as Trustee of any Trust.
5. **Charge over Customer's Property:** As security for payment to Mt. Marrow of all moneys payable by the Customer and for the Customer's obligations generally under these Credit Terms, the Customer charges in favour of Mt. Marrow the whole of the Customer's undertaking, property and assets (including without limitation all of the Customer's interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired. The Customer irrevocably appoints each Officer as the Customer's attorney to do all things necessary to create and register each such charge. Upon demand by Mt. Marrow, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to Mt. Marrow to further secure payment of the money payable by the Customer. If the Customer fails within a reasonable time of such demand to execute such mortgage or other instrument, then the Customer acknowledges that Mt. Marrow may execute such mortgage or other instrument as the Customer's attorney pursuant to the appointment of Mt. Marrow as the Customer's attorney set out in these Credit Terms.
6. **Suspension or Ceasing of Supply:**
 - (a) Mt. Marrow may in Mt. Marrow's complete discretion and without incurring any liability to the Customer, cease or suspend supply of products and services to the Customer or amend these Credit Terms.
 - (b) Without limiting clause 6(a), if an Event of Default occurs, Mt. Marrow may, without prejudice to Mt. Marrow's other rights, call up moneys owed to Mt. Marrow by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any products and services for which payment remains outstanding.
7. **Liability of Mt. Marrow:** Mt. Marrow will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by Mt. Marrow, Mt. Marrow's employees, contractors or agents whether negligent or not, except that nothing in these Credit Terms limits any liability imposed by any statute unless or to the extent that it is lawful to do so.
8. **Certification:** A statement signed by an Officer certifying the amount of any moneys payable by the Customer, or identifying any products and services, as being "unpaid for" is, in the absence of manifest error, conclusive and binding on the Customer.
9. **Notification of Change of Details:** The Customer will provide written notice to Mt. Marrow of any change in the Customer's structure or management, including any change of director, shareholder, partnership, trusteeship or address within 7 days of the change.
10. **Continuing Guarantee:** All guarantees under or related to these Credit Terms will be continuing guarantees and will terminate only with Mt. Marrow's written agreement.
11. **Set-Off:** Mt. Marrow may at any time set-off amounts owed by Mt. Marrow to the Customer against amounts owed by the Customer to Mt. Marrow.
12. **Property:**
 - (a) Where Products are to be supplied by way of sale property in the Products shall not pass until the Customer has paid all moneys owing to Mt. Marrow in full. Risk in the Products passes to the Customer at the time of delivery.
 - (b) The Customer holds the Products as fiduciary bailee and agent for Mt. Marrow and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by Mt. Marrow, until payment of all moneys owed by the Customer to Mt. Marrow where the Product are supplied by way of sale.
 - (c) If an Event of Default occurs, then without prejudice to Mt. Marrow's other rights, Mt. Marrow may without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of the Products.
 - (d) If the Customer sells any of the Products supplied by way of sale while money is owed to Mt. Marrow, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
 - (e) The Customer must not sell or otherwise dispose of any Products supplied on hire or things (including land or structure) to which the Products have been affixed without first obtaining the written consent of Mt. Marrow. If in breach of this condition the Customer sells any of the Products supplied on hire then, without prejudice to Mt. Marrow's other rights, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
 - (f) If the Customer uses the Products in some manufacturing or primary production of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for Mt. Marrow. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to Mt. Marrow and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.
 - (g) If the Products are resold, or goods and services using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for Mt. Marrow. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to Mt. Marrow at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without Mt. Marrow's prior written consent.
13. **Personal Property Securities Act (Cth) 2009 ("PPSA"):**

"Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meaning given to them by the PPSA.

 - (a) In consideration of Mt. Marrow supplying the Products to the Customer at the request of the Customer, the Customer by signing these Credit Terms:
 - (i) grants to Mt. Marrow a "Purchase Money Security Interest" ("PMSI") in all Products supplied by Mt. Marrow to the Customer from time to time as security for payment of the purchase price of the Products;
 - (ii) grants to Mt. Marrow a "Security Interest" ("SI") in all Products supplied by Mt. Marrow to the Customer from time to time as security for payment of any other amount owed by the Customer to Mt. Marrow and as security for the performance by the Customer of the obligations set out in these Credit Terms;
 - (iii) agrees that any Products or proceeds of sale of the Products coming into existence after the date of these Credit Terms will come into existence subject to the PMSI and SI granted herein and these Credit Terms without the need for any further action or agreement by any party;
 - (iv) acknowledges that the Customer has received valuable consideration from Mt. Marrow and agrees that it is sufficient;
 - (v) agrees that the PMSI and SI has attached to all Products supplied now or in the future by Mt. Marrow to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.

- (b) Mt. Marrow reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Credit Terms.
 - (c) The costs of registering a financing statement or a financing change statement can be charged to the Customer by Mt. Marrow at Mt. Marrow's complete discretion, and may, where applicable, be charged to the customer's credit account with Mt. Marrow.
 - (d) The Customer must promptly, on request by Mt. Marrow, execute all documents and do anything else reasonably required by Mt. Marrow to ensure that the PMSI and SI created under these Credit Terms constitutes a perfected security interest.
 - (e) The Customer must not agree to allow any person to register a financing statement over any of the Products in which Mt. Marrow has any PMSI and/or SI without the prior written consent of Mt. Marrow and will immediately notify Mt. Marrow if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Products.
 - (f) The Customer must not allow the Products to become accessions or commingled with other goods unless Mt. Marrow has first perfected any PMSI or SI that Mt. Marrow has in relation to the Products.
 - (g) If Mt. Marrow perfects any PMSI and/or SI that Mt. Marrow has in relation to the Products, the Customer must not do anything that results in Mt. Marrow having less than the security or priority granted by the PPSA that Mt. Marrow assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.
 - (h) The Customer irrevocably grants to Mt. Marrow the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if Mt. Marrow has cause to exercise any of Mt. Marrow's rights under Chapter 4 of the PPSA, and the Customer will indemnify Mt. Marrow for any claims made by any third party as a result of such exercise.
 - (i) The Customer acknowledge and agrees that: -
 - (i) Nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Credit Terms;
 - (ii) The Security Agreement created by these Terms of Sale may only be reinstated on the terms considered appropriate by Mt. Marrow at its complete discretion.
 - (j) The Customer acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of any PMSI and SI created under these Credit Terms, and the Customer waives it's right to: -
 - (i) not have goods damaged or be inconvenienced no more than necessarily incidental if Mt. Marrow removes an accession under s.92 PPSA;
 - (ii) to receive notice of any intention to remove an accession under s.95(1)(a);
 - (iii) to apply to the Court for an order postponing the removal of the "accession" or to determine the amount payable to Mt. Marrow for the retention of the accession under s.97 PPSA
 - (iv) to receive notice of a decision to enforce the security interest in personal property in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
 - (v) to receive notice of the enforcement of liquid assets under s.121(4) PPSA
 - (vi) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
 - (vii) to receive a Statement of Account if no disposal under s.132(4) PPSA; and
 - (viii) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and
 - (ix) to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Credit Terms under s.157 PPSA.
- 14. Effect of Other Terms:** These Credit Terms are in no way affected or amended by any other express or implied terms contained in any terms of sale in relation to the products and services. No terms of the Customer apply to any agreement between the Customer and Mt. Marrow.
- 15. Expenses:** The Customer must pay to Mt. Marrow any costs, charges and expenses (including all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by Mt. Marrow in connection with the entry into these Credit Terms, the exercise or attempted exercise of any power, right or remedy under these Credit Terms and/or the failure of the Customer to comply with these Credit Terms.
- 16. Service of Notices and Documents:** All notices or documents required to be given to Mt. Marrow for the purposes of the PPSA must be given in accordance with the PPSA. Any notices or documents required to be given by Mt. Marrow to the Customer for the purposes of the PPSA or for any other purposes will be effectively 'given', 'served' and 'delivered' if sent by Mt. Marrow to the Customer by pre-paid ordinary post to any one of the following addresses: -
- (a) the last address for the Customer known to Mt. Marrow;
 - (b) if the Customer is a Company, the registered office or principal place of business; or
 - (c) if the Customer trades under a registered business name, any address contained on a current business extract for that business name.
- 17. Transactions:** The Customer will be liable for all transactions and expenses involving the Customer's credit account including any fraudulent use of the account by the Customer or any person authorised by the Customer to use the account or the Customer's employees, agents or contractors. The Customer will also be liable for any fraudulent use of the Customer's credit account which is directly or indirectly caused or contributed to by the Customer's negligence.
- 18. Application of Moneys Received:** If Mt. Marrow receives or recovers money in respect of a debt of the Customer, Mt. Marrow may use the money to pay off whichever debt or part of a debt Mt. Marrow chooses and is not compelled to apply the money as directed by the Customer or any other person.
- 19. Indemnity:** The Customer will indemnify Mt. Marrow in relation to any direct or indirect loss, liability or damage suffered by Mt. Marrow or any other person as a result of the Customer's negligence or breach of these Credit Terms.
- 20. Trusts:** These Credit Terms bind the Customer both personally and as trustee of any trusts of which the Customer is trustee.
- 21. Joint and Several:** If the Customer consists of more than one person, the obligations of each person are joint and several.
- 22. Severance:** Each clause, subclause and part of these Credit Terms is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.
- 23. Waiver:** Any waiver by Mt. Marrow must be in writing. In the event that Mt. Marrow elects not to exercise any of Mt. Marrow's rights arising in connection with these Credit Terms, Mt. Marrow's election will not constitute a waiver of any rights relating to any other breach of these Credit Terms.
- 24. Amendments:** These Credit Terms may only be amended with Mt. Marrow's express written agreement.
- 25. Assignment:** The Customer may not assign any agreement under these Credit Terms without Mt. Marrow's prior written consent.
- 26. Application of Laws:** These Credit Terms are governed by the laws of the state of Queensland. The Customer submits to and consents to the central Courts of Brisbane having jurisdiction over these Credit Terms.
- 27. Definitions:** In these Credit Terms unless the context requires otherwise:
- (a) **"Credit Terms"** means these General Credit Terms.
 - (b) **"Credit-related information"** includes "credit information", "credit reporting information", "credit eligibility information" and/or "regulated information" (as the context permits) within the meaning of those terms in the Privacy Act.
 - (c) **"Customer"** means the customer whose details appear in the Application for Commercial Credit and the Customer's subsidiaries, holding companies and other related entities;
 - (d) **"Event of Default"** means any of the following events:
 - (i) the Customer fails to pay for any Products and services and/or the Customer breaches these Credit Terms;
 - (ii) the Customer ceases or threatens to cease carrying on business;

- (iii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer, or the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is appointed, or the Customer goes into liquidation or makes an assignment or an arrangement or composition with the Customer's creditor, or the Customer stops payment or is deemed unable to pay the Customer's debts within the meaning of the Corporations Act 2001 (Cth); if the Customer is a natural person: an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs, or an order is applied for or made to place the assets and affairs of the Customer under administration;
- (e) "Officer" means each director, secretary, credit manager and authorised representative of Mt. Marrow; and
- (f) "Privacy Act" means the *Privacy Act 1988 (Cth)* as amended from time to time.
- (g) "Products and services" includes all products, materials and services supplied by Mt. Marrow to the Customer.

28. Interpretation:

- (a) In these Credit Terms, unless the context requires otherwise, all references to a party include the party's successors and permitted assigns.
- (b) No provision of these Credit Terms will be construed adversely against a party solely because the party was responsible for drafting the provision.

I/We agree to be bound by the General Credit Terms set out above and by the terms set out in this application and warrant that the information given by me/us in this application is true and accurate and warrant I/we have disclosed all information relevant to this application.

I/We understand that I/we need not give any of the personal information requested in this application. However without this information it may not be possible for Mt. Marrow to process this application or provide me/us with an appropriate level of service. By signing this application I/We authorise Mt. Marrow to collect, hold, use, and disclose my/our personal information in the manner set out in this application and/or Mt. Marrow's Privacy Policy and Credit Reporting Policy (as may be amended from time to time). I/We acknowledge having read and understood Mt. Marrow's Privacy Policy and Credit Reporting Policy and that I/we am/are aware that copies of those policies are available on Mt. Marrow's website at www.mtmarrow.com or in an alternative form and free of charge from Mt. Marrow's Privacy Officer upon request.

Name:		Position:	
Signature:	(Signed for and on behalf of the Customer)	Date:	/ /
Witness Name:		Witness Signature:	
Witness Address:			

Name:		Position:	
Signature:	(Signed for and on behalf of the Customer)	Date:	/ /
Witness Name:		Witness Signature:	
Witness Address:			

Name:		Position:	
Signature:	(Signed for and on behalf of the Customer)	Date:	/ /
Witness Name:		Witness Signature:	
Witness Address:			

Name:		Position:	
Signature:	(Signed for and on behalf of the Customer)	Date:	/ /
Witness Name:		Witness Signature:	
Witness Address:			

GUARANTEE AND INDEMNITY

In consideration of Mt. Marrow agreeing at the request of the Customer named in the Application for Commercial Credit of which this Guarantee forms part to sell goods and services or give credit to the Customer, each person named as guarantor in the Schedule (“**Guarantor**”) enters into this Guarantee in favour of Mt. Marrow in the following terms:

1. **Guarantee:** The Guarantor unconditionally and irrevocably guarantees to Mt. Marrow the due and punctual payment of the Guaranteed Moneys and agrees:
 - (a) on demand from time to time to pay an amount equal to the Guaranteed Moneys then due and payable;
 - (b) any statement signed by an Officer certifying the amount of Guaranteed Moneys, or the money owing by the Guarantor under the Guarantee, is, in the absence of manifest error, binding and conclusive on and against the Guarantor;
 - (c) this Guarantee is a continuing guarantee and remains in full force and effect until all the Guaranteed Moneys are paid or satisfied in full and is in addition to, and not prejudiced or affected by any other security or guarantee held by Mt. Marrow for the payment of Guaranteed Moneys;
 - (d) the liabilities of the Guarantor and the rights of Mt. Marrow under this Guarantee are not affected by anything which might otherwise affect such liabilities and rights at law or in equity;
 - (e) if any payment by the Guarantor under this Guarantee or the Customer is avoided, set aside, ordered to be refunded or reduced rendered unenforceable by any laws relating to bankruptcy, insolvency or liquidation, that payment will be taken not to have been made and Mt. Marrow is entitled to recover from the Guarantor the value of that payment as if that payment had never been made and this clause continues after this Guarantee is discharged; and
 - (f) Mt. Marrow may enforce this Guarantee without first having resort to any other guarantee or security in relation to the Guaranteed Moneys.
2. **Warranty:** Each Guarantor warrants that all the information set out in this Guarantee is true and correct and the Guarantor has disclosed to Mt. Marrow all information relevant to this Guarantee.
3. **Indemnity:** As a separate and independent obligation, the Guarantor agrees to unconditionally and irrevocably indemnify Mt. Marrow from and against any claim, action, loss, damage, liability, cost, expense, outgoing or payment suffered, paid or incurred by Mt. Marrow in relation to the non payment or non recovery of the Guaranteed Moneys. Mt. Marrow need not incur any expense or make any payment before enforcing any right of indemnity.
4. **Notification of Change of Details:** The Guarantor will immediately provide written notice to Mt. Marrow of any change in the Guarantor’s details set out in this Guarantee or the Application for Commercial Credit.
5. **Waiver:** Any waiver by Mt. Marrow must be in writing. No failure or delay by Mt. Marrow to exercise any power, right or remedy under this Guarantee operates as a waiver, nor does any single or partial exercise of any power, right or remedy preclude any other or further exercise of that power, right or remedy. Mt. Marrow’s rights and remedies under this Guarantee are in addition to any rights and remedies arising at law.
6. **Claim in Administration:** Until this Guarantee is released by Mt. Marrow, the Guarantor will not without Mt. Marrow’s consent, prove in any Administration of the Customer in competition with Mt. Marrow or any related body corporate of Mt. Marrow.
7. **Continuing Guarantee:** All guarantees will be continuing guarantees and will terminate only with Mt. Marrow’s written agreement.
8. **Application of Moneys Received:** If Mt. Marrow receives or recovers money in respect of debts of the Customer or anyone else, Mt. Marrow may use the money to pay off whichever part of those debts Mt. Marrow chooses and does not have to apply the money for the Guarantor’s benefit.
9. **Charge and Security Interest:** As security for payment to Mt. Marrow of all moneys payable by the Guarantor and for the Guarantor’s obligations generally under this Guarantee, the Guarantor charges in favour of Mt. Marrow the whole of the Guarantor’s undertaking, property and assets (including without limitation all of the Guarantor’s interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired. The Guarantor irrevocably appoints each Officer as the Guarantor’s attorney to do all things necessary to create and register each such charge. Upon demand by Mt. Marrow, the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to Mt. Marrow to further secure payment of the money payable by the Guarantor. If the Guarantor fails within a reasonable time of such demand to execute such mortgage or other instrument, then the Guarantor acknowledges that Mt. Marrow may execute such mortgage or other instrument as the Guarantor’s attorney pursuant to the appointment of Mt. Marrow as the Guarantor’s attorney set out in this Guarantee.
10. **Personal Property and Securities Act (Cth) 2009 (“PPSA”):** Expressions used in this clause in quotation marks have the meaning prescribed to them in the PPSA. As security for payment to Mt. Marrow of all moneys payable by the Guarantor and for the Guarantor’s obligations generally under this Guarantee, the Guarantor grants a “security interest” in favour of Mt. Marrow over all of the Guarantor’s “personal property” both current and later acquired.

The Guarantor consents to Mt. Marrow registering a “financing statement” in the Personal Properties Securities Register to perfect the “security interest” created under this Guarantee. The Guarantor must promptly, on request by Mt. Marrow, execute all documents and do anything else reasonably required by Mt. Marrow to ensure that the “security interest” created under this Guarantee constitutes a “perfected” “security interest”.

The Guarantor acknowledges and agrees that: -

 - (a) Nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to this Guarantee;
 - (b) The “Security Agreement” created by this Guarantee may be reinstated on the terms considered appropriate by Mt. Marrow at its complete discretion.

The Guarantor acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of the “security interest” created under this Guarantee, and the Guarantor waives its right to: -

 - (a) not have goods damaged or be inconvenienced no more than necessarily incidental if Mt. Marrow removes an “accession” under s.92 PPSA;
 - (b) to receive notice of any intention to remove an “accession” under s.95(1)(a);
 - (c) to apply to the Court for an order postponing the removal of the “accession” or to determine the amount payable to Mt. Marrow for the retention of the “accession” under s.97 PPSA
 - (d) to receive notice of a decision to enforce the “security interest” in “personal property” in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
 - (e) to receive notice of the enforcement of liquid assets under s.121(4) PPSA
 - (f) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
 - (g) to receive a Statement of Account if no disposal under s.132(4) PPSA; and
 - (h) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and
 - (i) to receive notice of a “verification statement” in relation to any “registration event” (including registration of a “financing statement” or a “financing change statement”) relating to the “security interest” created under this Guarantee under s.157 PPSA.
11. **Trusts:** This document binds the Guarantor both personally and as trustee of any trust of which the Guarantor is a trustee.
12. **Set Off:** Mt. Marrow may at any time set-off amounts owed by Mt. Marrow to the Guarantor against amounts owed by the Guarantor to Mt. Marrow.
13. **Expenses:** The Guarantor must pay to Mt. Marrow all costs, charges, fees and expenses (including, without limitation, all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by Mt. Marrow in connection with any entry into this Guarantee, the exercise or attempted exercise of any power, right or remedy under this Guarantee and/or the failure of the Guarantor to comply with any obligations under this Guarantee.
14. **Acknowledgement:** The Guarantor acknowledges that the Guarantor:
 - (a) has entered into this Guarantee voluntarily;
 - (b) has read and understood the nature and consequences of entering in to this Guarantee;

- (c) has not signed this Guarantee on the basis of any representation of Mt. Marrow, Mt. Marrow's employees, agents or representatives or under the duress of any person; and
- (d) is entitled to seek independent legal and financial advice before signing this Guarantee.
15. **Joint and Several:** If there is more than one Guarantor, the obligations of each Guarantor are joint and several.
16. **Severance:** Each clause, subclause and part of this Guarantee is separate and independent. If any clause or subclause is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.
17. **Amendments:** This Guarantee may only be amended with Mt. Marrow's express written agreement.
18. **Assignment:** The Customer may not assign this Guarantee without Mt. Marrow's prior written agreement.
19. **Application of Laws:** This Guarantee is governed by the laws of the state of Queensland. The Guarantor submits to and consents to the central Courts of Brisbane having jurisdiction over this Guarantee.
20. **Definitions:** In this Guarantee unless the context requires otherwise:
- | | |
|-----------------------------------|--|
| Administration | includes any administration or liquidation of a corporation, arrangement, receivership, receivership and management or anything similar; |
| Credit-related information | includes "credit information", "credit reporting information" and/or "credit eligibility information" and/or "regulated information" (as the context permits) within the meaning of those terms in the Privacy Act. |
| Customer | means the Customer named in the Application for Commercial Credit of which the Guarantee and Indemnity forms a part; |
| Guarantee | means this Guarantee and Indemnity; |
| Guaranteed Moneys | means all Moneys which are, will or may be at any time in the future, owing or payable to Mt. Marrow by the Customer for any reason whatsoever including, without limitation, money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated damages. Where the Customer would have been liable but for the Customer's Administration, the Customer and Guarantor will still be taken to be liable; |
| Officer | means each director, secretary, credit manager and authorised representative of Mt. Marrow; and |
| Privacy Act | means the <i>Privacy Act 1988 (Cth)</i> as amended from time to time. |
- and any term defined in the Credit Terms will have the same definition in this Guarantee.
21. **Interpretation:**
- (a) In this Guarantee unless the context requires otherwise, all references to a party include the party's successors and permitted assigns.
- (b) No provision of this Guarantee will be construed adversely against a party solely because the party was responsible for drafting the provision.

GUARANTOR'S PRIVACY AND CREDIT REPORTING ACKNOWLEDGMENT AND CONSENT

PRIVACY AND COLLECTION NOTICE (APP 5)

Mt. Marrow's Collection Notice (APP 5) and Privacy Policy are published on Mt. Marrow's website at www.mtmarrow.com. Copies can also be obtained in an alternative form (such as hard copy) and free of charge by contacting Mt. Marrow's Privacy Officer on (07) 5464 4644.

CREDIT REPORTING AND STATEMENT OF NOTIFIABLE MATTERS

Mt. Marrow's Statement of Notifiable Matters and Credit Reporting Policy are published on Mt. Marrow's website at www.mtmarrow.com. Copies can also be obtained in an alternative form (such as hard copy) and free of charge by contacting Mt. Marrow's Privacy Officer on (07) 5464 4644.

The Guarantor gives consent to and authorisation for Mt. Marrow to do the following at any time:

- (a) Request credit reports containing credit-related information about the Guarantor's consumer and/or commercial credit arrangements from CRBs for the purpose of assessing this Guarantee and/or the Guarantor's creditworthiness and/or in connection with any related purpose from time to time as reasonably required;
- (b) Disclose personal information and/or credit-related information about the Guarantor to CRBs to enable CRBs to create and maintain credit information files containing credit-related information about the Guarantor;
- (c) Disclose to the Customer and/or any related bodies corporate of Mt. Marrow and/or any agents of Mt. Marrow and/or any of the Guarantor's current or potential guarantors and/or any other current or potential provider of credit to the Guarantor, for the purposes set out in this Guarantee and/or in Mt. Marrow's Credit Reporting Policy:-
- credit reports containing credit-related information about the Guarantor;
 - personal information and/or credit-related information about the Guarantor that is derived from credit reports obtained from CRBs;
 - any other information about Guarantor's consumer credit and/or commercial credit arrangements.
- (d) Collect personal information and/or credit-related information about the Guarantor from any entity the Guarantor has granted security to

- (including the Guarantor's bank and/or financial institution) for the purposes set out in this Guarantee and/or Mt. Marrow's Credit Reporting Policy; and
- (e) Exchange the Guarantor's credit-related information with any collection agents of Mt. Marrow and/or any of Mt. Marrow's related bodies corporate and/or any current or potential provider of credit to the Guarantor for the purposes set out in this Guarantee and/or Mt. Marrow's Credit Reporting Policy.

The Guarantor understands that the information permitted to be disclosed to or by Mt. Marrow under the Privacy Act will include:

- (a) Details to identify the Guarantor - that is, name, sex, date of birth, current / last known and 2 previous addresses, current or last known employer, and driver's license number;
- (b) The fact that the Guarantor has guaranteed credit and the amount of the credit;
- (c) Advice that payments previously notified as unpaid are no longer overdue;
- (d) Payments of \$150 or more overdue for at least 60 days and for which collection action has started;
- (e) In specified circumstances, that in the opinion of Mt. Marrow the Guarantor has committed a serious credit infringement; and
- (f) The fact that the Guarantee has been paid, satisfied, or otherwise discharged.

SCHEDULE

I/We have read and understood this document. I/We have not relied on anything said to me/us by the Customer or Mt. Marrow as to what it means or what its effects may be.

I/We understand that I/we need not give any of the personal information requested in this Guarantee. However without this information it may not be possible for Mt. Marrow to accept this Guarantee or provide an appropriate level of service. By signing this Guarantee I/we authorise Mt. Marrow to collect, hold, use, and disclose my/our personal information in the manner set out in this Guarantee and/or in Mt. Marrow's Privacy Policy and Credit Reporting Policy (as may be amended from time to time). I/We acknowledge having read and understood Mt. Marrow's Privacy Policy and Credit Reporting Policy and that I/we am/are aware that copies of those policies are available on Mt. Marrow's website at www.mtmarrow.com or in an alternative form and free of charge from Mt. Marrow's Privacy Officer upon request

SIGNED by each Guarantor in the presence of the witnesses whose names appear below.

DATED this day of 20

Guarantor's Full Name:		Signature:	
Witness' Name (Print):		Signature:	
Witness' Address:			

Guarantor's Full Name:		Signature:	
Witness' Name (Print):		Signature:	
Witness' Address:			

Guarantor's Full Name:		Signature:	
Witness' Name (Print):		Signature:	
Witness' Address:			

Guarantor's Full Name:		Signature:	
Witness' Name (Print):		Signature:	
Witness' Address:			

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