

HG TURF Pty Ltd Application for Commercial Credit

ACN 053 537 054

TO: H.G. Turf Pty Ltd ACN 053 537 054 ("H.G. Turf")

Application for Credit ("Application")

I/We the applicant ("Applicant") hereby apply for credit commercial accommodation and submit the foregoing information in support of the Application.

A copy of the terms and conditions of sale ("**Conditions of Sale**") have been provided to us as an attachment to this application for commercial credit and I/We acknowledge receipt of the Conditions of Sale and agree to be bound by its terms and conditions (as amended from time to time) at all times.

Terms used in this Application which are not defined in this Application have the meaning given to those terms in the Conditions of Sale.

I/We agree that:

(a) if granted, the credit account is subject to periodic review. H.G. Turf may obtain and disclose credit related information as set out below in respect of such a review as though it was the Application, and may vary the terms of the credit accommodation, refuse to extend any further credit, or close my/our account at any time without notice to me/us should it decide in its absolute discretion that circumstances warrant such action; and

(b) H.G. Turf may require security and/or bank or personal guarantees before goods will be supplied on a credit basis and in a case where the Applicant is a company or trading trust, directors' guarantees and statements of directors' personal assets and liabilities may be required (in which case H.G. Turf may provide information about me/us, or about the facility, to any proposed guarantor, including information from any credit report).

I/We declare that, as at the date of this Application, the Applicant is solvent and able to pay its accounts according to normal trading terms.

I/We warrant that the information contained in this Application is true and correct and that the signatories to this Application are authorised to bind the Applicant.

I/We declare that the credit to be provided is wholly or predominantly for business purposes.

IMPORTANT: You should **not** sign this declaration unless this credit is wholly or predominantly for business purposes. By signing this declaration you may **lose** your protection under the Consumer Credit Code.

Sole Trader or Partnership or Trustee

SIGNED by Sole Trader/Partner/Trustee in the presence of:)
)
)
)
 Signature of witness) Signature of Sole Trader/Partner/Trustee
)
)
 Name of witness (block letters))
 Name (block letters)

SIGNED by Sole Trader/Partner/Trustee in the presence of:)
)
)
)
 Signature of witness) Signature of Sole Trader/Partner/Trustee
)
)
 Name of witness (block letters))
 Name (block letters)

Company or Corporate Trustee

EXECUTED by)
 _____)
Company Name) Signature of director/secretary*
 in accordance with section 127 of the) *delete whichever is not applicable
 Corporations Act 2001 by authority of its)
 directors:)
 _____) Name of director/secretary* (block letters)
 Signature of director) *delete whichever is not applicable
 _____)
 Name of director (block letters)

IMPORTANT PRIVACY NOTICE AND CONSENT

<p>Applicant's (or Applicant's Director) Consent</p> <p>By applying to H.G. Turf Pty Ltd ("H.G. Turf") for commercial credit, I am or will be providing personal information about me to H.G. Turf. I acknowledge that some or all of this personal information, and any other personal information H.G.Turf collects about me ("my personal information") will or may be used to make an application to H.G.Turf for commercial credit. I consent to H.G.Turf using and disclosing my personal information for these purposes.</p> <p>I acknowledge that H.G.Turf may, and authorise H.G.Turf to:</p> <ul style="list-style-type: none"> • obtain and use certain credit information, including a credit report (as defined in the Privacy Act 1988 (Cth), and other information about me for the purpose of assessing my application for credit or for the purpose of collecting overdue payments, including information obtained from my bankers, from a commercial credit reporting service or from a publicly available source; • provide a credit reporting agency with the information about me contained in the application or otherwise acquired by H.G.Turf for the purposes of obtaining a credit report and about my conduct in relation to the provision of commercial credit to me pursuant to my application; • provide a proposed or actual guarantor with financial information about me for the purpose of the prospective guarantor deciding whether to accept the guarantee or to keep an existing guarantor informed about the guarantee; • exchange information about me with any credit providers named in the application or a credit report for the purposes of assessing the application for commercial credit, to notify of a default by me, to exchange information with other credit providers about the status of any commercial credit provided to me under the application where I am in default with other credit providers, and to assess my credit worthiness; and • review my credit worthiness from time to time, with a view to determining whether H.G.Turf requires further security in respect of the commercial credit facility, and obtain credit reports and exchange information with credit providers as set out above in respect of such review as if it were a fresh application for credit. <p>I acknowledge that H.G.Turf is authorised to do the above according to the provisions of the Privacy Act 1988 (Cth).</p>	<p>Guarantors' Consent</p> <p>In connection with an application to H.G.Turf Pty Ltd ("H.G.Turf") for commercial credit, I am or will be providing personal information about me to H.G.Turf. I acknowledge that some or all of this personal information, and any other personal information H.G.Turf collects about me ("my personal information") will or may be used to support an application to H.G.Turf for commercial credit and to help H.G.Turf assess whether to accept me as a guarantor for the commercial credit facility, and in the enforcement of the guarantee, if necessary. I consent to H.G.Turf using and disclosing my personal information for these purposes.</p> <p>I acknowledge that H.G.Turf may, and authorise H.G.Turf to:</p> <ul style="list-style-type: none"> • obtain and use certain credit information, including a credit report (as defined in the Privacy Act 1988 (Cth) and other information about me for the purpose of assessing an application for commercial credit made by the applicant named in the application, and assessing whether to accept me as a guarantor for commercial credit applied for by the applicant, of collecting overdue payments from the applicant in respect of the commercial credit or from me under any guarantee provided by me; • provide a credit reporting agency with personal information about me including for the purposes of obtaining the credit report referred to above; • exchange information about me with any credit providers named in the application or in a credit report for the purposes of deciding whether to accept me as a guarantor for commercial credit applied for by the applicant named in the application, to notify of a default by me under such guarantee and to exchange information with other credit providers about the status of any such guarantee; and • review the credit worthiness of the applicant from time to time, with a view to determining whether H.G.Turf requires further security in respect of the commercial credit facility, and obtain credit reports and exchange information with credit providers as set out above in respect of such review as if it were a fresh application for commercial credit. <p>I acknowledge that H.G.Turf is authorised to do the above according to the provisions of the Privacy Act 1988 (Cth).</p>
<p>Applicant(s) to sign here:</p> <p>Signature _____</p> <p>Name _____</p> <p>Dated _____</p> <p>Signature _____</p> <p>Name _____</p> <p>Dated _____</p>	<p>Guarantor(s) to sign here:</p> <p>Signature _____</p> <p>Name _____</p> <p>Dated _____</p> <p>Signature _____</p> <p>Name _____</p> <p>Dated _____</p>

1 Supply of goods

We will supply goods in accordance with, and subject to these terms and conditions (as amended from time to time).

2 Price

- 2.1 You agree to pay us the price specified to you by us on the date of order for each of the goods.
- 2.2 All prices advertised by us are subject to change without notice to you, except if agreed in accordance with clause 2.1.

3 Invoicing , payment and default

- 3.1 Unless otherwise agreed in writing our terms of payment are strictly net within 15 days from the date our invoice is issued. All goods remain our property until payment has been received in full.
- 3.2 You may not withhold any payment of money due to us under these terms and conditions for any reason.
- 3.3 We may accept payment by MasterCard, Visa or Bankcard and in the event that a credit card supplier charges us for your use of a card, we reserve the right to pass this charge on to you or, in our discretion, not accept that card.
- 3.4 We may charge you interest at a rate not exceeding two per cent (2%) per month or part thereof on any amount due and not paid by you within the time required for payment under clause 3.1.
- 3.5 Default by you under these payment provisions entitles us to:
- (a) rescind and terminate this credit agreement or any other agreement we may have with you;
 - (b) immediately demand full payment under any currently existing agreement between you and us, failing which we may, in addition to any other course of action then available to us, elect to terminate or rescind all or any other agreements between you and us immediately by notice in writing to you.
- 3.6 All losses, expenses and costs including legal fees on an indemnity basis, consequent upon your failure to pay on the agreed date, are recoverable from you by us as liquidated damages.

4 Delivery

- 4.1 If the preparation of your order or the delivery of any goods is suspended by your instructions or failure to instruct, the price will be increased to cover any extra expenses incurred by us. If you are unable to take the goods when they are ready for despatch then we may invoice you for storage.
- 4.2 If you cancel your order prior to delivery but after the goods are ready for despatch, we reserve the right to invoice you for all expenses involved in the preparation of your order.

5 Limitation of liability and indemnities

- 5.1 Certain laws imply terms into agreements for the supply of goods and prohibit the exclusion, restriction or modification of such terms ("**prescribed terms**").
- 5.2 Some prescribed terms permit a supplier to limit its liability for a breach of them. To the extent permitted by prescribed terms our liability in respect of a breach of a prescribed term relating to the supply of goods under these terms and conditions is limited at our sole discretion, to:
- (a) the replacement or repair of the goods concerned; or
 - (b) payment of the costs of replacement or repair of the goods concerned.
- 5.3 Except as provided by prescribed terms or in these terms and conditions, no written, oral or implied condition, warranty or term of any description whether under statute or by implication of law, custom or usage relating to the subject matter of these terms and conditions is any part of the contract between you and us or will have any operation or affect our rights unless that condition, warranty or term is recorded and accepted in writing, and signed by one of our authorised officers.
- 5.4 Subject to clause 5.2, we will not be liable to you (whether in tort or in contract) for or in respect of any loss or damage to persons or property or for death or injury caused by any act or omission (whether negligent or otherwise) on our part or on the part of any of our employees, agents, contractors or sub-contractors in

connection with or relating to these terms and conditions.

- 5.5 Without limiting clause 5.4, we accept no responsibility or liability for any loss or damage arising out of or in connection with any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused by:
- (a) the goods; and/or
 - (b) the entry onto, and any activities undertaken on and in, our premises by you or your employees, agents, contractors or sub-contractors.
- 5.6 You will indemnify us and keep us indemnified from and against liability and any loss or damage of any kind whatsoever arising directly or indirectly from:
- (a) any breach of any of the terms or conditions of these terms and conditions by you; and
 - (b) any claim by any person in respect of or arising out of or in connection with any of the matters referred to in clause 5.5.
- 5.7 Every exemption, limitation, defence, immunity or other benefit contained in these terms and conditions to which we are entitled will also be held by us to the benefit of, and will extend to protect, each of our employees, agents, contractors or sub-contractors (excluding you, your employees, agents, contractors and sub-contractors).
- 5.8 Each indemnity in these terms and conditions is a continuing obligation separate and independent from your other obligations and survives termination of these terms and conditions.
- 5.9 It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by these terms and conditions.
- 5.10 We will not be liable to you in any circumstances for any indirect, economic, special or consequential loss or damage, including but not limited to loss of revenue, loss of production or loss of profit.
- 5.11 No warranty is given and no responsibility is accepted by us to ensure that goods supplied under these terms and conditions comply

with any statutory requirements relating to the marketing of goods. Compliance with such legislation is your sole responsibility.

6 Returns and credit

- 6.1 If the goods are defective and within their warranty period you must notify us as soon as possible and we will arrange for you to return the goods via our nominated carrier with the freight paid to us. All return to us must be accompanied by our return authorisation details, specifying:
- (a) the reason for the return;
 - (b) our invoice number; and
 - (c) our staff member who authorised the return.
- 6.2 We will pay to you the reasonable freight costs if the goods are truly defective and not the subject of misuse.
- 6.3 If the goods are not defective, or misuse caused the defect, then you will be liable for payment of replacements (if any) and any other associated costs, including but not limited to the costs of freighting.

7 Events outside control

- 7.1 We are not responsible for non-delivery or delay in delivery of any goods caused directly or indirectly by events outside the control of the parties, including but not limited to:
- (a) war, threat of war or warlike conditions, hostilities, civil commotion, riots, fire, flood, strikes, lock-outs, accidental breakdown or mechanical failure of plant, machinery or equipment, acts of government;
 - (b) delays in transportation or default on the part of our manufacturer or supplier; or
 - (c) any other causes whatsoever beyond our reasonable control,

notwithstanding that any such cause may be operative at the time of entering into this agreement. Goods not so delivered and goods so delayed may at our option be delivered at any subsequent time or times and must be accepted and paid for by you.

8 Taxes

- 8.1 If GST has application to any supply made under this agreement, and the consideration payable or to be provided under this agreement is not otherwise expressly stated to be inclusive of GST, the party making the supply ("**Supplier**") may, in addition to the consideration payable

or to be provided elsewhere in this agreement, subject to issuing a valid tax invoice, recover from the party receiving the supply ("**Recipient**") an additional amount on account of GST.

- 8.2 If, it is determined on reasonable grounds that the amount of GST paid or payable on any supply made under this agreement differs for any reason from the amount of GST recovered from the Recipient then the amount of GST recovered or recoverable from the Recipient shall be adjusted accordingly.
- 8.3 All amounts payable by the Recipient to the Supplier by way of reimbursement of an amount paid or payable by the Supplier to any other person, or calculated on the basis of amounts incurred or to be incurred by the Supplier, shall be calculated on the basis of such amounts payable by the Supplier, or costs incurred by the Supplier, excluding any applicable amount in respect of GST incurred by the Supplier to the extent to which the Supplier is entitled to an input tax credit in respect of such GST or amount.

9 These terms are exclusive

- 9.1 By placing an order for goods with us, you agree to be bound by the terms in this document (as amended from time to time).
- 9.2 Except as otherwise provided for in this agreement, all terms, conditions, warranties, undertakings and representations (whether express, implied, statutory or otherwise, including any terms on any of your documents) relating to the goods or this agreement are excluded to the full extent permitted by law.

10 Other matters

- 10.1 Any of our rights under these terms can only be waived by us in writing.
- 10.2 These terms may only be varied in writing.
- 10.3 We may exercise a right, remedy or power in any way we consider appropriate and if we do not exercise a right, remedy or power at any time, this does not mean that we cannot exercise it later.
- 10.4 We may, as a condition of entering into this agreement, require personal guarantees in a form approved by us (including the receipt of a guarantor's certificate or a certificate of independent legal advice).
- 10.5 You must notify us immediately if there is a change in your trading address or in ownership.

10.6 You must obtain at your own expense any necessary licences or permits and comply with applicable laws in taking delivery of the goods from us.

10.7 Our rights, remedies and powers under this agreement are in addition to any rights, remedies and powers provided by law.

11 Governing law

11.1 This agreement is governed by the laws of Victoria, Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

11.2

goods means the goods the subject of this agreement (including any part of the goods).

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

party means you or us, and parties has the corresponding meaning.

price means the price specified in clause 2.1.

taxes means taxes, levies, imposts, charges and duties (including, stamp and transaction duties) imposed by any government agency, together with any related interest, penalties, fines and expenses in connection with them, imposed, levied or assessed or otherwise payable.

tax invoice has the meaning set out in the GST Act.

you means the person named in this agreement as the purchaser of the goods.

we and **us** and **our** means H.G.Turf Pty Ltd ACN 053 537 054.

PARTIES:

H.G. TURF PTY LTD

ACN 053 537 054

("we" or "us")

The persons identified below as guarantors ("Guarantor" or "you")

1. Consideration

You give this guarantee and indemnity in consideration of us agreeing to provide the Customer with commercial credit and agreeing to provide the Customer with Goods at your request. We acknowledge the receipt of valuable consideration from you for us incurring obligations and giving rights under this guarantee and indemnity.

2. Guarantee

You unconditionally and irrevocably guarantee to us the due and punctual payment by the Customer of the Secured Monies.

3. Indemnity

As a separate undertaking, you unconditionally and irrevocably indemnify us against all liability or loss arising from, and all damages, costs, charges and expenses incurred in connection with any breach of the Customer of the Terms and Conditions, or any failure by the Customer to pay any of the Secured Monies.

4. Payment

On any default by the Customer to pay any of the Secured Monies I will on demand by you pay such Secured Monies to you without the necessity of any prior demand having been made on the Customer or any other steps being taken against the Customer or its assets to enforce payment.

5. Rights

You waive any rights you may have to first require us to commence proceedings or enforce any other rights against the Customer or any other person before claiming under this Guarantee.

6. Liability Unaffected

Our rights and your liability under this Guarantee are not affected by anything which might otherwise affect them at law or in equity including, but not limited to one or more of the following:

- (a) the granting of time or any other indulgence to the Customer or any other Guarantor;
- (b) the release, waiver or variation of any of our rights against the Customer or any neglect or omission to enforce such rights;
- (c) any other things which under the law relating to sureties would or might but for this provision release me in whole or in part from the obligations under this Guarantee;
- (d) the release of any one or more of you by us;
- (e) a novation of a right of ours;
- (f) amendment of the Terms and Conditions;
- (g) the Customer:
 - (i) being an individual committing an act of bankruptcy or becoming an insolvent under administration;
 - (ii) being a body corporate becoming an externally-administered body corporate or having an application for winding up filed against it;
- (h) the Customer's obligations for payment becoming illegal, void, voidable or unenforceable in whole or in part;
- (i) payment by the Customer to us to the extent that payment might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001);
- (j) failure to give notice of any matter to you (including notice of default by the Customer);
- (k) you ceasing to be an officer of the Customer;
- (l) the termination of any agreement between us and the Customer; or
- (m) the withdrawal of or any variation to the credit provided by us to the Customer.

7. Continuing Obligation

This Guarantee is a continuing security and remains in force until the Secured Monies have been fully paid.

8. Suspension of your rights

You must not, without our consent:

- (a) raise a set-off or counterclaim available to you or the Customer against us in reduction of its liability under this Guarantee;
- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by us in connection with the Terms and Conditions; or
- (c) prove in competition with us if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Customer or the Customer is otherwise unable to pay its debts when they fall due,

for 2 years from the dates of this Guarantee, or until all the Secured Monies are paid, whichever is the longer.

9. Reinstatement of Guarantee

If a claim that a payment or transfer to us on connection with the Terms and Conditions or this Guarantee is void or voidable (including but not limited to a claim under the laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised, then we are entitled immediately as against you to the rights which we would have been entitled under this Guarantee if the payment or transfer had not occurred.

10. Costs

You must pay to you all costs and expenses incurred by us in connection with this Guarantee, including legal costs (on a solicitor-client basis), stamp duty and costs incurred in the recovery of monies owing by the Customer to us or in otherwise enforcing our rights against the Customer under the Terms and Conditions or you under the Guarantee.

11. Severance

If a provision of this Guarantee, would but for this clause be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;
- (b) if the provision cannot be read down to that extent, it must be severed without altering the

validity and enforceability of the remainder of this Guarantee.

12. We May Assign

Without notice to you or the Customer, we may assign to any person

- (a) the whole or any part of a debt comprised in the Secured Money; and/or
- (b) this Guarantee including the benefit of any indemnity in this Guarantee.

13. Final Discharge

Even when you do not owe any money us, we are not obliged to discharge this Guarantee if in our opinion:

- (a) within a reasonable time you might owe money to us;
- (b) a payment made us might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001).

14. Jointly and severally

A reference in this Guarantee to "you" is a reference to all persons named as a guarantor jointly and each of them severally. An agreement, representation, warranty or indemnity on the part of you binds the persons named as guarantor jointly and each of them severally.

15. Notices

A notice, approval, consent, or other communication in connection with this Guarantee may be given to you by delivery, post or facsimile to the address or telephone number given to us by you.

16. Applicable Law

This document is governed by the laws of the State of Victoria and the parties irrevocably and unconditionally agrees to submit to the non-exclusive jurisdiction of the courts of Victoria and the courts of appeal from them.

Each guarantor acknowledges that they:

- have read and understood this guarantee;
- prior to executing this guarantee, have had the opportunity to obtain independent legal and/or financial advice; and
- have made their own enquiries and are responsible for continuing to make their own enquiries as to the financial position of the Customer and have not relied on any statement made by or on behalf of H.G. Turf Pty Ltd.

Executed

Name of Customer _____ Date _____

Name of Guarantor _____ Name of Guarantor _____

Signature of Guarantor _____ Signature of Guarantor _____

Address of Guarantor _____ Address of Guarantor _____

Telephone _____ Telephone _____

Facsimile _____ Facsimile _____

Name of Witness _____ Name of Witness _____

Signature of Witness _____ Signature of Witness _____