

CREDIT APPLICATION FORM

Pentarch Group Pty Ltd

ACN 607 144 196 and its Australian and New Zealand Associated Entities



State you wish to trade in (please tick): NSW Qld NT Vic Tas SA WA

WARNING: If you do not understand this document, you should seek independent legal advice. Please do not use correction fluid or tape as this is a legal document. Any corrections should be crossed out and initialled.

Section 1 – Applicants details (Enter all details relevant to your business)

Name (Company Name/Partnership/Sole Trader/Trustee):

ACN: _____ Date of company registration (dd/mm/yy) / /

ABN/ARBN:

Trust Name (if Trust):

Trading as (Registered Business Name):

Company Sole Proprietor Partners Trustee Government/Statutory Authority

Nature of Business:

Street address (not a PO Box):

State:

Postcode:

Postal address (if different):

State:

Postcode:

Telephone number:

Email Address for statements:

Mobile number:

Email address for invoices:

Partner, Sole Trader, Director or Trustee details

	Names of Directors (if company), Partnership or Sole Trader	Director's I.D	Residential Address	Date of Birth (dd/mm/yyyy)
1				
2				
3				
4				

Section 2 – Credit limit required (Enter the estimated amount required - equivalent to two (2) months purchase - in the Forestry Division OR Agricultural Division box below. If your application refers to both divisions enter the credit limit required only once in the Forestry Division box).

Forestry Division

Agricultural Division

Permaculture and Carbon

\$

\$

\$

Section 3 – Details of Assets & Liabilities (Please provide details of all assets and liabilities owned by the Applicant & Guarantors)

Assets		
	Address or Description	Value (\$)
1		
2		
3		
4		

Liabilities / Losses		
	Description	Value (\$)
1		
2		
3		
4		

Section 4 – Trade References (Please provide details of 3 referees)

	Company name	Contact	Phone number	E-mail address
1				
2				
3				

Section 5 – Terms and Conditions**1. Definitions and interpretation****1.1 Definitions:**

Associated Entities has the same meaning as in the *Corporations Act 2001* (Cth). For clarity, Pentarch Holdings Pty. Ltd. (ACN 064 165 635) (and its subsidiaries) and Allied Natural Wood Enterprises Pty Ltd (ACN 607 144 089) (and its subsidiaries) are Associated Entities of Pentarch.

Conditions means these Terms and Conditions.

Consequential Loss means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

Customer means the party requesting the provision of Goods and Services and/or making an application for credit.

Goods means any goods supplied by the Supplier and all related or ancillary goods.

Insolvency Event means any of the following events concerning the Customer, unless the events take place as part of a solvent reconstruction, amalgamation, merger, or consolidation on terms approved by the Supplier before it takes place and the implementation of the reconstruction, amalgamation, merger, or consolidation complies with the terms of the approval:

- (a) if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the Customer;
- (b) if the Customer becomes bankrupt;
- (c) if a controlling trustee is appointed to, or over, any of the property or undertaking of the Customer;
- (d) if the Customer's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX *Bankruptcy Act 1966* (Cth);
- (e) the Customer is unable to pay its debts when they become due and payable;
- (f) if the Customer ceases to carry on business; or
- (g) if any event happens in Australia or any other country or territory in respect of a Customer that is similar to any of the events or circumstances referred to in this definition.

Loss means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.

New Pentarch Group Entity means an entity that becomes a Related Body Corporate or Associated Entity of Pentarch after this application for credit is made by the Customer.

Order includes any written, verbal or electronic request made by the Customer, its employees, agents and contractors or under the Customer's account number and/or account name for Goods or Services.

Pentarch means Pentarch Group Pty Ltd (ACN 607 144 196).

Pentarch Group means Pentarch and each of its Related Bodies Corporate and Associated Entities.

PMSI means a purchase money security interest as defined in the *Personal Property Securities Act 2009* (Cth) and any regulations

made under the *Personal Property Securities Act 2009* (Cth), as amended from time to time.

Related Body Corporate has the same meaning as in the *Corporations Act 2001* (Cth).

Services means any services provided by the Supplier being building, industrial, packaging or construction services and all related or ancillary services.

Supplier means, in connection with the supply of any Goods or Services, the Pentarch Group entity making the supply to the Customer.

Supplier T&Cs means:

- (a) any terms and conditions of quotation and supply, however described, notified by the Supplier to the Customer (whether on an invoice, quote, through the Supplier's website, docket or otherwise);
- (b) any supply agreement (however described) in the Supplier's standard form entered into in writing between the Supplier and Customer; or
- (c) if neither of paragraphs (a) or (b) apply, the Supplier's standard terms and conditions applicable to the Goods and Services ordered by the Customer as identified in Annexure A.

1.2 Interpretation

For the purposes of these Conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words denoting individuals or persons include corporations and vice versa if the context allows;
- (c) headings are for convenience only and do not affect interpretation;
- (d) references to an agreement or document are to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (e) references to any party include that party's executors, administrators, substitutes, successors and permitted assigns; the fact that a provision of these Conditions is expressly declared to be an essential term does not mean that other terms are not essential (whether or not so described);
- (f) a reference to currency or any monetary amount, unless otherwise specified, is a reference to Australian dollars;
- (g) a reference to a law:
 - (i) includes a reference to any legislation or regulation;
 - (ii) is a reference to that law as amended, consolidated, supplemented or replaced; and
 - (iii) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law; and
- (h) a reference to the word "including" means "including without limitation" and "include", "includes" and "in particular" must be construed similarly.

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2. Structure of this document

- 2.1 These Conditions and the Supplier T&Cs together regulate the commercial relationship between the Supplier and the Customer, including the extension of credit, in connection with the supply of Goods or Services by Pentarch Group to the Customer.
- 2.2 The terms set out in Part A of these Conditions are incorporated by reference as part of the Supplier T&Cs. These Conditions are legally binding between the Supplier and the Customer and should be read together with the Supplier T&Cs. To the extent of any inconsistency, the Supplier T&Cs (excluding the incorporated Part A of these Conditions) prevail over these Conditions.
- 2.3 A quotation to supply Goods or Services is an offer open to acceptance by the Customer within 30 days from the date on the quotation and any such acceptance must be on the basis that supply of the Goods and Services is started within 3 months of the date of the quotation. The Customer's Order or commencement by the Supplier of the supply of the Goods or Services constitutes acceptance of the offer.
- 2.4 Pentarch Group may amend these Conditions by notice in writing supplied to the Customer's email or postal address. The amended Conditions shall thereafter apply to each Order placed by the Customer after the date upon which notice was given unless the Customer earlier gives Pentarch Group written notice in advance of it placing a further Order. If the amended Conditions are not acceptable to the Customer, the Customer should place no further Orders with the Supplier.
- 2.5 Except to the extent otherwise explicitly agreed in writing between the parties, these Conditions and the Supplier T&Cs govern the entire relationship between the Supplier and the Customer in connection with the Goods and Services and will prevail over any other document (including purchase order terms or procurement terms provided by the Customer or terms contained in an Order or on the back of delivery dockets to the extent inconsistent with these Conditions or the Supplier T&Cs) from time to time. For the avoidance of doubt, a Supplier's acceptance of the Customer's Order will be treated as the Supplier's acknowledgement of the Customer's Order only and not the Supplier's acceptance of any terms or conditions of the Customer.
- 2.6 Any variations to these Conditions or the Supplier T&Cs not expressly agreed to in writing by the Supplier are expressly rejected by the Supplier.

PART A

3. Customer obligations

- 3.1 The Customer agrees to accurately complete all documentation required by the Supplier in relation to the provision of Goods and Services, and the provision of credit. The Customer accepts that the Supplier is relying upon the representations made by the Customer in such documentation in determining whether to provide Goods or Services or credit to the Customer. The Customer is liable to the Supplier for any inaccuracies, relevant omissions and misrepresentations made.
- 3.2 The Customer agrees to ensure that the representations set out in all documentation provided to the Supplier are current and must immediately inform the Supplier, in writing, of any material change to the information, particulars or any detail supplied.

- 3.3 The Customer agrees that these Conditions apply to any Related Body Corporate of the Customer where that entity is conducting the business of the Customer as a result of any assignment, novation, sale, agency, transmission or corporate or business restructure.
- 3.4 These Conditions and the Supplier T&Cs apply if the Supplier accepts any Order from the Customer, whether for cash or on credit.
- 3.5 The Customer has no entitlement to credit unless the Supplier, extends credit to the Customer. If in a particular case, the Supplier gives the Customer credit, the Supplier still reserves the right at any time and for any reason in the Supplier's sole discretion to refuse to supply any further Goods or Services to the Customer and to refuse to supply any Goods or Services or both to the Customer on credit terms. If the Supplier declines to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Supplier.
- 3.6 The Customer must:
 - (a) pay, without any deduction or set-off, the price charged by the Supplier for Goods or Services supplied to the Customer on delivery or performance, or if credit terms are offered, within 30 days following the end of the month during which the Goods or Services were supplied or provided (or the last trading day of the month following the month during which the Goods or Services were supplied or provided, whichever falls first);
 - (b) assessed on this document or fee to register or maintain any security interest held by the Supplier in respect of Goods or Services supplied to the Customer; and
 - (c) advise the Supplier in writing of the occurrence of any Insolvency Event, any variation to any of the information supplied by the Customer to the Supplier or in the structure or nature of the Customer's business, any change in its name, ownership, change of any directors or change of control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring. The Customer acknowledges that, despite any such event, change, or step the Customer remains liable to pay the price for all Goods or Services supplied.
- 3.7 If the Customer defaults in the performance or observance of its obligations under any contract of which these Conditions form part, then:
 - (a) the Supplier will take steps to mitigate its Loss and will act reasonably in relation to any default by the Customer;
 - (b) the Supplier will give the Customer notice requesting payment for Loss occasioned in respect of those events and requesting that the Customer remedy any breach within a reasonable time; and
 - (c) if that demand is not met then the Customer indemnifies the Supplier and Pentarch Group in respect of such Loss (including collection costs and mercantile agent fees or commissions, bank dishonour fees, and legal costs on an indemnity basis) that the Supplier or Pentarch Group has suffered arising therefrom.

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3.8 The Customer's liability to indemnify the Supplier and Pentarch Group will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by the Supplier or Pentarch Group or a breach of the Supplier's obligations under contract has contributed to the Loss which is the subject of the indemnity.

3.9 The Customer's liability to indemnify the Supplier and Pentarch Group is a continuing obligation separate and independent from the Customer's other obligations and survives the termination or performance of any contract of which these Conditions form part.

4. Orders

4.1 The Customer is liable for payment in relation to all Orders. It is not the responsibility of the Supplier to confirm authority of the person placing the Order. It is the sole responsibility of the Customer to ensure there is no unauthorised use of its account number or name, and that only authorised persons place Orders on behalf of the Customer.

4.2 No Order can be cancelled without the express written consent of the Supplier. If consent is given, and unless otherwise agreed, the Customer must pay the Supplier for Goods supplied or Services rendered which have been performed in accordance with these Conditions prior to date of cancellation of that Order. For the avoidance of doubt, in the event of cancellation of an Order under this clause:

- (a) the Supplier is entitled to payment for Goods and Services supplied prior to the cancellation but not yet paid for;
- (b) if Goods have been prepared but not delivered at the time of cancellation the Customer must accept that Goods when delivered and pay the relevant portion of the contract sum for it;
- (c) the Customer must reimburse the Supplier, as a debt immediately due and payable, for all costs, losses, liabilities, damages and expenses in connection with the cancellation of that Order (including the cost of goods, materials or services ordered by the Supplier in connection with the Order prior to cancellation of the Order); and
- (d) notwithstanding the above, if the Supplier accepts cancellation of an Order within three (3) days of the proposed delivery date, the full contract price remains payable by the Customer.

5. Variation of Credit

5.1 Despite any other clause in these Conditions or the Supplier T&Cs, the Supplier or Pentarch Group may withdraw the Customer's credit at any time without notice or at its discretion alter the Customer's credit limit, for any reason (including to meet the Customer's then buying needs).

5.2 Any credit approval limit noted in the Credit Application or on any form, invoice or document issued by the Supplier is for the Supplier's convenience only and will not be read as a commitment, promise or warranty by the Supplier to extend any level of credit to the Customer.

6. Overdue accounts

6.1 Any amount not paid by the due date will incur interest at a rate of 5% above the Reserve Bank of Australia Cash Rate as at the due date calculated daily and compounded monthly but in

no circumstances will the interest charged exceed 20% per annum. For clarity, this rate of interest will also apply to any judgment debt.

6.2 The Customer acknowledges and agrees that the Supplier has appointed Pentarch Group as its non-exclusive agent to issue credit and collect any debts owed by the Customer that are due from time to time to the Supplier.

6.3 The Supplier acknowledges that any payment made to Pentarch Group for a debt owed to the Supplier is in full or partial satisfaction of the debt owed to it, to the extent of the payment made.

7. Retention of title

7.1 Until such time as the Customer has made payment in full for any Goods supplied, and until such time as the Customer has made payment in full of all other money owed to the Supplier, the title in any Goods supplied does not pass to the Customer and the Supplier retains the legal and equitable title in the Goods.

7.2 Notwithstanding that title in the Goods remains with the Supplier until payment has been received in full, the Customer may sell such Goods (provided any such sale is at arm's length on market terms) or use the Goods in a manufacturing or construction process in the ordinary course of the Customer's business. As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of the Supplier.

7.3 The proceeds of sale of each item of Goods or process must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to the Supplier for Goods supplied.

7.4 Until Goods are sold or used in a manufacturing or construction process, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of the Supplier, store them in such a way they are clearly identified as the property of the Supplier and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier.

7.5 The Supplier is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Customer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods, any of its rights whether those rights are as owner and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.

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7.6 This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

8. Security interest

8.1 The retention of title arrangement described in clause 7 constitutes the grant of a PMSI or other security interest by the Customer in favour of the Supplier in respect of all Goods supplied to the Customer by the Supplier.

8.2 The Customer must immediately, if requested by the Supplier, sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Supplier's PMSI is a perfected security interest.

8.3 The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Supplier has perfected its PMSI.

8.4 For any Goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.

8.5 The Customer hereby waives any rights the Customer may otherwise have to:

- (a) receive any notices the Customer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135;
- (b) apply to a Court for an order concerning the removal of an accession under section 97;
- (c) object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135; and
- (d) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Supplier may have in Goods supplied to the Customer from time to time.

8.6 For the purposes of this clause "PPSA" means the *Personal Property Securities Act 2009* (Cth). The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

9. Risk

9.1 Risk of loss, damage, or deterioration to any Goods passes to the Customer on delivery of the Goods. Unless the Supplier T&Cs provide otherwise, delivery is deemed to occur at the time:

- (a) the Customer or any third party on behalf of the Customer's collects the Goods from the Supplier;
- (b) the Supplier or its nominated carrier deliver the Goods to the delivery location stated in the Customer's Order (or to such other location as agreed in writing); or
- (c) the Customer's nominated carrier takes possession of the Goods.

10. Charge over real and personal property

10.1 To better secure the payment of all monies which the Customer may become liable to pay to the Supplier, and as an essential term of these Conditions, the Customer charges in the Supplier's favour all of its estate and interest in:

- (a) any real property (i.e. real estate); and
- (b) any personal property (i.e. any other assets including for example and without limitation, any plant, equipment, vehicles, personal effects, and other items),

whether:

- (c) such property is held in the Customer's own right or in its capacity as trustee;
- (d) the Customer owns the property at present or later acquires it; and
- (e) wherever it is situated,

with the amount of the Customer's indebtedness to the Supplier and any other Pentarch Group entity on any account whatsoever.

10.2 The Customer shall, immediately upon demand being made on the Customer by the Supplier, whether directly or via Pentarch Group, sign all documents and do all things that the Supplier may reasonably require to be signed and done to further secure to the Supplier the amount of any indebtedness owed to the Supplier from time to time by the Customer including, but without being limited to, such mortgage or mortgages over any real property (whether acquired before or after the date of the Goods or Services are supplied) containing such covenants as are required by the Supplier and such bills of sale or mortgage debentures over any or all items of personal property.

10.3 The Customer (and if more than one then jointly and each of them severally) irrevocably appoint(s) the Supplier, Pentarch Group's Credit and Billing Agent, each Manager and each Credit Manager from time to time of the Supplier, each successor of the Supplier, each assignee of the Supplier and each of them severally to be the duly constituted attorney of each Customer to execute in the name of each Customer any documents including, without limitation, any mortgage or mortgages of real property, bills of sale, mortgage debentures or any like documents and Consents to any Caveats as the Supplier may wish to lodge against any dealings in the real property of the Customer in any Titles Office (and if more than one Customer, the real property of each Customer severally and real property of each combination of Customers) and to do all acts and execute any documents necessary to give effect to and/or register any of the foregoing.

10.4 The Customer consents unconditionally to the Supplier lodging a caveat or caveats noting its interest in any real property.

10.5 Each Customer undertakes and warrants not to object to or otherwise endeavour to prevent the lodging of any such caveat or take any steps to remove any such caveat. For clarity, "real property" includes estates and interests including leasehold.

10.6 Without limiting, or otherwise prejudicing the above, the power of attorney under clause 10.3 may be granted under:

- (a) *Powers of Attorney Act 2003* (NSW);
- (b) *Instruments Act 1958* (Vic);
- (c) *Powers of Attorney Act 1998* (Qld);
- (d) *Transfer of Land Act 1893* (WA);
- (e) *Powers of Attorney and Agency Act 1984* (SA);

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- (f) *Powers of Attorney Act 2000* (Tas);
- (g) *Powers of Attorney Act 1980* (NT); and
- (h) *Powers of Attorney Act 2006* (ACT).

10.7 The Customer also authorises any officer, partner or employee of any solicitors or agents engaged by the Supplier, Pentarch Group or any of their officers or employees as referred to previously in this clause to sign any stamp duties form on their behalf so as to stamp any form required to lodge or withdraw any caveat lodged by the Supplier over any of the real property.

10.8 The Customer acknowledges that:

- (a) it has read and understood this clause 10;
- (b) this clause 10 is necessary to protect the Supplier's legitimate interests, including having regard to:
 - (i) the risk that retention of title and personal guarantees (if applicable) may not in substance provide adequate protection to the Supplier;
 - (ii) the terms of any credit Pentarch Group may approve under this Credit Application Form are given on the basis that this clause 10 would apply, and if that were not the case, Pentarch Group would not have given the Customer credit terms; and
 - (iii) the risk of insolvency given the nature of the industries in which Pentarch Group and the Customer operates.

11. Trustees

11.1 Where the Customer is the trustee of a trust, then the following provisions shall apply:

- (a) the Customer shall be liable in its personal capacity and in its capacity as trustee of the trust, for the performance of all obligations and undertakings under these Conditions and the Supplier T&Cs;
- (b) the Customer warrants that the Customer has full, complete and valid authority pursuant to the trust to enter into these Conditions and the Supplier T&Cs and that it is indemnified out of the assets of the trust;
- (c) notwithstanding that there is no reference to a specific trust the Supplier's right of recourse shall extend to both the Customer's assets personally and the assets of the trust; and
- (d) the Customer undertakes to Pentarch Group that the Customer's rights of indemnity against the trust assets have not been excluded by the provisions of the trust or by any breach of trust or otherwise and that the Customer will not release or otherwise prejudice such rights of indemnity.

12. Exclusion of implied terms

12.1 The Customer may have the benefit of certain statutory guarantees relating to the Goods and Services pursuant to the *Competition and Consumer Act 2010* (Cth). Otherwise, to the maximum extent not prohibited by law, all terms, conditions or warranties that would be implied into these Conditions or the Supplier T&Cs or in connection with the supply of any Goods or Services by law, statute, custom or convention (including those relating to quality or fitness for purpose) are excluded.

13. Limitation of liability

13.1 No party is liable to the other party for any Consequential Loss, however caused, arising out of or in connection with any contract for supply of which these Conditions or the Supplier T&Cs form part.

13.2 To the maximum extent permitted by law and subject to clause 14, the Supplier's total liability arising out of or in connection with its performance of its obligations pursuant to these Conditions, the Supplier T&Cs, or arising out of or in connection with the supply of specific Goods or Services (including pursuant to or for breach of these Conditions, Supplier T&Cs or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) the Supplier's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Goods or Services that gave rise to the Loss in question. The limitations and exclusions in this sub-clause 13.2(a) do not apply to the extent that any Loss is directly attributable to:
 - (i) personal injury or death caused by the Supplier's negligence or breach of these Conditions or the Supplier T&Cs; or
 - (ii) fraud by, or willful default of, the Supplier.
- (b) Each party must take reasonable steps to mitigate any Loss it suffers or incurs.

14. Limitation of liability under Australian Consumer Law Guarantees

14.1 To the extent that Goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee under the Australian Consumer Law in relation to those Goods (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities)), is limited to, at the option of the Supplier, one or more of the following:

- (a) replacement of the Goods or the supply of equivalent goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- (d) equivalent goods; or
- (e) the payment of the cost of having the Goods repaired.

14.2 To the extent that Services supplied by the Supplier are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited to, at the option of the Supplier:

- (a) the supply of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

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15. GST

15.1 If the Supplier has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Customer, the Customer must pay to the Supplier an amount equivalent to the GST liability of the Supplier at the same time as the consideration is paid for the Goods or Services (unless the consideration for that supply is expressed specifically to be GST inclusive).

16. Withdrawal of credit

16.1 If the Customer fails to comply with any of the terms of these Conditions or any obligation to pay money to another Pentarch Group entity when due, or makes any misrepresentation to a Pentarch Group entity, the Supplier may, at its absolute discretion, immediately cease to extend credit to the Customer.

16.2 If the Supplier ceases to extend the Customer credit under this clause:

- (a) these Conditions, the Supplier T&Cs and any other terms or arrangements between the parties will continue unaffected except to the extent expressly notified in writing by the Supplier; and
- (b) the provision of Goods or Services to the Customer after the Supplier ceases to extend the Customer credit will be on the basis of cash on delivery or performance.

PART B

17. New Pentarch Group Entities

17.1 It is intended that all New Pentarch Group Entities will have the benefit of these Conditions.

17.2 The Customer promises Pentarch Group that it will only Order Goods or Services from a New Pentarch Group Entity on the strict condition that these Conditions and the Supplier T&Cs apply to such an Order and that the New Pentarch Group Entity will have the benefit of and may enforce these Conditions and the Supplier T&Cs irrespective of the fact that the New Pentarch Group Entity may not have been in existence or a Pentarch Group entity at the time of initial acceptance by the Customer of these Conditions.

17.3 Further, the Customer acknowledges that, in consideration for facilitating the extension of credit by a New Pentarch Group Entity by Pentarch Group to the Customer, Pentarch Group holds the benefit of the promises made by the Customer under these Conditions on behalf of that entity.

18. Privacy disclosure and consent

18.1 This clause 18 encompasses consents, notifications, and disclosures under, or in relation to, the *Privacy Act 1988* (Cth) (**Privacy Act**).

18.2 Pentarch Group cannot extend credit to the Customer without acquiring and using personal information.

18.3 Pentarch Group may collect and use personal information for:

- (a) its primary purposes which include, but are not limited to, providing goods and services to the Customer, obtaining a copy of the Customer's credit report, contacting the Customer's trade references, assessing the Customer's application for commercial credit, reviewing the Customer's credit terms, assessing the Customer's credit worthiness, assessing credit guarantees (current and prospective), reporting upon

overdue payments, and collecting overdue payments, and matters reasonably necessary in complying with the Customer's requests (together, **Primary Purposes**); and

- (b) purposes other than the Primary Purposes.

18.4 If:

- (a) the Customer signs and sends to Pentarch Group the Credit Application form; or
- (b) a Guarantor signs and sends to Pentarch Group the Personal Guarantee and Indemnity Agreement,

then:

- (c) the Customer and each Guarantor (where applicable) will be providing personal information to Pentarch Group; and
- (d) the Customer and each Guarantor are accepting the terms of this clause 18.

18.5 The Customer and each Guarantor (where applicable) consent to Pentarch Group, to the extent permitted by law, collecting, using, and disclosing their personal information for the Pentarch Group's Primary Purposes.

18.6 The Customer and each Guarantor (where applicable) consent to Pentarch Group undertaking the below enquiries and disclosures pursuant to the following sections and items of the Privacy Act:

- (a) obtaining a copy of the Customer's and each Guarantor's credit report from a credit reporting body for a commercial credit related purpose (item 2 of section 20F(1));
- (b) obtaining a copy of the Customer's and each Guarantor's credit report from a credit reporting body for a credit guarantee purpose (item 3 of section 20F(1));
- (c) obtaining a copy of the Customer's and each Guarantor's credit report from a credit reporting body for a trade insurance purpose (item 8 of section 20F(1));
- (d) disclosing credit eligibility information about the Customer and/or any Guarantor to other credit providers (section 21J(1) or 21K(1)); and
- (e) disclosing credit eligibility information about the Customer and/or any Guarantor to another entity and/or its professional legal or financial advisers where the recipient proposes to use that information for the purposes described in section 21N(3) of the Privacy Act (section 21N(2)).

18.7 The Customer and each Guarantor (where applicable) consent to Pentarch Group collecting, using, and disclosing their personal information (including sensitive information), for purposes other than Pentarch Group's Primary Purposes, including, but not limited to, internal management purposes, marketing (including direct marketing), and sales and business development purposes such as such as conducting market research or Customer satisfaction research, developing, establishing and administering arrangements (including rewards programs) with other organisations in relation to the promotion, administration and use of Pentarch Group Goods, in connection with potential or actual unlawful activity, misconduct or transfers of Pentarch Group's business or assets, and developing and identifying products and services that may interest the Customer.

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18.8 The Customer and each Guarantor (where applicable) consent to Pentarch Group, to the extent permitted by section 21D of the Privacy Act, disclosing their credit information to any or all of the following credit reporting bodies and their successors and assigns.

- (a) Equifax Australia: GPO Box 94, North Sydney NSW 2059, www.equifax.com.au, 13 8332.
- (b) Creditor Watch: GPO Box 276, Sydney NSW 2001, <https://creditorwatch.com.au>, 1300 501 312.
- (c) NCI: PO Box 3315, Rundle Mall SA 5000, <https://nci.com.au>, 1800 882 820.
- (d) Illion: PO Box 7405, St Kilda Road, Melbourne VIC 3004, <https://www.illion.com.au>, 13 23 33.
- (e) Experian: GPO Box 1969, North Sydney NSW 2060, <https://www.experian.com.au>, (02) 8907 7200.

18.9 Pentarch Group's Credit Reporting Policy contains a statement of notifiable matters in accordance with section 21C of the Privacy Act and Items 4.1 and 4.2 of the *Privacy (Credit Reporting Code) 2014* (Cth) (**Credit Reporting Code**).

18.10 The Customer and each Guarantor (where applicable) consent to Pentarch Group disclosing their personal information (including credit information) to employees, agents, New Pentarch Group Entities, the credit reporting bodies noted above, any trade credit bureau of which Pentarch Group is a member, the Customer's trade references, the Related Bodies Corporate of the preceding entities, and overseas recipients in countries including New Zealand.

18.11 By reason of the Customer's and each Guarantor's consent to the disclosure to overseas recipients pursuant to clause 18.10, Australian Privacy Principle 8.1 will not apply to Pentarch Group's dealings with the Customer's and any Guarantor's personal information.

18.12 A copy of Pentarch Group's Privacy Policy and Credit Reporting Policy can be obtained from: <http://www.anwe.com.au/privacy-policy.html> or by making a request in writing directed to Pentarch Group's Privacy Officer and forms part of these Conditions and the Supplier T&Cs.

18.13 Pentarch Group's Privacy Policy and Credit Reporting Policy contain information about how to access and seek correction of one's personal information, or how to complain about a breach of the Privacy Act, the Credit Reporting Code, or the Australian Privacy Principles, and how Pentarch Group will deal with any such complaint.

19. Governing law

19.1 These Conditions are governed by and is to be interpreted according to the laws in force in the State or Territory of Australia where the Goods or Services are supplied and the parties submit to the non-exclusive jurisdiction of the courts operating in that State or Territory. Where the Goods or Services are supplied to multiple States, these Conditions are governed by and is to be interpreted according to the laws in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts operating in New South Wales. The operation of the United Nations Convention on Contracts for the Sale of International Goods is hereby excluded.

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Section 6 - Acknowledgement

Acknowledgment

The Customer acknowledges that the Goods or Services it will acquire from any Supplier will be obtained for either the purpose of re-supply (whether or not in an altered form or as part of some other manufacture) or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

Who must sign this Agreement on behalf of the Customer:

For Companies: Where there is only one director for the company then that person must sign; where there are two or more directors for the company then 2 Directors or a Director + Company Secretary must sign.

Sole Traders operating under their own name or under a business name: The individual.

Partnerships: All Partners of the Partnership.

Where this is not possible, please contact the Pentarch Group Office – details as per mailing instruction on page 10.

The Customer agrees to be bound by the Terms and Conditions stated in Section 5 of this Agreement.

Signatory		Witness Executed by independent witness	
Print Name (in block letters)		Print Name (in block letters)	
Position		Address	
Signature		Signature	
Date	/ /	Date	/ /

Signatory		Witness	
Print Name (in block letters)		Print Name (in block letters)	
Position		Address	
Signature		Signature	
Date	/ /	Date	/ /

Signatory		Witness	
Print Name (in block letters)		Print Name (in block letters)	
Position		Address	
Signature		Signature	
Date	/ /	Date	/ /

Signatory		Witness	
Print Name (in block letters)		Print Name (in block letters)	
Position		Address	
Signature		Signature	
Date	/ /	Date	/ /

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Section 7 - PERSONAL GUARANTEE AND INDEMNITY AGREEMENT

WARNING: THIS IS AN IMPORTANT DOCUMENT. IF YOU DO NOT UNDERSTAND THIS DOCUMENT YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE.

IMPORTANT: As part of your application for credit, this Personal Guarantee and Indemnity Agreement must be completed and signed by all Directors, Sole Traders and Business Partners in the presence of Independent Witness (not spouses/partners or family members). Spouses/partners of all Directors, Sole Traders and Business Partners must sign as Guarantors in the presence of Independent Witnesses where there is joint ownership of personal assets.

I/We, the **Guarantor(s)**, _____
Insert Guarantor(s)* name as applicable

have requested the Supplier to supply _____
Insert Company Name/Partnership/Sole Trader

Trust Name (if a Trust) _____
Insert Trust name

Trading as (if applicable) _____
Insert Registered Business Name

the **"Customer"** of _____
Insert Street Address (not PO Box) State Postcode

with Goods and Services on Credit.

*Guarantor(s) names should agree with those on page 11.

Should the Supplier elect to supply Goods or Services:

- I/We guarantee payment to the Supplier of the whole price charged by the Supplier for Goods or Services supplied to the Customer from time to time, without any deduction or setoff whatsoever. I/We also guarantee payment of any other monies now or in the future owing by the Customer to the Supplier. I/We also guarantee the performance of the obligations of the Customer pursuant to the guarantee given by the Customer to Pentarch Group in the Terms and Conditions at Section 5.
- I/We indemnify the Supplier and Pentarch Group against all costs, losses and expenses which the Supplier or Pentarch Group incur as a result of any default by the Customer. I/We agree to pay any stamp duty assessed on this Guarantee.
- My/Our guarantee and indemnity under this Guarantee is a continuing guarantee and will not be affected:
 - if the Supplier or Pentarch Group grants any extension of time or other indulgence to the Customer or varies the terms of the Customer's account (even if this increases my/pour liability under this Guarantee);
 - by the release of any of the Guarantors or if this Guarantee is or becomes unenforceable against one or more of the Guarantors;
 - by any payment by the Customer being later avoided by law, whether or not I/we have been given notice of these matters.
- I/We agree that an application for credit made by the Customer is deemed to have been accepted from the date of the first invoice by the Supplier to the Customer and, without further notice to me/us, this Guarantee will extend to all liabilities from the Customer to that Supplier or to Pentarch Group.
- This Guarantee extends to credit given to the Customer in the future by a company which is not now, but at the time such credit is extended, a Pentarch Group company.
- This Guarantee may be withdrawn by the Guarantor(s) on expiry of 14 days following written notice of withdrawal being delivered to both the Supplier's Company Secretary at the Supplier's registered office and also to Pentarch Group's Company Secretary at its registered office. This Guarantee will continue in force in respect of all debt incurred up to the date of withdrawal.
- I/We authorise the Supplier and Pentarch Group to do each of the things listed in the Terms and Conditions in relation to my/our personal credit matters.
- We agree to the following:
 - As security for the obligations and liabilities of the Guarantor(s), I/we charge for the due and punctual payment and performance of those obligations and liabilities, all of my/our legal and equitable interest (including as beneficial owner, both present and future) of whatsoever nature held in any and all real property in favour of the Supplier and Pentarch Group.
 - Without limiting the generality of the charge in clause 8(a), I/we agree on request by the Supplier or Pentarch Group or both to execute any documents and do all things reasonably required by the Supplier or Pentarch Group to register a mortgage security over any real property. If the Guarantor(s) fails to deliver the requested documents, the Guarantor(s) hereby appoint/s Pentarch Group to be the Guarantor(s)'s lawful attorney for the purposes of

- executing and registering such documents. I/We indemnify the Supplier and Pentarch Group on an indemnity basis against all costs and expenses incurred by the Supplier or Pentarch Group as the case may be in connection with the preparation and registration of such mortgage documents.
- I/We consent unconditionally to the Supplier or Pentarch Group or both lodging a caveat or caveats noting its interest in any real property.
 - I/We agree to advise the Supplier in writing of the occurrence of any Insolvency Event, any change in my/our name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of my/our gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring.
 - If any payment made by or on behalf of the Customer is alleged to be void or voidable by any liquidator or like officer or the Customer under any law related to insolvency, I/we indemnify the Supplier and Pentarch Group against any costs or losses it may incur in connection with such claim. This indemnity shall continue to apply notwithstanding any withdrawal under clause 6.
 - If the charge created by clause 8(a) is or becomes void or unenforceable, it may be severed from this Guarantee without any effect on the Supplier's or Pentarch Group's rights against the Guarantor(s).
 - If the Guarantor(s) is a trustee of a trust, the Guarantor(s) enters into this agreement in both the Guarantor's personal capacity and as trustee of that trust.
- Any condition or agreement under this guarantee by or in favour of two or more persons is deemed to bind them jointly and severally or be in favour of each of them severally. If the Guarantor comprises more than one person the Supplier may at any time, and from time to time, proceed against any or all of them in respect of the Guarantor's obligations as the Supplier may choose in its absolute discretion, and the Supplier is not to be obliged to make any claim against all the persons comprising the Guarantor.
 - Until the whole of the Customer's obligations have been paid or satisfied in full, the Guarantor must not (except with the prior written consent of the Supplier) either directly or indirectly, and either before or after the winding up or bankruptcy of the Customer, or any person, take any steps to recover or enforce a right or claim against the Customer relating to any sum paid by the Guarantor to the Supplier or Pentarch Group under this Guarantee including without limitation proving or claiming in competition with the Supplier or Pentarch Group so as to diminish any distribution, dividend or payment which, but for the proof or claim, the Supplier or Pentarch Group would be entitled to receive pursuant to the winding up or bankruptcy of the Customer.
 - The definitions in the Terms and Conditions shall apply in this Guarantee. Also, singular words include the plural and vice versa and references to any party to this Guarantee, include that party's executors, administrators, substitutes, successors or permitted assigns.

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Important: Spouses of all Directors, Sole Traders and Business Partners must also sign below as Guarantors in the presence of Independent Witnesses.

Certificate of Guarantee – Executed as a Deed

Acknowledgement

By signing below as Guarantor(s), I/We understand the terms of this Guarantee. In particular, I/we understand that if the Customer fails to make any required payments to the Supplier, Pentarch Group or the Supplier may recover the amount of these payments from me/us personally. In such case, Pentarch Group or the Supplier may, amongst other recovery rights, have recourse against any real property I/We might own, including by registering a caveat over such property.

I/We certify that I/We have had the opportunity of taking independent legal advice in relation to the meaning and effect of this Guarantee.

All Directors, Sole Traders, Business Partners and any other Guarantors complete, print and sign below as Guarantors in the presence of Independent Witnesses (not spouses or family members).

Guarantor		Witness Executed by independent witness	
Print Name (in block letters)		Print Name (in block letters)	
Address		Address	
Signature		Signature	
Email		Date	/ /

Guarantor		Witness Executed by independent witness	
Print Name (in block letters)		Print Name (in block letters)	
Address		Address	
Signature		Signature	
Email		Date	/ /

Guarantor		Witness Executed by independent witness	
Print Name (in block letters)		Print Name (in block letters)	
Address		Address	
Signature		Signature	
Email		Date	/ /

Guarantor		Witness Executed by independent witness	
Print Name (in block letters)		Print Name (in block letters)	
Address		Address	
Signature		Signature	
Email		Date	/ /

Mailing Instructions

For your application to be processed ensure you have completed and signed both the Credit Application Form and the Personal Guarantee and Indemnity Agreement (pages 9 and 10). Please return all original signed and witnessed documents to:

Pentarch Group

Kings Garden Estate
Level 1, 99 Coventry Street
Southbank Victoria 3006
Email: pentarchar@pentarch.com.au