

# APPLICATION FOR CREDIT

CONFIDENTIAL - (This form including guarantee must be completed in full in order to process)

APPLICATION FOR CREDIT TO BARRACUDA DESIGN & ART

**I/We hereby apply for a Credit Account and submit the following information**

|   |       |              |                 |
|---|-------|--------------|-----------------|
| Trading Name  | _____ |              |                 |
| Trading Address   | _____ | Post Code    | _____           |
| Postal Address  | _____ |              | Post Code _____ |
| Business Phone  | _____ | Business Fax | _____           |
|   |       | Mobile       | _____           |
| Nature of Business (e.g. Distributor, Accountant, Mechanic) | _____ |              |                 |
| Date you commenced Business under this trading name         | _____ | ABN          | _____           |
| Bank Name   | _____ | Branch       | _____           |

## PROPRIETORSHIP DETAILS

Type of Business:     SOLE TRADER     PARTNERSHIP     TRUST     COMPANY

Personal details of:     SOLE TRADER     PARTNERSHIP     TRUSTEE     COMPANY (Directors/Shareholders of company)

1. Full Name \_\_\_\_\_ Home Phone: \_\_\_\_\_ D.O.B \_\_\_\_\_  
Residential Address \_\_\_\_\_ Post Code \_\_\_\_\_

2. Full Name \_\_\_\_\_ Home Phone: \_\_\_\_\_ D.O.B \_\_\_\_\_  
Residential Address \_\_\_\_\_ Post Code \_\_\_\_\_

3. Full Name \_\_\_\_\_ Home Phone: \_\_\_\_\_ D.O.B \_\_\_\_\_  
Residential Address \_\_\_\_\_ Post Code \_\_\_\_\_

4. Full Name \_\_\_\_\_ Home Phone: \_\_\_\_\_ D.O.B \_\_\_\_\_  
Residential Address \_\_\_\_\_ Post Code \_\_\_\_\_

**IF A COMPANY** please complete the following:

Registered Company Name \_\_\_\_\_ ACN \_\_\_\_\_

Registered Office Address \_\_\_\_\_ Post Code \_\_\_\_\_

Address for Notices \_\_\_\_\_ Post Code \_\_\_\_\_

Date of Incorporation \_\_\_\_\_ State of Incorporation \_\_\_\_\_ Paid up Capital \$ \_\_\_\_\_

Nature of Business (e.g. Distributor, Accountant, Mechanic) \_\_\_\_\_

*Note: Directors personal guarantees included with this form must be signed by all directors of the company in order for this application to be processed.*

## TRADE REFERENCES

1. Name \_\_\_\_\_ A/C Type: \_\_\_\_\_ Days \_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

2. Name \_\_\_\_\_ A/C Type: \_\_\_\_\_ Days \_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

3. Name \_\_\_\_\_ A/C Type: \_\_\_\_\_ Days \_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_

AMOUNT OF CREDIT REQUIRED PER MONTH: \$ \_\_\_\_\_

PERSON TO CONTACT REGARDING PAYMENT OF ACCOUNT: 1) \_\_\_\_\_ 2) \_\_\_\_\_

# APPLICATION FOR CREDIT

## DECLARATION BY/FOR AND ON BEHALF OF THE APPLICANT/S (Please read carefully before signing)

1. I/We declare and warrant that the applicant is neither bankrupt nor insolvent and has not committed any act of bankruptcy nor traded whilst insolvent within the previous six months.
2. I/We authorise the Client to conduct such credit checks as deems necessary at any time.
3. I/We agree to be bound by the Conditions of Trade and the *General Terms of Trade*
4. I acknowledge and accept the *General Terms of Trade* that accompanies this Application for Credit.

***If this application is signed on behalf of a company, partnership or trust the persons executing this application warrants that they are duly authorised to sign).***

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### Signature of Applicant # 1

I witnessed Applicant # 1 sign this document on the date indicated:

.....  
Signature Date

.....  
Signature of Witness Date

.....  
Name (please print)

.....  
Name of Witness (please print)

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### Signature of Applicant # 2 (If applicable)

I witnessed Applicant # 2 sign this document on the date indicated:

.....  
Signature Date

.....  
Signature of Witness Date

.....  
Name (please print)

.....  
Name of Witness (please print)

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### Signature of Applicant # 3 (If applicable)

I witnessed Applicant # 3 sign this document on the date indicated:

.....  
Signature Date

.....  
Signature of Witness Date

.....  
Name (please print)

.....  
Name of Witness (please print)

# GENERAL TERMS OF TRADE

These *General Terms of Trade* apply broadly to all transactions between us. Documents issued by us in regards to a transaction will identify, if necessary, special terms and conditions.

## Interpretation

“**Good faith**” means honesty in fact in the conduct or transaction concerned and is a notion that is extended to include negotiations precedent or subsequent to this agreement.

“**Business Day**” means any day other than a Saturday, Sunday, or public holiday.

**Time is of the essence** as it pertains to the performance of its respective obligation under this Agreement and the transaction contemplated and is a *primary consideration* when interpreting the reasonableness of time in a particular situation.

**Reasonable Time.** Whenever the Agreement between us requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by our consent. What is reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

### Description of the Parties

We are the “Seller”, that is, the person who sells or contracts to sell goods or services.

You are the “Buyer”, that is, the person who buys or contracts under authority of another, whether expressly or impliedly, to buy goods or services.

“**Guarantor**” means that person who has furnished, under a separate agreement, an undertaking in the favour of us stating that your performance under this Agreement will be discharged to the our full satisfaction. There is no obligation imposed upon us to keep a Guarantor or Guarantors, as may be required from time to time, informed as to your performance or non-performance hereunder.

### The Subject Matter to be Supplied

“**Goods**” means those things which are moveable and have been identified or referenced in some way by the Parties and are for use primarily in the commercial context, including certificates or coupons exchangeable for such goods, and including goods, which at the time of sale or subsequently, are to be affixed to real property whether or not severable therefrom. Goods must be both existing and identified before any interest in them can pass.

“**Services**” means *work, skill, labour and services*, including, but not limited to, services furnished in connection with repair, alteration, or improvement of a premises, or services furnished in connection with the sale or repair of goods. The supply of services may be based upon a supply of goods component or vice versa.

The transactions contemplated hereunder may be for the supply of goods or services or may be some combination of both.

### Determination of Price

“**Price**” means the amount agreed to by the parties; or fixed under our absolute discretion and announced, either orally or in writing, by us to which you have approved, expressly or impliedly; or means the amount established by a course of dealing between us.

“**Delivery**” means voluntary transfer of possession, but the Price, unless otherwise stated in writing by us, does not include delivery costs.

## Payment

1. If you must make a payment or do any other thing on or by a day that is not a business day, you must make the payment or do the thing on or by the next business day.
2. Unless otherwise agreed your *tender of payment* is a condition precedent to our duty to tender or complete any delivery.
3. We reserve the right to protest any attempted accord and may give notice of such protest by letter and on the instrument attempting the accord. By accepting payment of any sum after its due date, moreover, we do not waive our right either to require payment when due of all other sums or to declare default for failure so to pay.
4. If a cheque issued by you is dishonoured by your bank, you will be liable to us, in addition to the amount owing on the cheque or draft or order, for damages treble the amount so owing, but in no case less than one hundred dollars (\$100), and in no case more than five hundred dollars (\$500), plus the cost of posting the written demand for payment.

## Default

### When are you in default?

You will be in default, for example, if:

*As the Buyer:*

- You do not pay us when monies under this Agreement are due;
- You make payment by a cheque which is subsequently dishonoured by your bank on “due presentment”.

*As a Guarantor:*

- You do not pay any of the guaranteed money when called upon so to do.

### We may send you a default notice

If you are in default under our Agreement, we may send you a default notice. The notice will tell you:

- What the default is
- What you are required to do correct the default;
- That you have 10 business days to correct the situation causing the default.

### Failure to comply with our default notice

If you do not comply with the default notice:

1. You become liable to pay us immediately all monies, an amount that now permits us to include substantial, yet still reasonable enforcement expenses (legal or commercial agent fees) and interest; and
2. We may repossess and sell the goods; and
3. We will apply the proceeds of the sale towards repayment of the monies owed under the Agreement.

### We may perform your obligations at your cost

If you fail to do anything that our Agreement requires you to do, we may:

- Do the thing as required
- Do it in your name
- Do it at your expense and add the expense to your balance under our Agreement.

## Enforcement Expenses and interest

In the event of a breach of this Agreement, we may charge you enforcement expenses reasonably incurred by us. We may add these to your account. These expenses include, but are not limited to:

1. **Interest** at the daily rate of 0.06575 per cent on unpaid balances. We will calculate interest daily by multiplying the unpaid balance of the account at the end of the by the daily percentage rate. The daily percentage rate is the annual percentage rate divided by 365.
2. **Attorney or Commercial Agent Fees.** We are entitled to substantial, yet still reasonable legal or commercial agent fees.
3. **Costs of service and of searches.** Costs and expenses are allowable if incurred, whether or not paid. Costs and expenses that are reasonably necessary to the conduct of a particular step are allowable under this Agreement.
4. **Expenses of attachment or seizure,** including keeper fees.
5. **Premiums** on necessary surety.

An enforcement expense includes, but is not limited to:

- Enforcing any right we have under this Agreement or enforcing any guarantee;
- Attempting to enforce any right;
- Performing any of your obligation under this Agreement;
- Protecting any right;
- Waiving any right;
- Contemplating the enforcement of any right.

## Lien

To secure payment to us of all sums due under the Agreement, you irrevocably grant to us, after taking possession of the goods, a lien on goods the subject of this Agreement. Under this arrangement you have agreed to allow us to keep open certain remedies available that statutory authority, for example, the *Sale of Goods Act*, may operate to limit without your consent.

## Risk

Unless otherwise agreed risk passes to you at the time we ship, and we ship FOB our ordinary place of business to your specified location. You assume all responsibility for filing claims for damage against the carriers and other agents involved.

## Transfer of Title and Property

Title of ownership and property in the goods vests absolutely with us and does not pass to you UNTIL you have discharged fully your obligations, for example, payment in full as required under this Agreement.

## Damage or Destruction

If any of the goods are damaged or destroyed prior to our tender of delivery, you will direct the insurer to make payment to us of all insurance monies payable in respect of the insurance claim made on the damaged or destroyed goods, the receipt of monies of which is to be applied by us as follows:

**First:** Against the outstanding price of the goods that are damaged or destroyed.

# GENERAL TERMS OF TRADE

**Second:** Against the outstanding price of all goods supplied under the Agreement.

**Third:** Against the outstanding balance payable to us by you on any account under the Agreement.

**Fourth:** If any monies remain after application of steps 1-3, we will notify you of the amount of any residual, and you are required to make a written reclamation demand within 10 business days after your receipt of the notice; otherwise, we have the right to hold the residual and apply it as a credit against future transactions between us.

## Access

You irrevocably permit us or any person authorised by us in writing, upon our giving you reasonable notice to enter your premises or a premises where the goods are reasonably believed by us to be held on your behalf. You also agree to indemnify and hold us harmless for reasonable costs of removal, enforcement, and legal action in respect of the removal of goods the subject of this Agreement.

## Further Assurances

1. You must sign documents or do anything to perfect our rights under this Agreement or to comply with any obligation under this Agreement.
2. You appoint us as your attorney to sign any document or do anything that we may reasonably require to comply with an obligation under this Agreement.

## Representations and Warranties

You represent and warrant to us that:

- All information and representations that you, or any person acting on your behalf, give us in connection with this Agreement are true and correct.
- You have not failed to disclose to us anything relevant to our decision to have commercial dealings with you;
- No litigation, arbitration, adjudication, mediation, or dispute is proceeding against you or is threatened against you that may have a material, adverse effect on your ability to perform your obligations under this Agreement;

You acknowledge that:

- We have accepted to enter into commercial dealings with you based upon the above-referenced representations; and
- You have not entered into this Agreement in reliance on any representation or warranty from us.

## The effects of statutory covenants diminished

If the law of the State or Territory where the transaction occurred was when we entered into this Agreement implies covenants into the transaction not contemplated by either or both of us, then the operation and effect of those implied covenants are diminished to the fullest extent permitted. Nothing in this provision purports to operate to exclude statutory covenants where it is an offence to do so or to do so renders this Agreement inoperable.

## Undertakings Regarding the Transaction or Transactions contemplated by this Agreement

Our tender of delivery under this Agreement is a condition to your duty to accept the goods or services provided and, unless otherwise agreed, your duty to pay for them. Tender entitles us to—

- Acceptance of the goods or services supplied; and
  - Payment according to this Agreement.
- Your acceptance of the Goods or Services occurs when you—
- After a reasonable opportunity to inspect the goods or services signify by words or conduct that the goods or services provided are conforming or that you retain them in spite of their non-conformity; or
  - Fail to make an effective rejection; or
  - Do any act inconsistent with our ownership.

Your acceptance of a part of any commercial unit is acceptance of that entire unit.

Your right, as against us to retain or dispose of the goods or services delivered or supplied, is conditional upon you making the payment due.

## Dispute Resolution

When a dispute arises between us, you agree to comply with our dispute resolution process. To this end a person under our Agreement who has a complaint against the other person for whatever reason is first required to notify the other party of the dispute by giving written notice specifying the following:

- The nature of the dispute;
- The outcome required; and

- The action believed necessary under the circumstances that will assist both in settling the dispute.

Each of us will then in good faith attempt to resolve the dispute by mutual negotiation, and if the dispute in some aspect involves payment of monies, the party withholding payment is required immediately upon receipt of the said notice to deposit the *disputed amount* into an escrow account with instructions pertaining to the release of funds. Undisputed amounts shall be paid forthwith.

A person who does not follow these instructions will violate the covenant of the duty of good faith and fair dealing under our agreement, and the facts and evidence in support of this breach *may* be brought to the attention of a trier of fact, if the dispute is not resolved and must be litigated in a court of competent jurisdiction.

A failure by a party to place funds into an escrow account, moreover, is conduct that may be interpreted by the other party as being such that the party is not able to pay its obligations as they become due and gives good cause for the other party, if that party so desires, to initiate remedial action without penalty.

## Notices

Notices, demands, or requests provided for or permitted to be given under our Agreement must, at all times, be in writing and may be given to the address identified on the most recent transaction document by—

- Personal Delivery
- Express or Registered Post with delivery confirmation
- Facsimile Transmission with receipt confirmation

Termination of this Agreement by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and any attempt to dispense with notification is invalid if its operation would be unconscionable.

## Personal Guarantee of Shareholders, Partners, and Spouses

If you are a corporation, trust or a partnership, all principals are required to sign a personal guarantee. If you are an individual, your spouse is required to sign a Personal Guarantee.

Unless all such principals or spouses, as applicable, execute such Personal Guaranty as required herein, this Agreement shall, at our option, become null and void and confer no rights upon you, notwithstanding performance for any duration under the Agreement.

All guarantors shall be jointly and severally liable for performance of all of the terms, covenants, and conditions of this Agreement.

## Privacy Act and Credit Information

You and the Guarantor jointly and severally acknowledge and agree that we are authorised to make approaches to a credit reporting agency throughout the term of the Agreement to obtain a report about the creditworthiness of either the Buyer or the Guarantor or both.

You and the Guarantor jointly and severally authorise us to engage in the exchange of information with a credit reporting agency or with other such parties as are necessary to give effect to the contract and to the ongoing relationship between the parties hereto.

You and the Guarantor jointly and severally acknowledge that the information referred to in the previous paragraph may include information about the creditworthiness, credit standing, credit history, credit capacity, and credit providers of either the Buyer or the Guarantor or both.

You and the Guarantor jointly and severally acknowledge that we will make such approaches as referred to herein as permitted by the various provisions under the *Privacy Act 1988* (Cth) including, but not limited to, sections 18E(8)(c) and 18K(1)(h). It is understood and agreed between us that any credit information received shall remain confidential.

## Execution and Counterparts

This Agreement may be executed in several counterparts and when so executed will constitute one agreement binding on us, despite the fact that our signatures may appear at different intervals on original and counterparts.

## Unenforceable Terms

Any provision in this Agreement that is prohibited or unenforceable under any applicable law or any jurisdiction shall as to such jurisdiction be ineffective without affecting any other provision of this Agreement. To the full extent that the provisions of such applicable law may be waived, both of us hereby waive them to the fullest extent possible so that this Agreement is still valid and binding and is enforceable in accordance with its remaining terms.

## Governing Law

**PERSONAL: GUARANTEE – Please read before signing**

This Guarantee is made on: (insert full date) .....

- BETWEEN -

**1. THE SUPPLIER:**

Company Name: ..... ABN: .....

Address: ..... Suburb: ..... State: ..... Postcode: .....

Phone: ..... Fax: ..... Email: .....

- AND -

**2. THE GUARANTOR:**

Full Name: .....

Address: ..... Suburb: ..... State: ..... Postcode: .....

Phone: ..... Fax: ..... Email: .....

**RECITALS**

A. The Supplier and the Customer identified below have entered into an *on-going supply agreement* that commenced with a **Credit Application** submitted by the Customer on ...../...../..... in consideration for the execution of this agreement by the guarantor.

**THE CUSTOMER:**

Company Name: ..... ACN: .....

Address: ..... Suburb: ..... State: ..... Postcode: .....

Phone: ..... Fax: ..... Email: .....

B. The undersigned Guarantor is a person with an interest in the *on-going supply agreement* above identified.

C. The undersigned Guarantor desires to guarantee the obligations of the Customer.

**TERMS OF THE GUARANTEE:**

**Section 1. Definitions and interpretation.**

- 1.1 Unless otherwise specified, the words and phrases used in this Guarantee have the same meaning as the agreement between the parties being guaranteed.
- 1.2 References to laws include regulations, instruments, by-laws, and all other subordinate legislation or orders made by any authority with jurisdiction in respect of this Guarantee.
- 1.3 This Guarantee must be interpreted so that it complies with all applicable laws. If any provision of this Guarantee does not comply with any law, then the provision must be read down so as to give as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of the Guarantee.
- 1.4 The laws of the State of **NAME** apply to this Guarantee.
- 1.5 Any change to this Guarantee **MUST BE IN WRITING AND SIGNED** by the parties.
- 1.6 An obligation imposed by this Guarantee on or in favour of more than one person binds or benefits all of them jointly and each of them individually.
- 1.7 The use of one gender includes the other and the singular includes the plural and vice versa.
- 1.8 If the guarantor is an individual, this guarantee binds that person's legal personal representative. If either of them is a corporation, this document binds its transferees.

**PERSONAL: GUARANTEE – Please read before signing**

1.9 The headings and mode of presentation of this guarantee do not form part of the agreement and cannot be used for its interpretation.

**Section 2. General**

2.1 The undersigned Guarantor covenants to:

- (a) Guarantee personally and unconditionally the obligations of the Customer to the Supplier and to be subject to and bound by all terms, conditions, restrictions, and prohibitions contained in the agreement, without limitation;
- (b) Act personally as surety for the full and faithful performance of all the financial obligations, commitments, and payments required of the Customer in any such subject in the Agreements.

2.2 The undersigned agrees that –

- (a) A statement in writing issued by an authorised person of the Supplier of the monies owing yet unpaid by the Customer as at the date indicated on the writing is *prima facie* evidence of the amount outstanding that is subject to enforcement under this guarantee.
- (b) The Supplier does not have to pursue any remedies it may have against the Customer or any other individual guarantor; but, rather, it may proceed directly and primarily against the undersigned with or without joining the Customer or other Guarantors as principals or as named parties in any such proceeding;
- (c) Notwithstanding any action that may be taken by the Supplier against the Customer, this guarantee will be enforceable against the undersigned Guarantor.

2.3 The undersigned Guarantor’s obligations are continuing and shall in no way be avoided or affected by any time or indulgence given by the Supplier to the Customer. Further, the undersigned Guarantor agrees that any:

- (a) Claim or right that the Supplier has or may have against the Customer SHALL take priority over any competing right of the guarantor; and
- (b) Goods and Services Tax imposed upon the Supplier by reason of supply of goods or services or both to the Customer shall be paid by Guarantor.

2.3 The undersigned is jointly and severally liable for such obligations, commitments, and payments required of the Customer.

**THE GUARANTOR, INTENDING TO BE BOUND LEGALLY, HAS HEREUNTO SIGNED THIS AGREEMENT THE DAY AND YEAR FIRST WRITTEN ABOVE.**

.....  
Signature of Guarantor

...../...../.....  
Date

.....  
Name of Guarantor (please print)

I witnessed the above Guarantor sign this document on the date indicated:

.....  
Signature of Witness

...../...../.....

.....  
Name of Witness (please print)