

## CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

DATE: \_\_\_\_\_ REF No. \_\_\_\_\_

CLIENT'S TRADE NAME: \_\_\_\_\_

CLIENT'S FULL or LEGAL NAME: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

Billing Address: \_\_\_\_\_ Physical Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

### COMMERCIAL CLIENTS ONLY-

**Accounts Payable Detail**

ABN/ACN Number: \_\_\_\_\_

Requested Credit Limit: \_\_\_\_\_ Date Established: \_\_\_\_\_

Contact 1: \_\_\_\_\_ Contact 2: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

Email: \_\_\_\_\_ Email: \_\_\_\_\_

### DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEE (If a Trust)

Full Name: \_\_\_\_\_ Full Name: \_\_\_\_\_

Home Address: \_\_\_\_\_ Home Address: \_\_\_\_\_

\_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

ID: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ ID: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

(Driver's License, Passport, etc.)

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**A copy of the Director's driver's license MUST be attached to this application form.**

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### TRADE REFERENCE

Business Name 1: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Business Name 2: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Synergy Aluminium Towers Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.

SIGNED (CLIENT): \_\_\_\_\_ SIGNED (SYNERGY): \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

### WITNESS TO CLIENT'S SIGNATURE:

Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_

## Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Synergy Aluminium Towers Pty Ltd and its successors and assigns ("Synergy") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

[ ] ("the Client") *(Insert Company Name In Box Provided)*

### I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to Synergy of all moneys which are now owing to Synergy by the Client and all further sums of money from time to time owing to Synergy by the Client in respect of goods and services supplied or to be supplied by Synergy to the Client or any other liability of the Client to Synergy, and the due observance and performance by the Client of all its obligations contained or implied in any contract with Synergy, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to Synergy the Guarantor will immediately on demand pay the relevant amount to Synergy. In consideration of Synergy agreeing to supply the Goods to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to Synergy registering any interest so charged. The Guarantor irrevocably appoints Synergy and each director of Synergy as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which Synergy may reasonably require to:
  - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (b) register any other document required to be registered by the PPSA or any other law; or
  - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** Synergy on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, Synergy in connection with:
  - (a) the supply of goods and/or services to the Client; or
  - (b) the recovery of moneys owing to Synergy by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to Synergy's nominees costs of collection and legal costs; or
  - (c) moneys paid by Synergy with the Client's consent in settlement of a dispute that arises or results from a dispute between, Synergy, the Client, and a third party or any combination thereof, over the supply of goods and/or services by Synergy to the Client.

### I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood** Synergy's Terms and Conditions prior to entering into this Guarantee and Indemnity and **agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to Synergy by the Client and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on Synergy's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to Synergy, each Guarantor shall be a principal debtor and liable to Synergy accordingly.
6. If any payment received or recovered by Synergy is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and Synergy shall each be restored to the position in which they would have had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to Synergy.**
9. I/we irrevocably authorise Synergy to obtain from any person or company any information which Synergy may require for credit reference purposes. I/We further irrevocably authorise Synergy to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with Synergy as a result of this Guarantee and Indemnity being actioned by Synergy.
10. To secure payment of all monies which may become payable to Synergy by the Guarantor under this Guarantee and Indemnity, the Guarantor charges all of the Guarantor's interest (freehold and leasehold) in land and personal property held now or in the future. If a demand is made upon me/us by Synergy, I/we will immediately execute a mortgage, or other instruments of security, or consent to a caveat, as requested by Synergy. If I/we fail to execute a mortgage, or other instruments of security, or consent to a caveat, within a reasonable time of being so requested, I/we irrevocably and by way of security appoint any credit manager or solicitor engaged by Synergy to be our true and lawful attorney to execute and register such instruments. I/we consent to any caveat being lodged against any interest in law or real property owned by me/us to protect the interest under this Guarantee and Indemnity. I/we waive all rights inconsistent with anything in this Guarantee and Indemnity.
11. The above information is to be used by Synergy for all purposes in connection with Synergy considering this Guarantee and Indemnity and the subsequent enforcement of the same.
12. I/we have read and fully understand the above clauses as well as Synergy's Terms & Conditions of Trade.
13. The Client and Guarantor, understand that the address of the property given is owned/under mortgage to said Guarantor listed.
14. I/we agree and acknowledge that for the purpose of assessing whether to accept me/us as guarantor for credit provided to Synergy, Synergy may obtain from a credit reporting agency a credit report containing personal information about me/us.
15. Synergy is at liberty from time to time to charge the account of the Client with all costs, charges and expenses, legal or otherwise that Synergy incurs in connection with:
  - (a) the account of the Client;
  - (b) this Guarantee and Indemnity;
  - (c) any other security in respect of the indebtedness of the Client to Synergy
16. The Guarantor agrees to pay Synergy's costs and disbursements incurred in recovering monies secured by this Guarantee and Indemnity and/or any other document signed by the Client, including Synergy's Terms & Conditions of Trade. Costs include debt recovery agency fees and legal costs.
17. Synergy will have the right to proceed against the Guarantor under this Guarantee and Indemnity, irrespective of default of the Client to pay and with or without notice to the Client, as if the primary liability for any money owing was the Guarantors' own. Further, Synergy will have the right to proceed against the Guarantor notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.

Further to clause 10 of this Guarantee and Indemnity and Clause 22 of Synergy's Terms & Conditions of Trade, the Client and Guarantor, understand that the address of the property given is under/under mortgage to the said Guarantor that is listed as follows:

Date \_\_\_\_\_

Guarantor 1  
Name: \_\_\_\_\_

Address of Property to be used as Security: \_\_\_\_\_  
Folio Identifier of Property: \_\_\_\_\_

Date \_\_\_\_\_

Guarantor 2  
Name: \_\_\_\_\_

Address of Property to be used as Security: \_\_\_\_\_  
Folio Identifier of Property: \_\_\_\_\_

<b>GUARANTOR -1</b> SIGNED: _____ FULL NAME: _____ HOME ADDRESS: _____ DATE OF BIRTH: _____ SIGNATURE OF WITNESS: _____ NAME OF WITNESS: _____ OCCUPATION: _____ PRESENT ADDRESS: _____ EXECUTED as a Deed this        day of        20____
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<b>GUARANTOR -2</b> SIGNED: _____ FULL NAME: _____ HOME ADDRESS: _____ DATE OF BIRTH: _____ SIGNATURE OF WITNESS: _____ NAME OF WITNESS: _____ OCCUPATION: _____ PRESENT ADDRESS: _____ EXECUTED as a Deed this        day of        20____
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Note: 1. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).  
2. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee members

**\*In order to verify your name & signature, please provide a valid copy of your current drivers licence.**

**1. Definitions**

- 1.1 "Synergy" means Synergy Aluminium Towers Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Synergy Aluminium Towers Pty Ltd.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting Synergy to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods (supplied either by sale or hire) or Services supplied by Synergy to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Guarantor" means the Client's individual who pledges to perform the rights and obligations of the Client.
- 1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Synergy to the Client.
- 1.6 "Price" means the Price payable (plus any GST where applicable) for the hire (or purchase) of the Goods as agreed between Synergy and the Client in accordance with clause 6 below.
- 1.7 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" Cth.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Synergy.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Errors and Omissions**

- 3.1 The Client acknowledges and accepts that Synergy shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Synergy in the formation and/or administration of this contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Synergy in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Synergy; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

**4. Change in Control**

- 4.1 The Client shall give Synergy not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change in trustees, or business practice). The Client shall be liable for any loss incurred by Synergy as a result of the Client's failure to comply with this clause.

**5. Brochures and Promotional Material**

- 5.1 The Client acknowledges that description and illustrations in Synergy's brochures, promotional material and advertising are not to be taken as an exact representation of the articles described and are intended to present a general idea of the Goods. All drawings, brochures and electronic information supplied are informative only. Synergy accepts no responsibility for the accuracy of illustrations, designs, samples, weights, dimensions, capacities and other particulars of the Goods, and will not be responsible for the cost of additional work or consequential loss or damage caused by any defect or otherwise in Brochures and Promotional Material. All samples, illustrations, designs and specifications supplied to the Client remain the property of Synergy and may not be copied, reproduced or used in part or whole without the prior written consent from Synergy.

**6. Price and Payment**

- 6.1 At Synergy's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Synergy to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to Synergy's current price list; or
  - (c) Synergy's quoted price (subject to clauses 6.2 to 6.4) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Client acknowledges that any Price quoted or advertised is subject to change without notice.
- 6.3 Synergy reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; and/or
  - (b) in the event of increases to Synergy in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond Synergy's control.
- 6.4 Variations will be charged for on the basis of Synergy's quotation, and will be detailed in writing, and shown as variations on Synergy's invoice. The Client shall be required to respond to any variation submitted by Synergy within ten (10) working days. Failure to do so will entitle Synergy to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.5 The Client shall be responsible for, and will pay:
- (a) all costs associated with the pickup and delivery of the Goods to and from the company depot, and if necessary shall provide loading equipment as well as all packaging costs;
  - (b) any additional costs or expenses not specifically provided for in this agreement, including but not limited to, any taxes, fees, stamp duty,



levy or charge imposed by government, or semi-government authority;

(c) any extra costs due to the difference between data supplied by the Client and the actual site shall be paid by the Client.

6.6 At Synergy's sole discretion, a non-refundable deposit may be required.

6.7 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Synergy, which may be:

(a) on delivery of the Goods;

(b) before delivery of the Goods;

(c) by way of instalments/progress payments in accordance with Synergy's payment schedule;

(d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;

(e) the date specified on any invoice or other form as being the date for payment; or

(f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Synergy.

6.8 Payment may be made by cash, cheque, bank cheque, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Synergy.

6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Synergy nor to withhold payment of any invoice because part of that invoice is in dispute.

6.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Synergy an amount equal to any GST Synergy must pay for any supply by Synergy under this or any other agreement for the sale/hire of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## 7. Delivery of Goods

7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:

(a) the Client or the Client's nominated carrier takes possession of the Goods at Synergy's address; or

(b) Synergy (or Synergy's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

7.2 At Synergy's sole discretion, the cost of delivery is included in the Price.

7.3 Synergy may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

7.4 The Client must take delivery by receipt or collection of the Goods whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Synergy shall be entitled to charge a reasonable fee for redelivery of the Goods and/or the storage of the Goods.

7.5 Synergy shall not be responsible for delay or non-completion of the job for which the Goods are purchased/hired resulting from an act beyond the reasonable control of Synergy, including but not limited to, an act of God (natural disaster), industrial action, strikes, lockouts, epidemics, fire, war, government actions, commotion, riot, floods or inclement weather.

## 8. Title to the Goods

8.1 Where this is a hire agreement:

(a) the Goods is and will at all times remain the absolute property of Synergy, however the Client accepts full responsibility for:

(i) the safekeeping of the Goods and indemnifies Synergy for all loss, theft, or damage to the Goods howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client; and

(ii) shall keep Synergy indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Goods during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.

Furthermore, the Client will insure, or self-insure, Synergy's interest in the Goods against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Goods. Further the Client will not use the Goods nor permit it to be used in such a manner as would permit an insurer to decline any claim.

(b) If the Client fails to return the Goods to Synergy then Synergy or Synergy's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods is situated and take possession of the Goods, without being responsible for any damage thereby caused.

(c) The Client is not authorised to pledge Synergy's credit for repairs to the Goods or to create a lien over the Goods in respect of any repairs.

8.2 Where is this an agreement for the purchase of the Goods:

(a) Synergy and the Client agree that ownership of the Goods shall not pass until:

(i) the Client has paid Synergy all amounts owing to Synergy; and

(ii) the Client has met all of its other obligations to Synergy.

(b) Receipt by Synergy of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

(c) It is further agreed that:

(i) until ownership of the Goods passes to the Client in accordance with clause (a) that the Client is only a bailee of the Goods and must return the Goods to Synergy on request.

(ii) the Client holds the benefit of the Client's insurance of the Goods on trust for Synergy and must pay to Synergy the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(iii) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any

such act on trust for Synergy and must pay or deliver the proceeds to Synergy on demand.

- (iv) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Synergy and must sell, dispose of or return the resulting product to Synergy as it so directs.
- (v) the Client irrevocably authorises Synergy to enter any premises where Synergy believes the Goods are kept and recover possession of the Goods.
- (vi) Synergy may recover possession of any Goods in transit whether or not delivery has occurred.
- (vii) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Synergy.
- (viii) Synergy may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

## 9. Personal Property Securities Act 2009 (“PPSA”)

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that has previously been supplied and that will be supplied in the future by Synergy to the Client.
- 9.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Synergy may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Synergy for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Synergy;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Synergy;
  - (e) immediately advise Synergy of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 Synergy and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by Synergy, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client must unconditionally ratify any actions taken by Synergy under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary (including those contained in this clause 9) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 9.10 Only to the extent that the hire of the Goods exceeds a two (2) year hire period with the right of renewal shall clause 9 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 9 will apply generally for the purposes of the PPSA.

## 10. Security and Charge

- 10.1 In consideration of Synergy agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies Synergy from and against all Synergy's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Synergy's rights under this clause.
- 10.3 The Client irrevocably appoints Synergy and each director of Synergy as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

## 11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 11.1 The Client must inspect the Goods on delivery and must within twenty-four (24) hours of delivery notify Synergy in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must examine the Goods. If the Client does not notify Synergy within twenty-four (24) hours of delivery, the Client shall be deemed to have accepted and satisfied with the condition of the Goods.
- 11.2 The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Synergy to inspect the Goods. The parties agree that on or before 7 days from the date of delivery is sufficient time to notify Synergy of any alleged defect and that upon the expiration of the 7 days from the date of delivery, the Client cannot make any claim with respect to any alleged defect/damage or shortage in quantity.
- 11.3 In the event that the Client wishes to notify Synergy of an alleged defect (pursuant to clauses 11.1 and 11.2), the Client shall, as its own cost, deliver the Goods to Synergy for its inspection. Following inspection, Synergy, acting reasonably, may as its absolute and unconditional discretion, choose to refund the cost of the Client's delivery cost, should it deem itself responsible for the alleged defect.

## Synergy Aluminium Towers Pty Ltd – Terms & Conditions of Trade

- 11.4 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.5 Synergy acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.6 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Synergy makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Synergy's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.7 If the Client is a consumer within the meaning of the CCA, Synergy's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.8 If Synergy is required to replace the Goods under this clause or the CCA, but is unable to do so, Synergy may refund any money the Client has paid for the Goods.
- 11.9 If the Client is not a consumer within the meaning of the CCA, Synergy's liability for any defect or damage in the Goods is:
- limited to the value of any express warranty or warranty card provided to the Client by Synergy at Synergy's sole discretion;
  - limited to any warranty to which Synergy is entitled, if Synergy did not manufacture the Goods;
  - otherwise negated absolutely.
- 11.10 Subject to this clause 11, returns will only be accepted provided that:
- the Client has complied with the provisions of clause 11.1; and
  - Synergy has agreed that the Goods are defective; and
  - the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.11 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Synergy shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Client failing to properly maintain or store the Goods;
  - the Client using the Goods for any purpose other than that for which they were designed;
  - the Client continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - the Client failing to follow any instructions or guidelines provided by Synergy;
  - fair wear and tear, any accident, or act of God.
- 11.12 Notwithstanding anything contained in this clause if Synergy is required by a law to accept a return then Synergy will only accept a return on the conditions imposed by that law.
- 11.13 Notwithstanding anything contained in this clause or these Terms and Conditions of Trade,
- 12. Intellectual Property**
- 12.1 Where Synergy has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Synergy. Under no circumstances may such designs, drawings and documents be used without the express written approval of Synergy.
- 12.2 The Client warrants that all designs, specifications or instructions given to Synergy will not cause Synergy to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Synergy against any action taken by a third party against Synergy in respect of any such infringement.
- 12.3 The Client agrees that Synergy may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Synergy has created for the Client.
- 13. Default and Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Synergy's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes Synergy any money the Client shall indemnify Synergy from and against all costs and disbursements incurred by Synergy in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Synergy's contract default fee, and bank dishonour fees). This is an essential term.
- 13.3 The terms of payment are strictly as noted on the date of the invoice provided by Synergy to the Client. In the event that the Client does not pay for the goods or services supplied by Synergy or on before the due date noted on the invoice, or as agreed in writing by Synergy and the Client from time to time, Synergy may through an external legal service provider, issue a written demand to the Client demanding payment within seven (7) days. In the event that a demand is issued, the Applicant must pay, in addition to the invoice sum, any legal costs incurred by Synergy (inc GST), this being, the costs and disbursements incurred by Synergy for having the demand issued. It is an essential term that the Client pay Synergy's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Client, including collection costs, debt recovery fees and legal costs on an indemnity basis.
- 13.4 Further to any other rights or remedies Synergy may have under this contract, if a Client has made payment to Synergy, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Synergy under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 13.5 Without prejudice to Synergy's other remedies at law Synergy shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Synergy shall, whether or not due for payment, become immediately payable if:
- any money payable to Synergy becomes overdue, or in Synergy's opinion the Client will be unable to make a payment when it falls due;
  - the Client has exceeded any applicable credit limit provided by Synergy;
  - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.



**14. Cancellation**

- 14.1 Without prejudice to any other remedies Synergy may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Synergy may suspend or terminate the supply of Goods to the Client. Synergy will not be liable to the Client for any loss or damage the Client suffers because Synergy has exercised its rights under this clause.
- 14.2 Synergy may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Synergy shall repay to the Client any money paid by the Client for the Goods. Synergy shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Synergy as a direct result of the cancellation (including, but not limited to, any loss of profits and any cost of materials, labour and other costs incurred by Synergy).

**15. Hire of Goods**

- 15.1 Hire charges shall commence from the time the Goods leave Synergy's premises and continue until the return of the Goods to Synergy's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 15.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 15.3 No allowance whatsoever can be made for time during which the Goods are not in use for any reason, unless Synergy confirms special prior arrangements in writing. In the event of Goods breakdown provided the Client notifies Synergy immediately, hiring charges will not be payable during the time the Goods are not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
- 15.4 The Client shall:
- (a) maintain the Goods as is required by Synergy;
  - (b) notify Synergy immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Goods by giving such notification;
  - (c) satisfy itself at commencement that the Goods are suitable for its purposes;
  - (d) operate the Goods safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Synergy or posted on the Goods;
  - (e) ensure that all persons operating or erecting the Goods are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Goods and shall provide evidence of the same to Synergy upon request;
  - (f) comply with all occupational health and safety laws relating to the Goods and their operation;
  - (g) on termination of the hire, deliver the Goods complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Synergy;
  - (h) keep the Goods in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Goods;
  - (i) not alter or make any additions to the Goods including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Goods or in any other manner interfere with the Goods;
  - (j) employ the Goods solely in its own work and shall not permit the Goods or any part thereof to be used by any other party for any other work;
  - (k) not exceed the recommended or legal load and capacity limits of the Goods;
  - (l) not use or carry any illegal, prohibited or dangerous substance in, or on, the Goods;
  - (m) not fix any of the Goods in such a manner as to make them legally a fixture forming part of any freehold;
- 15.5 Immediately on request by Synergy the Client will pay:
- (a) the new list price of any Goods that are for whatever reason destroyed, written off or not returned to Synergy;
  - (b) all costs incurred in cleaning the Goods;
  - (c) all costs of repairing any damage caused by the ordinary use of the Goods up to an amount equal to ten percent (10%) of the new list price of the Goods;
  - (d) the cost of repairing any damage to the Goods caused by the negligence of the Client or the Client's agent;
  - (e) the cost of repairing any damage to the Goods caused by vandalism, or (in Synergy's reasonable opinion) in any way whatsoever other than by the ordinary use of the Goods by the Client;
  - (f) any lost hire fees Synergy would have otherwise been entitled to for the Goods, under this, or any other hire agreement.

**16. Sale of Goods**

- 16.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 16.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Synergy is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Synergy is sufficient evidence of Synergy's rights to receive the insurance proceeds without the need for any person dealing with Synergy to make further enquiries.
- 16.3 If the Client requests Synergy to leave Goods outside Synergy's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 16.4 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Synergy as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that Synergy has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 16.4.
- 16.5 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.



**17. Privacy Act 1988**

- 17.1 The Client agrees for Synergy to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Synergy.
- 17.2 The Client agrees that Synergy may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 17.3 The Client consents to Synergy being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4 The Client agrees that personal credit information provided may be used and retained by Synergy for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (c) enabling the collection of amounts outstanding in relation to the Goods.
- 17.5 Synergy may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 17.6 The information given to the CRB may include:
- (a) personal information as outlined in 17.1 above;
  - (b) name of the credit provider and that Synergy is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Synergy has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
  - (g) information that, in the opinion of Synergy, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.7 The Client shall have the right to request (by e-mail) from Synergy:
- (a) a copy of the information about the Client retained by Synergy and the right to request that Synergy correct any incorrect information; and
  - (b) that Synergy does not disclose any personal information about the Client for the purpose of direct marketing.
- 17.8 Synergy will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 17.9 The Client can make a privacy complaint by contacting Synergy via e-mail. Synergy will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au)

**18. Unpaid Seller's Rights**

- 18.1 Where the Client has left any item with Synergy for repair, modification, exchange or for Synergy to perform any other service in relation to the item and Synergy has not received or been tendered the whole of any monies owing to it by the Client, Synergy shall have, until all monies owing to Synergy are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 18.2 The lien of Synergy shall continue despite the commencement of proceedings, or judgment for any monies owing to Synergy having been obtained against the Client.

**19. Building and Construction Industry Security of Payments Act 1999**

- 19.1 At Synergy's sole discretion, if there are any disputes or claims for unpaid Goods then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 19.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

**20. Trusts**

- 20.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Synergy may have notice of the Trust, the Client covenants with Synergy as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.

- (c) The Client will not without consent in writing of Synergy (Synergy will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

**21. General**

- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Synergy has its principal place of business, and are subject to the jurisdiction of the courts in that state. Subject to clause 11 Synergy shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Synergy of these terms and conditions (alternatively Synergy's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods hire).
- 21.3 Synergy may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 21.4 The Client cannot licence or assign without the written approval of Synergy.
- 21.5 Synergy may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Synergy's sub- contractors without the authority of Synergy.
- 21.6 The Client agrees that Synergy may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Synergy to provide Goods to the Client.
- 21.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

**22. Guarantee and Indemnity**

- 22.1 In consideration of Synergy agreeing to supply Goods and/or services to the Client, each Guarantor agrees to be bound with the rights and responsibilities as set out in the Personal/Directors Guarantee and Indemnity (annexed to these terms and marked with the letter "A").
- 22.2 Each Guarantor covenants and agrees to Synergy that it will guarantee the due and punctual payment by the Client any monies owned in accordance with these terms and any invoice issued by Synergy for Goods supplied or Services performed.
- 22.3 Each Guarantor will indemnify Synergy and any receiver or any other person appointed by Synergy in relation to any losses, liabilities, expenses (including but not limited to legal costs on an indemnity basis) or taxes incurred in connection with any exercise or attempted exercise of any powers, rights, discretions or remedies vested in or held by any person under the Corporation Act 2001 (Cth); and
- 22.4 Each Guarantor indemnifies Synergy in relation to any direct and indirect losses, damage or expenses which Synergy suffers as a result of the Client's failure to perform, or delay in performing, any of the Client's obligations both in these terms or in law.
- 22.5 To secure payment of all monies which may become payable to Synergy by the Guarantor under this Guarantee and Indemnity, the Guarantor charges all of the Guarantor's interest (freehold and leasehold) in land and personal property held now or in the future. If a demand is made upon by Synergy, the Guarantor will immediately execute a mortgage, or other instruments of security, or consent to a caveat, as requested by Synergy. If a Guarantor fails to execute a mortgage, or other instruments of security, or consent to a caveat, within a reasonable time of bring so requested, the Guarantor irrevocably and by way of security appoints any credit manager or solicitor engaged by Synergy to be our true and lawful attorney to execute and register such instruments. The Guarantor consents to any caveat being lodged against any interest in law or real property owned by them to protect Synergy's interest under this Guarantee and Indemnity. The Guarantor waives all rights inconsistent with anything in this Guarantee and Indemnity.

If customer is an individual:

<b>Signed, sealed and delivered by (insert individuals name) and witnessed:</b>		
Name	Capacity	Signature
	Client	
	Witness	

If customer is a company:

<b>Executed</b> for and on behalf of _____ Pty Ltd (ACN _____) in accordance with section 127 of the Corporations Act by:		
Name	Capacity (circle one)	Signature
	Sole director Director Secretary	
	Director Secretary	

Guarantor signature:

<b>Signed, sealed and delivered by (insert Guarantors name) and witnessed:</b>		
Name	Capacity	Signature
	Guarantor	
	Witness	