

## CONFIDENTIAL CREDIT ACCOUNT APPLICATION &amp; TERMS &amp; CONDITIONS OF SALE



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ABN: 18 672 647 380

W: eastcoaststeel.com.au

**IMPORTANT: Original must be received before account is opened.****1. CUSTOMER DETAILS**

Company Name	_____	Telephone	_____
Trading Name	_____	Fax	_____
Trading Address	_____	Email	_____
	_____	Post Code	_____
Postal Address	_____		
	_____	Post Code	_____
Registered Address	_____		
	_____	Post Code	_____
Contact Names Purchasing	_____	Accounts Payable	_____
Purchasing Email	_____	Accounts Email	_____

**2. BUSINESS DETAILS**

Nature of Business	_____		
How long has the business been trading	_____	ACN	_____
Number of Branches	_____	No. of Employees	_____
Are business premises owned / leased / rented	_____		
If leased / rented supply lessee / landlords name	_____		
Special Delivery Instructions	_____		
Products Used	_____		

**3. PROPRIETORS / DIRECTORS DETAILS**

Full Name(s) and address(es) of sole trader, partners, directors

1.	_____	Position	_____
	_____	Telephone	_____
2.	_____	Position	_____
	_____	Telephone	_____
3.	_____	Position	_____
	_____	Telephone	_____
4.	_____	Position	_____
	_____	Telephone	_____

Has the Company ever been under external administration or has any proprietor/director been registered under any part of the Bankruptcy Act or under any special financial arrangement or involved in Company or Business which has been liquidated or under external administration?

YES / NO

If yes, give details

**4. TRADE REFERENCES**

	Company	Suburb / State	Avg. Monthly Value	Telephone	Fax
1.	_____	_____	\$ _____	_____	_____
2.	_____	_____	\$ _____	_____	_____
3.	_____	_____	\$ _____	_____	_____
4.	_____	_____	\$ _____	_____	_____

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**5. FINANCIAL DETAILS OF THE APPLICANT****EXPECTED PURCHASE PER MONTH**

\$

Bank	Branch (BSB)	Account No
If company nominal Capital	\$	Paid Up Capital
	\$	\$

**6. GUARANTEE & INDEMNITY**

In consideration of your Agreement to supply or continue to supply goods and services on credit to the Customer and for other valuable consideration the persons whose signature as Guarantor appear below unconditionally guarantee to the Supplier the due and punctual payment of all sums of all sums of money, interest and charges which are or may become payable by the Customer to the Supplier and agree to indemnify and keep indemnified the Supplier from and against all and any losses, damages, costs and expenses suffered or incurred by reason of any breach or failure on the part of the Customer.

The guarantor hereby agrees with the Supplier:

1. The Guarantee and Indemnity shall be a continuing Guarantee and shall not be prejudiced or affected by:
  - (a) Any other guarantee or any security or instrument, negotiable or otherwise which the Supplier may now or hereafter hold in respect of any moneys hereby guaranteed, or any judgment obtained by the Supplier, or any release, discharge, surrender or modification of or dealing with any such guarantee, security, instrument or judgement.
  - (b) Any arrangement with or release of the Customer or any other guarantor or person by the Supplier or by operation of law, whether the consent of the Guarantor shall have been obtained, or notice thereof given to the Guarantor or not; or any omission or delay on the part of the Supplier.
  - (c) The fact that the moneys payable by the Customer or any part thereof may cease to be recoverable from the Customer or from any other guarantor or person or for any other reason than that the same have been paid in full, and to such extent as may be necessary to give effect to this sub-clause this Guarantee shall be treated as an indemnity.
  - (d) Any change in the membership or termination of any partnership or firm of which the Customer or Guarantor is a member or the death, liquidation or bankruptcy of the Customer, or the assent of the Supplier to any composition, arrangement or scheme in respect of the Customer or the acceptance by the Supplier of any dividend or sum of money thereunder.
  - (e) The failure of any other person named as a party to execute this instrument.
  - (f) Any variation of the terms upon which the goods and/or services are supplied to the Customer and paid for by the Customer.
  - (g) Any claim the Customer may have against the Supplier.
  - (h) Any act or omission by the Supplier which may result in prejudice to the Guarantor.
  - (i) Any payment to the Supplier by the Customer which is later avoided by the application of any statutory provision.
  - (j) The death of the Guarantor.
2. Until the Supplier has received one hundred cents in the dollar in respect of moneys hereby guaranteed, the Guarantor AGREES:
  - (a) In the event of any bankruptcy or any other administration of the Customer's estate or any winding up, official management or scheme of arrangement of the Customer the Guarantor will not without the prior written consent of the Supplier lodge any proof of debt or similar claim in respect of any debt or liability to the Guarantor on any account whatsoever, nor enforce any security held by the Guarantor in respect of the Customer and shall hold any such debt, liability or security and any rights or benefits in respect thereof in trust for the Supplier.
  - (b) If requested by the Supplier to lodge a proof of debt or similar claim in any such administration and enforce any such security aforesaid, and to execute all such documents and do all such things as the Supplier may require to enable the Supplier to have and receive the benefit of or arising from any such proof, claim or security.
  - (c) The Guarantor's liability hereunder shall be that of principal debtor.
3. A statement in writing signed by the manager or credit manager of the Supplier as to the moneys due from or owed by the Customer or covered by this Guarantee shall be prima facie evidence of the amount so due or owing or covered by this guarantee.
4. The Guarantor irrevocably appoints the Supplier as their attorney with authority to do on behalf of the Guarantor anything the Guarantor may lawfully authorise an attorney to do in order to give effect to the terms of this Guarantee including without limitation the following:
  - (a) to make, sign, execute, seal and deliver any document;
  - (b) to execute any instrument or do any act which may result in a benefit being conferred on the Supplier;
  - (c) to appoint substitute attorneys;
  - (d) to exercise any rights or powers as trustee held by the Guarantor ; and
  - (e) to take possession of, use, sell or otherwise dispose of any asset of the Guarantor.
5. To secure the payment of all moneys which may become payable by the Guarantors to the Supplier the Guarantors hereby grant to the supplier charge over all of their right title and interest in all and any real or personal property now held or acquired by them or any of them such charge to secure their obligations under the Guarantee and the Guarantors consent to the Supplier lodging a Caveat or Caveats over any such real property and undertake and agree as a separate obligation to execute a registerable bill of sale or mortgage over any such real or personal property upon request by the Supplier and undertake to pay to the Supplier all and any costs and stamp duty associated with the preparation, stamping and lodging of any document pursuant to this clause in addition to any other moneys secured by this Guarantee.
6. The Customer must pay all and any import duties, levies or imports or any goods and services tax (GST), sales, transaction, use, excise, gross receipts, value added, property or other taxes or duties of any kind whatsoever assessed upon or relating in any way to the goods ordered by the Customer irrespective of:
  - (a) the person, nation, state or authority requiring payment of these taxes or duties; or
  - (b) the person who is primarily liable to pay such taxes or duties under the law of the place where the tax or duty is payable; or
  - (c) any eligibility of the Customer for any refund or drawback for such taxes or duties.
7. The Guarantor further agree that:
  - (a) they have signed this Guarantee voluntarily;
  - (b) they have understood the nature and effect of this Guarantee in particular that they agreed to guarantee all amounts now owed by the Customer to the Supplier and all amounts that the Customer may in the future owe to the Supplier;
  - (c) each Guarantor has compared his/her obligations and responsibilities under the Guarantee and those of any other person named in the Guarantee; and
  - (d) they have considered the consequences to themselves should they default in those obligations and responsibilities.
8. In this Guarantee and Indemnity the following rules of interpretation apply unless the context otherwise requires:
  - (a) words denoting the singular number include the plural and vice versa;
  - (b) words denoting natural persons include bodies corporate and unincorporated bodies and their permitted assigns; and
  - (c) references to any party to the Agreement or any other agreement or instrument include the party's successors and permitted assigns.

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9. Where any provision of this Guarantee is rendered void, unenforceable or otherwise ineffective by operation of law that shall not effect the enforceability or effectiveness of the remaining provisions.
- 10 In this instrument 'Guarantor' or 'Guarantors' mean the Guarantors jointly and each person who is a Guarantor severally and their respective successors and assigns.
- 11 If the applicant is a company, trust or partnership, the Guarantee and Indemnity must be completed and executed by all those persons particularised in Section 3 in the presence of an independent witness (who is also able to complete and execute the Guarantee and Indemnity accordingly) and returned to the Supplier with the application.**

Date this	day of	20
Signature of guarantor		Signature of guarantor
Full Name of guarantor		Full Name of guarantor
Address of guarantor		Address of guarantor
Signature or witness		Signature or witness
Full name and address of witness		Full name and address of witness

#### EAST COAST STEEL TO COMPLETE:

Credit limit approved	\$	Terms approved	
Approved / Declined by		Date	
Acceptance / refusal letter sent date			
Customer No			
Prospect No			

### DECLARATION OF TERMS AND CONDITIONS OF SALE AND PRIVACY ACT AUTHORISATION

This authorisation relates to the Privacy Act 1988 and MUST BE COMPLETED IN FULL PRIOR TO US PROCESSING YOUR CREDIT APPLICATION.

#### Agreement that the Supplier may seek consumer credit information (Section 18K (1) (b), Privacy Act 1988).

If the Supplier considers it relevant to assessing my/our application for commercial credit, I/we agree to the Supplier obtaining from a credit reporting agency a credit report containing personal credit information about me/us in relation to commercial credit provided by the Supplier.

#### Agreement that the Supplier may use a credit report about me for collecting overdue payment (Section 18K (1) (h), Privacy Act 1988).

If the Supplier considers it relevant to collecting overdue payments in respect to commercial credit provided to me/us, I/we agree to the Supplier receiving from a credit reporting agency a credit report containing personal information about me/us in relation to collecting overdue payments.

Agreement to the Supplier seeking from or giving to other credit providers details about my/our credit worthiness (Section 18N (1) (b), Privacy Act 1988).

I/we agree that the Supplier may give to and seek from any credit providers named in this credit application and any credit providers that may be named in a credit report issued by a credit reporting agency information about my/our credit arrangement. I/we understand that this information can include any information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.

I/we understand the information may be used for the following purposes:

- to assess an application by me/us for credit
- to notify other credit providers of a default by me/us
- to exchange information with other credit providers as to the status of this account where I am in default with other credit providers
- to assess my/our credit worthiness

In consideration of the Supplier agreeing to supply goods on credit to the applicant, I/We jointly and severally agree to the terms and Conditions of Sale herein. Further I/we agree to your 30 Day Nett Trading Terms (i.e. payment is due within 30 days after end of month in which delivery is made) and understand that credit facilities may be withdrawn without notice and/or interest (at the interest rate set by the Penalties Interest Rates Act from time to time) and collection expenses charged on overdue accounts placed in the hands of our Collection Agents or Solicitors.

Guarantor's agreement (Section 18K (1) (c), Privacy Act 1988).

I/we agree that the Supplier may seek from a credit reporting agency, a credit report containing personal information about me/us to assess whether to accept me/us as a guarantor for credit applied for, or provided to the borrower.

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I/we agree that if the Supplier approves the borrower's application for credit this agreement remains in force until the credit facility covered by the borrower's application ceases.

**TO BE SIGNED BY ALL DIRECTORS**

Signed By the said	Print Name
Signed By the said	Print Name
Signed By the said	Print Name
Signed By the said	Print Name

In the presence of \_\_\_\_\_

Print name and address of witness \_\_\_\_\_

## TERMS AND CONDITIONS OF SALE

Unless agreed otherwise by the Supplier in writing these Terms and Conditions of Sale apply to all orders accepted by the Supplier and all quotations accepted by the Customer notwithstanding any contrary and/or additional terms and/or conditions contained in any such order of or acceptance by the Customer.

1. Unless otherwise agreed to by the Supplier in writing, payment for goods is to be made in cash not later than the end of the month following the month in which the goods are delivered. The Supplier reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery if in the sole opinion of the Supplier this is warranted.
  2. (a) The Supplier shall be entitled to charge interest on all accounts not satisfied in accordance with clause 1 hereof at the rate on unpaid judgments under the Civil Procedure Act 2005 from time to time and shall be calculated on the balance owing from time to time from the date upon which moneys become due and payable up to the date of payment in full at the sole discretion of the Supplier.
  - (b) In addition the Supplier shall be entitled to charge an account keeping fee of \$66.00 per calendar month for each month (or part thereof) that any part of the amount owing by the Customer to the Supplier is overdue.
  3. Unless otherwise agreed by the Supplier in writing the following shall apply:
    - (a) Legal and equitable title in all goods supplied by the Supplier to the Customer shall not pass to the Customer until the purchase price for all goods purchased by the Customer from the Supplier has been paid in full to the Supplier by the Customer (including in circumstances where the goods have been on-sold by the Customer to a third party) but risk in the goods shall pass to the Customer immediately upon delivery.
    - (b) Until such time as title passes in accordance with paragraph (a) above the Customer shall hold the goods as bailee for and agent of the Supplier on the terms set out below.
    - (c) Pending transfer of title, the Customer may use the goods as agent of the Supplier and as authorised by the Supplier to manufacture new products. The products resulting from such manufacture will be the property of the Supplier.
    - (d) The Customer is hereby authorised to sell, or agree to sell, the goods or any manufactured products as agent of the Supplier until such time as title passes to the Customer PROVIDED THAT:
      - (i) the Customer shall not represent or hold out to any third parties that it is acting as agent of the Supplier and the Supplier shall not be bound as principal by any contracts between third parties and the Customer;
      - (ii) all proceeds of sale of any goods or manufactured products shall be paid into a separate account from which the Customer shall account to the Supplier for the purchase price of the goods.
    - (e) Without prejudice to any other rights which the Supplier may have under this contract or at law, the Supplier shall be entitled to enter upon the Customer's premises and repossess the goods or any products manufactured with the goods without notice upon the occurrence of any of the following events:
      - (i) the Customer, being a natural person, commits an act of bankruptcy, or is declared insolvent;
      - (ii) where the Customer is a corporation, proceedings are commenced to wind up the Customer or the Customer is placed under official management or a receiver is appointed over the Customer's undertaking or property or any part thereof or the Customer is placed under any other form of insolvent administration;
      - (iii) the Customer enters into some arrangement or assignment for the benefit of its Creditors;
      - (iv) the Customer disposes of or parts with possession of the goods otherwise than as expressly authorised by this contract;
      - (v) the Customer, in the opinion of the Supplier, is in breach of any terms of this contract.
  4. All quotations are based on current costs of labour, materials and services. Any variation in cost of labour, materials and/or services after the date of the quotation shall be to the Customer's account whether such variation occurs before or after the date of acceptance.
  5. The Customer shall be responsible for the payment of any GST or like tax payable in respect of goods supplied to the Customer and any such tax shall be in addition to any quoted prices unless such quoted prices clearly state that GST is included. The Customer shall not be obliged to pay GST on any taxable supply unless provided with a valid tax invoice.
  6. If at any time before delivery of goods or performance of any work by reason of war, strike, lockout, cessation or shortened hours of labour, transport delays, delay in delivery by Supplier's suppliers, accidents, destruction of or damage to the Supplier's works or business or those of its suppliers, Government interference with or control of the operation of the works or business of the Supplier or its suppliers, or any cause whatsoever beyond the control of the Supplier, the Supplier is prevented from making delivery or performance at the time stipulated
- the Supplier shall be entitled at its option either to extend the time for delivery or performance for a reasonable period or to determine the contract and the Customer shall in consequence have no claim for damages, but without prejudice to the Supplier's rights to recover all sums owing to it in respect of deliveries made or services performed prior to the date of such determination and to recover all payments made or expenses incurred by the Supplier in connection with the contract.
7. Except insofar as any express written undertaking is given by the Supplier, these conditions are in place of and exclude all other warranties and conditions whether implied by statute or otherwise and in particular provided that nothing in this Clause will exclude, restrict or modify any condition, warranty, right or liability implied in the Contract by law where to do so would render this clause void.
  8. Unless expressly agreed to the contrary, the provisions and tolerances contained in the standard specification to which the goods are manufactured by the Supplier or its supplier will apply to all orders accepted.

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9. Goods proved to be defective as a result of action or inaction on the part of the Supplier will be replaced at the place of original delivery provided written notification of the defect be given to the Supplier within fourteen (14) days from the date of delivery and the goods are returned, except if destroyed, by the Customer to the Supplier's works, warehouse or depot from which they were purchased. In no circumstances will any other allowance be made or compensation or damages paid in respect of defective goods or for non-delivery where goods delivered are claimed to be defective. For the purpose of these terms the word 'defective' means 'not in accordance with the express or implied terms, conditions or warranties of the contract'.

10. Where goods are proved to be defective for reasons of action or inaction on the part of the Supplier's supplier the Supplier will use its best endeavours to have the goods replaced by its suppliers but shall have no further or other liability to the Customer in respect thereof.

11. Notwithstanding the terms of any conditions herein the Supplier does not accept any responsibility whatsoever for errors in dimensions, quantities, specifications or otherwise where orders for any of those goods are placed with the Supplier by the Customer otherwise than in writing.

12. If material is supplied to the Supplier by the Customer for cutting or any other treatment and such material is lost, damaged or destroyed by the Supplier, the Supplier's liability to the Customer shall be limited to replacement of any material so lost, damaged or destroyed or at the discretion of the Supplier, payment by the Supplier to the Customer of the replacement cost of such material.

13. The Customer shall be responsible for immediate examination of goods after arrival at place of delivery and the Supplier shall not be liable for any claim to which it would otherwise be liable in respect of damaged goods including goods, damaged in course of transit unless particulars of such claim are notified to the Supplier in writing within seven (7) days after arrival of the goods into the custody of the Supplier or its carrier.

Shortages other than those noted on the Supplier's Delivery Receipt by or on behalf of the Customer or by or on behalf of his carrier at the time of passing of the goods from the custody of the Supplier or its carrier shall not be recognised by the Supplier.

14. The Supplier's liability for damages for any breach of this contract and terms and conditions shall (subject to any limitations herein contained) be limited to general damages and the Supplier shall not be responsible for any special damage suffered by the Customer whether on the ground of consequential loss, loss on resale, delays in the Customer's factory or otherwise howsoever.

15. Clauses 9, 10, 11, 12, 13 and 14 do not apply where there has been a breach of a condition of warranty implied into this Contract by the Trade Practices Act (1974) (Cth) and Fair Trading Act (1987) (NSW) and the application of those Clauses would have the effect of limiting the liability of the Supplier arising from such a breach.

16. Pursuant to section 68A of the Trade Practices Act (1974) (Cth) and Section 68 of the Fair Trading Act (1987) (NSW) this sub-clause applies in respect of any goods or services supplied under this Contract which are not of a kind ordinarily acquired for personal, domestic or household consumption, provided that this sub-clause will not apply if the Customer establishes that reliance on it would not be fair and reasonable.

Limitation for breach of a condition or warranty implied into this contract by the Trade Practices Act (1974) (Cth) and the Fair Trading Act (1987) (NSW) is limited to:

17. (a) in the case of goods any one of the following as determined by the Supplier :

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods, or;
- (iv) the payment of the cost of having the goods repaired;

(b) in the case of services, any one of the following as determined by the supplier:

- (i) the supplying of the services again;
- (ii) the payment of the cost of having the services supplied again.

18. If the goods are collected from the Supplier's premises by the Customer or the Customer's agent the Customer indemnifies the Supplier for loss

or damage of any kind sustained by the Supplier as a result of any deliberate or negligent act or omission on the part of the Customer or his agent.

19. The time appointed in any quotation or contract as the time of delivery represents the time at which the goods are estimated to be ready for despatch from the Supplier's works, branch warehouses or Agency stocks and the Supplier is to be allowed the further time necessary to cover transit to place named for delivery and every quotation containing a provision to supply goods 'ex stock' is subject to the goods being available ex stock after fulfilment of prior orders at time of receipt of order and an allowance of time in which to cut, handle and pack such goods is implied in every such quotation. The Supplier will not incur any penalty for late delivery.

20. All charges incurred through the Customer not taking delivery shall be at the Customer's expense as shall any charges incurred by the Supplier in delivering goods otherwise than as provided in Clause 4 hereof.

21. The Supplier reserves the right to charge a restocking and handling fee on goods returned by the Customer. Acceptance of returned goods is at the absolute discretion of the Supplier and only with prior approval by same. Goods that have been cut to size or otherwise processed will not be returnable to the Supplier.

22. If the Customer makes default in payment or otherwise fails to carry out the terms of or repudiates the contract created by acceptance of this quotation or any other contract with the Supplier or if the Customer stops payment or calls a meeting of its creditors or becomes insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of going or goes into liquidation or has a winding up petition presented against it or a Receiver appointed, the Supplier may at its option and notwithstanding its waiver of such default or failure and without prejudice to its other rights

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under the contract created by the acceptance of the quotation suspend or cancel such contract or require payment in cash before or on delivery of goods or installation of equipment notwithstanding terms of payment specified or may take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for any loss resulting from such resale. The Supplier may exercise any of such rights as to the whole or part of the goods.

23. The Supplier accepts no responsibility for loss of or damage to or maintenance of secrecy with respect to any plans, drawings, samples or other material supplied by the Customer to the Supplier although reasonable care will be taken by the Supplier. If any goods are manufactured by the Supplier to the design or specification of the Customer, the Customer will indemnify the Supplier for any loss or damage sustained by the Supplier arising of any breach of patent, trademark or registered design.

24. To secure the payment of all moneys now due or which may become due and payable by the Customer to the Supplier the Customer and each director of the Customer executing this document for and on behalf of the Customer hereby grant to the Supplier a Charge over all of their right title and interest in all and any real or personal property now held or acquired by them or any of them such Charge to secure their obligations to the Supplier and consent to the Supplier lodging a Caveat or Caveats over any such property noting the Supplier's interest hereunder and undertake and agree as a separate obligation to execute a registerable charge or mortgage over any such real or personal property upon request by the Supplier and undertake to pay to the Supplier all and any costs associated with the preparation, stamping and lodging of any document pursuant to this clause in addition to any other moneys due by the Customer to the Supplier.

25. In the interpretation hereof the words 'the Supplier' shall mean East Coast Steel Pty Ltd (ACN 064 444 819) or its successors and the words 'the Customer' shall mean and include the customer and charge referred to overleaf.

26. The Supplier reserves the right to change any of these Terms and Conditions of Sale upon giving written notice to the Customer of such changes. Those amended Terms and Conditions of Sale shall apply for all orders placed by the Customer with the Supplier after the date of notification of those amendments.

27. International Sales – The Supplier and the Customer hereby exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.