



Mail Completed Form to:

Big River Group Pty Ltd
t/as MB Prefab
PO Box 575
Geelong VIC 3220
Tel: (03) 5223 2888, Fax: (03) 5221 7457

APPLICATION FOR COMMERCIAL CREDIT (02/12)

Salesperson

To: **Big River Group Pty Ltd ACN 000 009 754 (the 'Supplier')**

For obtaining commercial credit from the Supplier, I/we submit for consideration and in support of this application, the following details:

Applicant

Full name of Applicant			
ACN		ABN	
Trading Name			
Indicate Legal Structure of Applicant (please tick one box)	<input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trustee of a trust <input type="checkbox"/> Other:.....		
If Applicant is a Trustee of a trust, give full name of the trust			
Business Street Address			
Business Postal Address			
Contact Person		Phone	
Email		Fax	

Contact & Business Details

1. Director/Partner/Sole Trader	Full Name		D.O.B.	/ /
	Title/Position		Drivers Licence	
	Address		Mobile	
2. Director/Partner/Sole Trader	Full Name		D.O.B.	/ /
	Title/Position		Drivers Licence	
	Address		Mobile	

Purchasing Contact Person		Accounts Payable Contact Person	
Date Business Commenced	/ /	Expected Monthly Purchases	\$
Nature of Business			
Details of any judgments entered against Applicant in the last four years			
Name of Bank		Branch	
Account No.		BSB	

Trade References (provide the three current main trade suppliers)

1. Name	<input type="text"/>	Telephone	<input type="text"/>
Address	<input type="text"/>	Fax	<input type="text"/>
Contact person:	<input type="text"/>		
2. Name	<input type="text"/>	Telephone	<input type="text"/>
Address	<input type="text"/>	Fax	<input type="text"/>
Contact person:	<input type="text"/>		
3. Name	<input type="text"/>	Telephone	<input type="text"/>
Address	<input type="text"/>	Fax	<input type="text"/>
Contact person:	<input type="text"/>		

I:

- (a) authorise the Supplier to make such inquiries (including of credit reporting agencies, the trade referees noted above and our bankers) as the Supplier considers necessary for the purpose of assessing this application for credit and for continuing to provide credit;
- (b) acknowledge that the Supplier has informed me in accordance with S.18E(8)(c) of the **Privacy Act 1988**, that certain items of identity/personal information about us contained in this application may be exchanged between the Supplier and a credit reporting agency. This information includes identity particulars, the fact an application was made and the amount, current credit provider status, arrears and discharges, dishonoured cheques and serious credit infringements;
- (c) agree that the Supplier may give and seek from any credit providers named in this credit application and any credit providers that may be named in a credit report issued by a credit reporting agency, information about our credit arrangements and I hereby irrevocably authorise such information to be given by and to the Supplier. I understand that this is information about our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under Privacy Act 1988;
- (d) agree that if the Supplier considers it relevant to collecting overdue payments in respect of commercial credit provided to the Applicant then the Supplier may receive from a credit reporting agency a credit report containing personal information about us in relation to collecting overdue payments.
- (e) warrant that the information stated herein is true and correct to the best of my knowledge;
- (f) acknowledge and agree that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.
- (g) agree that by signing this application for credit, we agree to be bound by the Supplier's Terms and Conditions in relation to its supply of Goods and / or Services to the Applicant, as attached to this application and as amended from time to time by the Supplier;
- (h) agree to advise the Supplier promptly of any change of name, address, directors, proprietors, legal structure of our business or cessation of trading by the Applicant and agree to be liable for any monies outstanding to the Supplier or loss suffered by the Supplier as a result of our failure to do so;
- (i) undertake to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
- (j) declare that the Applicant named herein is solvent and able to pay its debts as and when they fall due.
- (k) warrant that I am an authorised signatory on behalf of the Applicant named in this application.

Signature	<input type="text"/>	Print name of authorised signatory	<input type="text"/>
Date	<input type="text" value=" / /"/>	Position/Title	<input type="text"/>

These are the Terms and Conditions under which Big River Group Pty Ltd, ACN 000 009 754, (the Supplier) will supply Goods and / or Services to the Applicant.

Definitions

“**Agreement**” means the contract formed between the Applicant and Supplier and constituted by these Terms and any acceptance or confirmation of Order by the Supplier, whether written or oral or constituted by the Supplier supplying Goods and / or Services to the Applicant.

“**Applicant**” means the person or entity to whom Goods are supplied by the Supplier.

“**Delivery**” means the delivery to or collection by the Applicant of the Goods as provided for in these Terms or as otherwise agreed in writing between the Supplier and Applicant.

“**Goods**” means all goods, products, equipment and other materials the subject of an Order by the Applicant or otherwise provided to the Applicant by the Supplier under this Agreement provided that unless the context provides otherwise, any reference to ‘Goods’ includes all proceeds of such Goods. Goods includes the provision of Services.

“**GST**” means goods and services tax as defined by A New Tax System (Goods and Services Tax) Act 1999 (Cth.)

“**Order**” “means any purchase order, request, instructions, direction to proceed whether written or oral, and in any form used by the Applicant from time to time for ordering Goods.

“**PPSA**” means the Personal Property Securities Act 2009 (Cth.)

“**PPSR**” means the Personal Property Securities Register established pursuant to the PPSA.

“**Related bodies corporate**” as defined in the Corporations Act 2001 (Cth.)

“**Services**” means any work or labour the subject of an Order by the Applicant or otherwise provided to the Applicant by the Supplier under this Agreement.

“**Supplier**” means Big River Group Pty Ltd, ACN 000 009 754.

“**Terms**” means these terms and conditions and as amended by the Supplier in writing from time to time.

Payment terms

1. The terms of payment are as follows, unless otherwise agreed to in writing by the Supplier:
 - (a) in the case of an Applicant granted an approved credit account by and with the Supplier - strictly thirty (30) days from the end of month of purchase;
 - (b) in any other case, Cash on Delivery (‘COD’)
2. Payments required to be made by the Applicant to the Supplier under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
3. Any amount due to the Supplier from time to time may be deducted by the Supplier from any monies which may be or may become payable to the Applicant by the Supplier.
4. Should the Applicant not pay for the Goods and /or Services supplied by the Supplier in accordance with the payment terms as provided herein, or as agreed to in writing by the Supplier from time to time, the Supplier may do any of the following:
 - (a) withdraw any credit;
 - (b) refuse any further credit;
 - (c) stop supply; and
 - (d) charge interest on all amounts owing by the Applicant to the Supplier on a daily basis at the rate of 15% p.a. and the Applicant agrees to pay this interest to the Supplier.

Quotations

5. The Applicant agrees that:
 - (a) any quotation given by the Supplier must be in writing.
 - (b) any quotation given by the Supplier is based on then current prices and subject to availability and shall not be binding on the Supplier unless an Order is placed with the Supplier within 14 days from the date of quotation;
 - (c) prior to receipt of any Order the Supplier may amend a quotation;
 - (d) quotations made by the Supplier shall not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any Order to purchase received by it.
 - (e) the Supplier shall not be bound by any Quotation, if it forms the view that the subject matter of the Quotation is to form part of a larger transaction or series of transactions with the Applicant and those circumstances have materially changed;
 - (f) it will pay any reasonable charges the Supplier claims for holding any Goods referred to in any quotation pending placement of an Order.

Jurisdiction

6. The Applicant acknowledges and agrees that this Agreement shall be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.

7. The Applicant acknowledges and agrees that the Agreement for the supply of Goods and / or Services between the Supplier and the Applicant is formed at the address of the Supplier.
8. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

Security

9. The Applicant hereby charges in favour of the Supplier all of its right, title and interest in any and all real property that the Applicant owns at present and in the future with the amount of its indebtedness to the Supplier until discharged.
10. The Applicant appoints as its duly constituted attorney an authorised officer of the Supplier from time to time to execute in the Applicant's name any deed, real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.
11. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security over real property, those charges, mortgages or other security interests shall continue and co-exist with the obligations and security interests created in this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Formation of contract

12. Each Order placed by the Applicant constitutes an offer to acquire Goods and / or Services from the Supplier and placement of an Order, either verbally or in writing, shall imply acceptance of the Supplier's Terms, except as otherwise agreed in writing between the Supplier and Applicant, and to the exclusion of any other terms and conditions (including any terms and conditions contained in any Order or document of the Applicant).
13. Only acceptance by the Supplier of the Applicant's Order shall complete an Agreement and such acceptance of Order by the Supplier may be written, oral or constituted by the Supplier supplying Goods and / or Services to the Applicant.

Cancellations and Returns

14. The Applicant agrees, other than in the case of warranty or consumer guarantee claims:
 - (a) not to cancel the whole or part of any Order placed with the Supplier;
 - (b) not to return Goods without the Supplier's prior written approval and then only if Goods are in new and saleable condition with undamaged packaging and less than 3 weeks have passed since delivery;
 - (c) the Supplier may elect to take back Goods on such terms as the Supplier requires including:
 - (i) payment of a restocking fee of not less than 20% of the invoice value; and
 - (ii) original invoice as proof of purchase is produced;
 - (d) not to return any Goods which were custom cut, custom processed or custom acquired.

Delivery

15. The Applicant agrees:
 - (a) the Supplier accepts no responsibility or duty for Delivery but may elect to arrange Delivery at its discretion and without any liability and at the Applicant's cost and responsibility in all things;
 - (b) the Supplier reserves the right to charge for any Delivery;
 - (c) the Applicant shall be deemed to have accepted Delivery and liability for Goods immediately the Supplier notifies the Applicant that any Goods are ready for collection or upon the Supplier delivering any Goods to a carrier or to the Applicant's business premises or site nominated by it whether attended or not;
 - (d) a certificate purporting to be signed by an officer of the Supplier confirming Delivery shall be conclusive evidence of Delivery as shall any signed Delivery docket;
 - (e) the Supplier will not be liable for delay, failure or inability to deliver any Goods;
 - (f) once the Applicant is notified Goods are ready for collection or Delivery the Applicant agrees to pay all costs of the Supplier in holding those Goods for the Applicant.

Retention of title

16. Until payment has been made for the Goods supplied and any other sums whatsoever outstanding from the Applicant to the Supplier from time to time (‘Full Payment’):
 - (a) the Applicant agrees that property and title in the Goods shall not pass to the Applicant; and
 - (b) the Applicant will hold the Goods in a fiduciary capacity for the Supplier and agrees to store the Goods in such a manner that they can be identified as the property of the Supplier, and shall not mix the Goods with other similar goods.

17. The Applicant shall be entitled to sell the Goods in the ordinary course of its business, but until Full Payment for the Goods has been made to the Supplier, the Applicant shall sell as agent and bailee for the Supplier and the proceeds of sale of the Goods shall be held by the Applicant on trust for the Supplier absolutely.
18. The Applicant's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 17 unless and until the funds held on trust are remitted to the Supplier.
19. If the Applicant supplies any of the Goods to any person before all monies payable by the Applicant have been paid to the Supplier the Applicant agrees that the Supplier retains title to any proceeds, including but not limited to sale proceeds or an account for such monies or rent monies and insurance monies.
20. The Applicant agrees that whilst property and title in the Goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the Goods of the Supplier and to repossess the Goods which may be in the Applicant's possession, custody or control when payment is overdue.
21. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 20. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
22. The Applicant agrees that where the Goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Applicant on those Goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the Goods bearing the name or trademark of the Applicant.

Cancellation of terms of credit

23. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this Agreement or not.
24. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

Acceptable Variation

25. The Applicant will accept variation in quantities at plus or minus 5% and will pay pro-rata for the actual quantity delivered.

Exclusions

26. Other than where a consumer guarantee under the Australian Consumer Law applies:
 - (a) No dealing with the Applicant shall be or be deemed to be a sale by sample.
 - (b) If the Supplier publishes material concerning its Goods, its Services and/or its prices anything so published which is incompatible with these Terms is expressly excluded.
 - (c) The Applicant shall rely on its own knowledge and expertise in selecting any Goods and/or Services for any purpose and any advice or assistance given for or on behalf of the Supplier shall be accepted at the Applicant's risk and shall not be or be deemed to be given as expert or adviser nor to have been relied upon by the Applicant or anyone claiming through the Applicant.
 - (d) All Goods are sold subject to any manufacturer's trading terms, warranties and representations applicable to those Goods.
 - (e) The Supplier shall not be liable nor responsible for any failure of Goods or Services to comply with any requirements of the Applicant or any other person (whether relating to manufacture, design, fabrication, installation and/or intended use or otherwise).
 - (f) The Supplier disclaims any responsibility or liability relating to any Goods and/or Services:
 - (i) made or performed to designs, drawings, specifications and/or procedures etc, and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Applicant; and
 - (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately.
 - (g) The Applicant agrees to check all Goods for compliance with all relevant applicable standards and regulatory bodies (**Standards**) before use, on-sale or application and/or to use or apply all Goods in accordance with those Standards with all manufacturer and/or the Supplier's recommendations and/or directions and in accordance with good commercial practice.

Intellectual Property

27. The Applicant agrees to all tooling, material, industrial and/or intellectual property employed in the preparation for sale or production of any Goods and/or Services shall be and remain the property of the Supplier notwithstanding any contribution by the Applicant relating thereto.
28. If the Supplier utilises any design patent or intellectual property or follows any instruction provided by or on behalf of the Applicant the Applicant indemnifies the Supplier against any claim, proceeding, damages or liability for any loss, cost or expense arising as a result whether for any alleged infringement of any intellectual property or otherwise.

29. The Applicant must not advertise, use or represent any intellectual property of the Supplier or of any Goods themselves in any way without the prior written consent of the Supplier.
30. If the Applicant breaches or permits any breach of this clause, it acknowledges the Supplier may suffer claims by third parties as a result (e.g. by parties who are entitled to exploit any intellectual property) and the Applicant indemnifies the Supplier against such third party claims.

Timber Goods

31. The Applicant acknowledges the Supplier's timber Goods may have the following characteristics:
 - (a) as a natural product, variations in colour texture and inherent quality occur;
 - (b) it is susceptible to exposure to elements (sun, rain, temperature etc);
 - (c) it is susceptible to bending, warping, crushing, swelling and fungal growth if not stored or used properly;
 - (d) it is susceptible to damage and size variations which may be caused (inter alia) by relative humidity, moisture content, chemicals, petrochemicals etc;
 - (e) may contain or be treated with poisons and/or potentially toxic chemicals (including formaldehyde, preservatives etc) and should be stored and worked upon in well ventilated areas and not burned except in safe manner; and
 - (f) product related dust and saw dust are inherently dangerous if inhaled and may be highly combustible.
32. The Applicant agrees to observe all relevant material safety data sheets applicable to the Goods and/or the Services.

Pallets and Stands

33. The Applicant agrees to return to the Supplier all pallets, stands and any re-usable packaging or display equipment (**Equipment**) supplied and to indemnify the Supplier for the full replacement cost of any Equipment not returned promptly.

Stock Discretion

34. The Supplier has a continuing discretion to allocate available stock and gives no warranty as to certainty of supply unless expressly agreed in writing in advance.

Partial Delivery/Forward Orders

35. If the Applicant places forward Orders or requests partial or instalment Delivery, the Applicant agrees:
 - (a) to pay for so much of any Order as is from time to time delivered by the Supplier;
 - (b) that no delay or failure to fulfil any part of any Order will entitle the Applicant to cancel or vary any Order or delay or reduce any payment.

Specifications

36. To the extent permissible by law, any illustration, drawing or specification supplied by the Supplier (**Specs**) are drafts and approximates.
37. Any tangible or intellectual property rights in Specs remain the property of the Supplier and may be recalled at any time. Specs are to be treated at all times as confidential and not made use of without the prior written consent of the Supplier.

On Sale

38. The Applicant agrees that upon on-sale of any Goods to third parties it must not make any misrepresentations to third parties about the Goods.

Indemnity

39. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

Provision of further information

40. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier 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 Supplier may ask for new guarantors to sign a guarantee and indemnity.

Corporations

41. If the Applicant is a corporation, the Applicant warrants that its directors have either signed or accepted this Agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier on request.

Trustee capacity

42. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
 - (a) the Applicant enters into this Agreement in both its capacity as trustee and in its personal capacity;
 - (b) the Applicant has the right to be indemnified out of trust assets;
 - (c) the Applicant has the power under the trust deed to enter into this Agreement; and
 - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier in writing.

43. The Applicant must give the Supplier a copy of the trust deed upon request.

Partnership

44. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed or authorised the entering of this Agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier on request.

45. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

46. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this Agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

Waiver

47. A waiver of any provision or breach of this Agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this Agreement by the Applicant must be made by the Applicant's authorised officer in writing.

Costs

48. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this Agreement (if any).

49. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis and as a liquidated sum.

Taxes and duty

50. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this Agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.

51. If as a result of:

- (a) any legislation becoming applicable to the subject matter of this Agreement; or
 - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

Miscellaneous

52. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.

53. The Supplier's liability in respect of a breach of a consumer guarantee (as defined in the Australian Consumer Law) or any express warranty provided by the Supplier for any Service or Good not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at the Supplier's option to;

- (a) in relation to the Goods:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the Goods repaired.
- (b) in relation to the Services:
 - (i) the supply of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

54. To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and the Supplier is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Applicant for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or

(d) any damage or fault in performance arising out of incorrect or inappropriate operation of the Goods by the Applicant;

(e) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Supplier's failure to complete or delay in completing the order to deliver the Goods.

Severance

55. If any provision of these Terms is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

56. If any part of these Terms is invalid or unenforceable, that part is deleted and the remainder of these Terms remains effective.

Variation

57. The Applicant agrees that these Terms may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.

58. Any proposed variation to these Terms by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

Entire agreement

59. These Terms constitute the entire agreement between the parties relating in any way to its subject matter.

60. Other than where a consumer guarantee under the Australian Consumer Law applies:

- (a) all previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect.
- (b) no oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

PPSA

61. Defined terms in this clause have the same meaning as given to them in the PPSA.

- (a) The Supplier and the Applicant acknowledge that these Terms constitute a Security Agreement and gives rise to a Purchase Money Security Interest ("PMSI") in favour of the Supplier over the Goods supplied or to be supplied to the Applicant as Grantor pursuant to these Terms and that the Goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods".
- (b) The Supplier and the Applicant acknowledge that the Supplier as Secured Party, is entitled to register its Security Interest in the Goods supplied or to be supplied to the Applicant as Grantor under these Terms on the PPSR as Collateral.

62. To the extent permissible at law, the Applicant:

- (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Applicant, as Grantor, to the Supplier;
- (b) agrees to indemnify the Supplier on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
 - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of the Supplier; and
 - (ii) enforcement or attempted enforcement of any Security Interest granted to the Supplier by the Applicant.
- (c) agrees that nothing in sections 130 to 143 of the PPSA relating to enforcement by the Supplier of any Security Interest created or provided for herein will apply to these Terms or the Security under the Terms;
- (d) waives any rights it may have under sections 95, 123, 130, 132(4), 135, 142, 143, 129, 132(3)(d) of the PPSA.

DEED OF GUARANTEE and INDEMNITY (02/12)

To **Big River Group Pty Ltd ACN 000 009 754 (herein called the 'Supplier')**

The guarantor/s ('the **Guarantors**'), set out below, hereby jointly and severally covenant and undertake in relation to

....., **ACN**

and each of its subsidiaries, associates, associated entities, related bodies corporate, related entities and any successors and assigns (herein called the **'Applicant'**) as follows:

Jurisdiction

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. The parties to this Guarantee and Indemnity submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

Guarantee

3. In consideration of the Supplier extending or agreeing to extend credit or further credit and /or agreeing to supply from time to time Goods and / or Services to the Applicant at the Guarantors' request (testified by the Guarantors' execution of this Deed of Guarantee and Indemnity), the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Applicant 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 Applicant to the Supplier arising out of a relationship of trustee and beneficiary.

Indemnity

4. As a separate and additional obligation and liability under this Guarantee and Indemnity, as principal debtor, the Guarantors agree to indemnify the Supplier against all losses, damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Applicant to make due payment of any money owing to the Supplier whether for Goods sold and /or Services rendered or otherwise or to observe the terms of any agreement between the Applicant and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Applicant or any Guarantor and whether successful or not or whether frustrated by the Applicant or Guarantor or by operation of law and including costs ordered by a Court to be paid by the Supplier to the Applicant or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real property given to the Supplier.

Guarantee and Indemnity

5. This Guarantee and Indemnity shall be a continuing Guarantee and Indemnity and shall not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier to the credit of any account of the Applicant or the Guarantors, or deemed to be held on trust by the Applicant for the Supplier, and shall be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 3 and 4 and including but not limited to those in clauses 13 and 14 of this Guarantee and Indemnity.
6. 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 shall be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier shall be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
7. The Supplier shall have the right to proceed against the Guarantors under this Guarantee and Indemnity, irrespective of default of the Applicant to pay and with or without notice to the Applicant, as if the primary liability for any money owing was the Guarantors' own. Further the Supplier shall 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.
8. This Guarantee and Indemnity shall continue in force until such time as the Supplier releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Applicant.
9. This Guarantee and Indemnity is without prejudice to and shall not be affected by nor shall the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
 - (a) any other security taken by the Supplier from the Applicant or from any other person;
 - (b) any waiver or indulgence, whether as to time or otherwise, given to the Applicant or to the Guarantors or any one or more of the Guarantors;
 - (c) 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;
 - (d) any event releasing or varying the obligations of the Guarantors hereunder;

- (e) any event or arrangement (including but not limited to any Deed of Company Arrangement) or composition being entered into by the Applicant and / or the Guarantors or any payments pursuant to same being received by the Supplier; or
- (f) 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.

Right of subrogation

10. In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Applicant whether under a guarantee or indemnity or otherwise, the Guarantors shall not exercise any rights of subrogation against any other Guarantors or the Applicant unless and until the Supplier has been paid in full.
11. In the event of the Applicant going into liquidation, the Guarantors shall be prohibited from proving in competition with the Applicant unless and until the Supplier has been paid in full.

Insolvency of Applicant

12. No sum of money which the Applicant pays to the Supplier and the Supplier 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 Applicant by reason of the *Corporations Act 2001*, *Bankruptcy Act 1966* or otherwise shall, for the purpose of this Guarantee and Indemnity, be considered as discharging or diminishing the Guarantor's liability and this Guarantee and Indemnity shall continue to apply as if the said sum(s) had at all times remained owing by the Applicant.

Costs

13. The Supplier is at liberty from time to time to charge the account of the Applicant with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:
 - (a) the account of the Applicant;
 - (b) this Guarantee and Indemnity;
 - (c) any other security in respect of the indebtedness of the Applicant to the Supplier;
 - (d) the preparation, completion and stamping of this Deed; or
 - (e) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this Deed; and the same shall be part of the monies secured by this Deed.
14. The Guarantors agree to pay, as a liquidated debt, the Supplier's costs and disbursements incurred in recovering monies secured by this Deed, including debt recovery agency fees and legal costs and expenses on an indemnity basis.
15. The Guarantors appoint as their duly constituted attorney an authorised officer of the Supplier 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 Supplier may choose to lodge in any Land Titles Office in any state or territory of Australia against real property that the Guarantors may own, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

Variation

16. The Guarantors authorise the Supplier to give time or any other indulgence or consideration to the Applicant in respect of compliance with its obligations to the Supplier, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this Guarantee and Indemnity.
17. The Guarantors agree that this Guarantee and Indemnity shall not be avoided, released or affected by the Supplier making any variation or alteration in the terms of its agreement(s) with the Applicant, even if such variation or alteration has the effect of increasing the Guarantors' liability under this Guarantee and Indemnity.

Severance

18. If any provision of this Guarantee and Indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

Security

19. The Guarantors charge in favour of the Supplier all of their right, title and interest in any real 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 3 and 4 and including but not limited to those in clauses 13 and 14.
20. This Guarantee and Indemnity secures the repayment of all monies owed by the Applicant whatsoever, and this deed constitutes the entire guarantee.

21. Where the Guarantor has previously entered into an agreement with the Supplier by which the Guarantor has granted a charge, mortgage or other security over real property, those charges, mortgages or other security interests shall continue and co-exist with the obligations and security interests created in this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Understanding and Independent Advice

22. The Guarantors and each of them have read and understood the terms of this Guarantee and Indemnity before signing it and have had the opportunity to obtain independent legal advice about its effect and terms.

Personal Capacity

23. The Guarantors hereby jointly and severally sign this Guarantee and Indemnity in their personal capacity and regardless of whether the Applicant or each or any of the Guarantors are a trustee of a trust.

Privacy Act

24. The Guarantors agree to the Supplier:

- (a) making all enquiries it deems necessary to investigate each of us individually including enquiries to our bankers, any credit provider or credit reporting agency and any personal credit and consumer credit information about us;
 - (b) obtaining from a credit reporting agency a consumer credit report obtaining information about us;
- for the purposes of assessing whether to accept us as a Guarantor for credit applied for by the Applicant and to assist in collecting overdue payments;
- (c) disclosing to any bankers, credit provider, credit reporting agency information about any default by us under this Guarantee and Indemnity.

	Dated	/ /		
Signed, sealed and delivered by the guarantor in the presence of:	Signature		Witness Signature	
	Name		Witness Name	
	Address		Witness Address	

Signed, sealed and delivered by the guarantor in the presence of:	Signature		Witness Signature	
	Name		Witness Name	
	Address		Witness Address	

Please Note: The witness cannot be an Employee of the Supplier or a Director of the company applying for credit. The witness cannot be a spouse or relative of the guarantor.