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APPLICATION FOR CREDIT ACCOUNT – Horan Steel Holdings Pty Ltd – ABN 81 101 349 348

Company Name/Legal Entity \_\_\_\_\_ Please Tick

ABN \_\_\_\_\_ Public Company

Business Name/Trading Name \_\_\_\_\_ Private Company

Trading Address \_\_\_\_\_ Partnership

\_\_\_\_\_ Sole Trader

Postal Address \_\_\_\_\_ Trust

\_\_\_\_\_ Other Specify

Registered Office \_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Mobile \_\_\_\_\_

Date Business Started: Period of Trading Under Present Owners \_\_\_\_\_

If Limited Company Paid Up Capital \$ \_\_\_\_\_ Date of Incorporation \_\_\_\_\_ ACN \_\_\_\_\_

*If a Company, Partnership or Sole Trader, Please Complete* \_\_\_\_\_

Names, Addresses & Telephone Numbers of Directors, Partners and Sole Trader \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Nature of Business \_\_\_\_\_ Anticipated Value of Monthly Purchases \$ \_\_\_\_\_

Bankers \_\_\_\_\_ Branch \_\_\_\_\_

Solicitor \_\_\_\_\_ Accountant \_\_\_\_\_

TRADE REFERENCES *(Detail only substantial trade relationships)*

1. \_\_\_\_\_ Telephone \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_ Telephone \_\_\_\_\_

\_\_\_\_\_

3. \_\_\_\_\_ Telephone \_\_\_\_\_

\_\_\_\_\_

## PRIVACY

- (1) The Company is committed to protecting your privacy by complying with the National Privacy Principles, and to this end the Company:
- (a) May collect information about the customer to the extent that is necessary for the assessment of the credit application, and for the maintenance of the credit account;
  - (b) May use or disclose this information to third parties to whom the customer has authorised disclosure for the purpose of, for example trade references;
  - (c) Will not use or disclose personal information for a different purpose without your consent;
  - (d) Will take reasonable steps to protect personal information and to ensure its accuracy, completeness and security;
  - (e) Will be "open" with respect to personal privacy issues;
  - (f) Will, where appropriate provide access to personal information and will correct any incorrect personal information held at the request of the relevant individual; and
  - (g) Will in all other regards comply with the National Privacy Principles.
- (2) A full version of the Company's privacy policy may be obtained by contacting the Company directly. A customer may obtain access to information about them held by the Company by contacting the Company directly. The Company has the right to verify the identity of the customer before providing any personal information.

## GUARANTEE AND INDEMNITY

I/We (the "guarantor")

- (a) Acknowledge that I/We have read the completed Application for Credit and the Company's standard terms of sale accompanying this application;
- (b) Guarantee the Customer's punctual payment of every amount payable under the Credit Account to which this application relates, including without limitation: principal, interest, fees, costs, charges, indemnity or damages;
- (c) Agree to be bound by the express and implied standard terms of sale as amended from time to time (the terms of sale that are current as at the date of this Application are contained in and form a part of this application) and be jointly and severally liable with the customer for any breach of these terms;
- (d) Indemnify the Company against any loss they suffer if any terms of sale are unenforceable because of any act or omission by, or circumstances affecting the customer;
- (e) Acknowledge that this guarantee and indemnity is a continuing obligation; and
- (f) Acknowledge that this guarantee and indemnity will not be discharged by the granting of any concession or waiver of any default by the Customer, or failure to enforce any term or condition.

Signed \_\_\_\_\_ Print Name \_\_\_\_\_

Position \_\_\_\_\_ Date \_\_\_\_\_

## TERMS OF APPLICATION

I/We (the "buyers")

- (a) Warrant that the information provided above is true and correct;
- (b) Agree that all purchases from Horan Steel Holdings Pty Ltd (the "Seller") shall be on the Seller's standard terms of sale as amended from time to time (the terms of sale that are current as at the date of this Application are contained in and form part of this Application);
- (c) Acknowledge that the Seller may decline this Application without giving any reason for its decision;
- (d) Authorise the Seller to use the information herein and to make such enquiries, including any credit checks or enquiries of credit reporting agencies, as it considers necessary for the purposes of assessing this Application and for such other purposes as the Seller deems fit.

Signed \_\_\_\_\_ Print Name \_\_\_\_\_

Position \_\_\_\_\_ Date \_\_\_\_\_

## STANDARD TERMS OF SALE Horan Steel Holdings Pty Ltd

### 1. Interpretation

In these terms:

- (1) "Seller" means Horan Steel Holdings Pty Ltd.
- (2) "Buyer" means the purchaser of the Goods whether on credit or otherwise.
- (3) "Goods" means the goods and products sold or supplied by the Seller to the Buyer.

### 2. Terms of Sale

These terms represent the sole basis of the sale of the Goods to the Buyer to the exclusion of any conditions of sale appearing on any document or order form provided by the Buyer to the Seller. Any modification of these terms and conditions in any document of the Buyer does not apply to the Goods sold, unless otherwise expressly accepted in writing by the Seller.

### 3. Prices and Quotations

- (1) Unless otherwise stated all prices quoted by the Seller are net, exclusive of GOODS AND SERVICES TAX.
- (2) Any prices quoted by the Seller are based on prices and charges in effect or nominated by the Seller at the date of the quotation and are based on rates of freight, insurance, customs duties, exchange rates, shipping expenses, sorting and stacking charges, cost and materials and other charges affecting the cost of the Goods at the time the quotation is made.
- (3) If the Seller makes any alterations to the price of the Goods or to any of their inputs either before acceptance of the Goods or during the currency of this contract, these alterations are at the Buyer's expense and to the Buyer's account.

### 4. Drawings and Specifications

- (1) All specifications, drawings and particulars of quantities and dimensions submitted to the Seller are approximate only and any derivation from any of these things does not vitiate any contract with the Seller or form grounds of any claim against the Seller.
- (2) Any descriptions, illustrations or performances contained in catalogues, price lists or other advertising do not form part of the contract of sale of the Goods or the description applied to the Goods.
- (3) Where specifications, drawings or other particulars are supplied by the Buyer, the Seller's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Seller and set out in any quotation then any such increase or decrease must be adjusted.

### 5. Delivery and Packaging

- (1) All delivery, freight and other transport costs (including any insurances of the Goods) are at the Buyer's expense and to the Buyer's account, unless expressly agreed otherwise in writing by the Seller.
- (2) The delivery times made known to the Buyer are estimates only and the Seller is not liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non delivery of the Goods.
- (3) Any additional costs associated with particular delivery instructions are at the Buyer's expense and to the Buyer's account even if cost has been omitted from any quotation provided by the Seller.

### 6. Loss or Damage in Transit

- (1) Risk in the Goods passes to the Buyer upon the Goods leaving the premises of the Seller. The Seller is not responsible to the Buyer or any person claiming through the Buyer from any loss or damage to Goods in transit, caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to the loss or damage).
- (2) The Seller must provide the Buyer with reasonable assistance to allow the Buyer to press claims on carriers so long as the Buyer:
  - (a) Has notified the Seller and carriers in writing immediately after loss or damage is discovered on receipt of the Goods; and
  - (b) Lodges a claim for compensation on the carrier within 3 days of the receipt of the Goods.

### 7. Claims

- (1) The Buyer waives any claim for shortages in quantity, lengths or weight of any Goods delivered if a claim in respect of short delivery is not lodged with the Seller within 7 days from the date of receipt of the Goods.
- (2) If the Goods are not manufactured by the Seller the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Goods. The Seller agrees to assign to the Buyer on request the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- (3) Except as provided in these terms, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for any physical or financial injury, loss or damage, or for any consequential loss or damage of any kind arising out of the supply, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way whatsoever.

- (4) The Seller's liability for a breach of a condition or warranty implied under the Trade Practices Act 1974 (or similar legislation applying in the States and Territories of Australia) is expressly limited to:
- (a) In the case of Goods, any one or more of the following at the Seller's option:
    - (i) the replacement of the Goods or the supply of equivalent Goods;
    - (ii) the repair of the Goods;
    - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
    - (iv) the payment of the cost of having the Goods repaired; or
  - (b) In the case of any services provided by the Seller:
    - (i) supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.
- (5) Returned Goods
- (a) The Seller is not to be under any duty to accept goods returned by the buyer and will do so only on terms to be agreed in writing in each individual case.
  - (b) If the Seller agrees to accept returned goods from the buyer under para (a) of this clause, the goods must be returned to the Seller at the Seller's place of business referred to at the head of these conditions.
- (6) Cancellation
- No order may be cancelled except with consent in writing and on terms which will indemnify the Seller against all losses.

## **8. Payment**

- (1) The purchase price of the Goods must be paid in full within the time specified in the invoice or failing any time being specified, within 30 days of the end of the month in which the invoice is issued by the Seller ("the due date"). Payment must be made without any deductions whatsoever, whether by way of set off, counter claim or any other form of equitable or lawful claim.
- (2) Should the Buyer not pay the full amount by the due date, the Seller may charge interest on the amount outstanding at the current overdraft rate of the Commonwealth Bank of Australia for the period that the amount remains unpaid, with interest accruing on a daily basis. The Seller may also recover all legal and other fees incidental to the recovery of any amount which has not been paid by the due date by the Buyer.

## **9. Retention of Title**

- (1) The Seller retains ownership of and title in the Goods sold or supplied to the Buyer until the Seller has been paid in full for the Goods under all individual contracts for the supply of the Goods between the Seller and the Buyer.
- (2) The Buyer is a bailee of the Goods until such time as ownership of and title in the Goods passes to the Buyer and this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full.
- (3) Until payment in full is made, the Buyer:
  - (a) must not supply any of the Goods to any person outside its ordinary or usual course of business;
  - (b) must not allow any person to have or acquire any security interest in the Goods; and
  - (c) must insure the Goods at the full replacement value and store and maintain the Goods in good condition and in a manner so that they are clearly identifiable as the property of the Seller.
- (4) If the Goods are re-sold, or products manufactured using the Goods are sold by the Buyer, then the Buyer holds the proceeds of any such sale equal to the invoice price of the Goods sold or used, on trust for and as agent for the Seller immediately when the proceeds are received. Upon receipt of such proceeds, the Buyer must either pay the amount of the proceeds to the Seller immediately or pay the proceeds into a separate identifiable account as trustee for the Seller.
- (5) The Buyer irrevocably gives the Seller, its agents and servants a licence, at any time after the purchase price of any Goods has become due and has not been paid, and without the necessity of giving any notice, to enter on and into any premises occupied by the Buyer (or its agents or any associated company) to search for and remove any of the Goods without in any way being liable to the Buyer or any person or company claiming through the Buyer for trespass or any resulting damage.

## **10. No Waiver**

The failure by the Seller to insist upon the compliance with any of these terms does not constitute a waiver of those terms and the Seller is entitled to insist upon compliance with all provisions of these terms at any time.

## **11. Severance**

If any provision or part of a provision of these terms is found to be invalid or unenforceable, then that provision or part of that provision must be severed and the remaining provisions will continue and be binding and have full force and effect.

## **12. Place of Contract**

- (1) The contract for the sale of the Goods is made in the State of New South Wales, irrespective of where the Seller and the Buyer are located or where the Goods are to be delivered.
- (2) Both the Buyer and the Seller agree to submit to the jurisdiction of the Courts of New South Wales.