Application for Credit & Terms of Trading Agreement with Evins Stores Pty Ltd, trading as Banner Hardware

(ABN 45008012833)

P (08) 8362 8992 F (08) 8363 1086 E sales@bannerhardware.com.au

Norwood	Blackwood	Beverley	Millicent	Naracoorte	Mt Gambier
Corner Magill & Fullarton Roads	191 Main Road	720 Port Road	Kentish Place	46 Sandstone Ave.	2 Sturt Street

If posting application, please forward to PO Box 2092, Kent Town SA 5071

ALL APPLICANTS

☐ Consumer ☐ Sole Trader ☐ Partnership ☐ Commercial Company

Trading Name: _____ Phone: _____

Trading Address: _____ Fax: _____

Email: _____ Type of Business: _____

COMPANY

☐ Pty Ltd. ☐ Trust ☐ Public Company ☐ Government Body ☐ Club/Association ☐ Other _____

☐ ABN: _____ ☐ Trade/Builder's licence no: _____

EXACT REGISTERED NAME OF INCORPORATED BODY: _____

ADDRESS OF REGISTERED OFFICE INCORPORATED BODY: _____

Street address if different to above: _____

Does incorporated body trade under a Business Name? Y / N Date of incorporation: _____

If yes, what is the Trading Name: _____

If a Trust, is the Trust: Discretionary / Unit (delete as appropriate) Date created: _____ Name of Trustee: _____

Date Trustee appointed: _____ Full names of Benificiaries/Unit Holders: _____

Director's Full Names	Residential Addresses	Private Phone	Date of Birth	Driver's Licence No.
Director 1:				
Director 2:				
Director 3:				
Director 4:				

SOLE TRADER / PARTNERSHIP

State names & addresses of Proprietor or Partners:

Name: _____ Address: _____ Phone: _____ Driver's Licence No. _____ DOB: _____

Name: _____ Address: _____ Phone: _____ Driver's Licence No. _____ DOB: _____

Name: _____ Address: _____ Phone: _____ Driver's Licence No. _____ DOB: _____

Name: _____ Address: _____ Phone: _____ Driver's Licence No. _____ DOB: _____

Date of commencement of business: _____ Affiliated or Parent Companies (1): _____

Previous Business & Address: _____ Previous Home Address: _____

TRADING TERMS AND CONDITIONS OF SALE

1. INTERPRETATIONS AND DEFINITIONS

a) The headings used are not to form part of this agreement but are for convenience of reference only and to not affect interpretation.
b) Where the context admits or requires words importing the singular numbers shall include the plural number and vice versa and those importing a gender shall include the other genders and words importing natural persons shall include corporations.
c) 'Supplier' means Evins Stores, trading as Banner Hardware.
d) A 'duty authorized officer' shall mean any of the general manager, managers, sales manager or credit manager of the supplier from time to time or any other person notified to the Customer by the Supplier specifically in writing.
e) A 'duty authorized officer' shall mean any of the general manager, managers, sales manager or credit manager of the Supplier from time to time or any other person notified to the Customer by the Supplier specifically in writing.

2. GENERAL

a) The terms and condition contained in this application shall not be varied by the wording of any Customers Purchase Order Form, Notice of acceptance or otherwise, unless such variation is expressly agreed to in writing by the Supplier.
b) The Supplier may vary the terms and conditions contained in this application by notice in writing to the Customer. The Customer agrees that a purchase of any goods or services after notice of variation will be an acceptance of such varied terms and conditions.
c) Should there be any variation to any of the information supplied by the Customer in the Application or in the structure or nature of the Customers business (such as a conversation to or from a Company or Trust) the Customer shall forthwith notify the Supplier in writing. Unless notification of such variation of change is given, the original Customer and Guarantors on this Application shall remain liable to the Supplier as through any goods or services or work or material supplied by the Supplier were supplied to the original Customer.
d) This agreement and all obligations hereunder shall be binding on the Customers personal representatives, successors and permitted assigns and shall be for the benefit of the Suppliers successors and assigns.
e) Any quotations given by the Supplier for the supply of goods or services shall not be binding on the Supplier until confirmed in writing by the Supplier.
f) The supplier may contact the customer via written communication, email, telephone, Mobile SMS, for purposes of debt collection, advertising and marketing and sales promotions.

3. PAYMENT / ACCOUNT TERMS

a) All goods and services supplied by the Supplier to the Customer during any calendar month shall be paid for in full by the Customer on or before the suppliers last trading day in the following month (the due date).
b) If the Customer does not pay the Supplier by the due date, the Supplier shall be entitled to debit to the account of the customer interest on the monies due, charged on a daily basis at the rate of 17.5% per annum from the due date for payment until the actual date of payment. The Supplier may debit the Customers account monthly or at such other times it chooses and may debit retrospectively. The supplier may at any time vary the interest rate by serving a notice in writing on the Customer and the interest rate shall be varied as therein effective from a date not less than 7 days after service of such notice.
c) Any legal costs, stamp duties or other expenses incurred by the Supplier in respect of this Application, Agreements, Guarantees, Securities or other documentation required by the Supplier in consequence of this Application together with any collection costs, dishonored cheque fees, mercantile fees, costs, disbursements and commissions incurred, shall be paid by the Customer to the extent that such payment is permitted by law.
d) The Supplier may withdraw credit facilities at any time or vary the credit limit, without notice to the Customer or the Guarantor (if any).
e) Notwithstanding any complaint, payment for all items other than those which are the subject of the complaint shall be made by the Customer to the Supplier in accordance with the agreed terms and conditions of trading.
f) If there shall be a breach of any of the terms and conditions of this Agreement, all monies payable by the Customer to the Supplier shall, at the Suppliers election, thereupon become immediately due and payable notwithstanding that the abovementioned due date shall not have expired.

4. DELIVERY

a) The Supplier shall deliver products to the delivery place nominated by the Customer. The Customer shall pay to the Supplier delivery charges in accordance with the Supplier current rates, as at the date of dispatch. If there is no current rate, then a reasonable rate shall be paid.
b) The Customer authorizes the Supplier to deliver products to the place nominated by the Customer and to leave the products at the place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the place.
c) The supplier shall not be obliged to obtain a signed receipt or other acknowledgment from any person at the place for delivery nominated by the Customer, but if a signed receipt or other acknowledgement is obtained from someone believed by the Supplier to be authorized by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgment shall be conclusive evidence of delivery, the quality of products delivered, the lack of defects in such products and otherwise compliance with the order.
d) The supplier shall not be liable for any failure to deliver or for delay in delivery of products occasioned by any strike, lockout, shortage of stock, shortage of labor, lack of skilled labor, delays in transit, fire, flood, hostility, civil commotion or other causes whatsoever whether or not beyond the control of the Supplier.

5. PROPERTY AND RISK

a) The Customer acknowledges and agrees with the Supplier that the Supplier shall remain the legal and beneficial owner of all products supplied until such time as the Customer has paid the Supplier in full for all products supplied. Until property in the goods passes to the Customer, the Customer holds the goods as fiduciary bailee and agent for the Supplier.
b) The Supplier is entitled to retake possession of any unpaid products in the event that the Customer defaults or commits an act of bankruptcy or a receiver is appointed of the Customer goes into liquidation or official management or some other form of insolvency administration whether formal or informal or the Customer ceases to carry on business or the Customer makes a scheme or compromise with his creditors or defaults in payment of any monies payable to the Supplier, without prejudice to any other rights of the Supplier.
c) The Supplier has the right of resale of the said products in the event that is retakes possession.
d) The Customer consents to the Supplier having access to the Custuomer premises to inspect the products at any time or to retake possession of the said products and if the said products are located on land other than land owned and occupied by the Customer and the Customer has a license implied or expressed or other right to enter upon such land then the Supplier shall be the Customers agent to enter upon such land to retake possession of the products and the Custuomer shall indemnified the Supplier from any loss or damage suffered by the Supplier or claims brought against the Supplier arising out of the Supplier retaking possession of the said products.

6. SPECIAL ORDERS AND SPECIFICATIONS IN GENERAL

a) The Customer warrants and agrees that all drawings and specifications and other design information provided to the Supplier for the manufacture of special orders are accurate and correct in all respects.
b) All products manufactured in accordance with the Customers special order and specifications and not ordinarily sold by the Supplier as standard stock items shall not be refundable to the Supplier nor shall the Customer be entitled to claim any rebate, refund or reduction in price.
c) The general rights of the Supplier and limitation on the Customer set out in other parts of this agreement are not limited by clauses 5 (a) and (b).

7. RETURN OF STOCK ITEMS

a) Products ordinarily sold by the Supplier as standard stock items may only be returned for credit to the customer's account within fourteen (14) days of the date or delivery of the products; and then only if the products are undamaged, unused and in good and saleable condition.
b) Products accepted for credit by the Supplier will attract a charge (the amount of which shall be at the discretion of the Supplier but not less than 15% of the price for those products to cover restocking and preparing charges. Such charges shall be deducted from the amount of credit allowed. The original invoice number must accompany all products returned to Supplier.

8. CLAIMS UPON SUPPLIER

a) Subject to clause 4 (c) the Customer has fourteen (14) days from the date of delivery of products within which to provide to the Supplier written notice of any alleged claim for failure to comply with the order whether due to shortfall, defect, incorrect supply or otherwise howsoever. Should the Customer fail to provide such notice within the stipulated time period the Supplier shall be deemed to have one of the following:
   (i) The replacement of the products or the supply of equivalent products.
   (ii) The repair of the products.
   (iii) The payment of the costs of replacing the products or of acquiring equivalent products.
   (iv) The payment of the costs of having the products repaired.

9. TRUST AND TRUSTEES

Where the Customer is a trustee:
a) The Customer agrees to forthwith produce a stamped copy of the trust deed (with all amendments) if and when requested by the Supplier.
b) The Customer warrants that is has full power and authority for the benefit and purpose and objects of the trust to enter into this Agreement on behalf of the trust and that is shall be bound by the terms and condition of their Agreement both personally and as trustee.

10. LAWS TO GOVERN PROVISIONS OF AGREEMENT

a) Unless varied by notice in writing by the Supplier this agreement and every variation amendment or special term of this agreement and all matters arising from the relationship of the Supplier and the Customer shall be interpreted and governed in accordance with the laws of the state in which this document is signed by or on behalf of the Customer notwithstanding that the products sold by the Supplier to the Customer may be delivered outside that state or the agreement for supply may be found to have been outside that state.
b) The Customer submits to the exclusive jurisdiction of the courts in the state referred to in clause 8 (a) or such other state or territory as the Supplier may from time to time notify in writing to the Customer.
c) The parties to this Agreement agree that proceedings may be commenced in any court in the state or territory having jurisdiction by virtue of clause 10 (b) and consent to that court having locality jurisdiction notwithstanding that the court would not have such jurisdiction without this consent.

11. NOTICE

Notice to be given by the Customer to the Supplier shall be delivered personally to the Credit Manager of the Supplier. Notice to be given to the Customer by the Supplier may be delivered personally, or sent to the Customer's last know address and unless the contrary is proved shall be taken as delivered on the second business day following posting. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post.

12. MISUSE OF ACCOUNT

The Customer will ensure no unauthorized persons use the account. If the Customers business is sold the Customer will close the account to prevent misuse and will remain liable for the account until written notification of change of ownership of the business has been received by the Supplier.

13. SEVERANCE

In the event that the whole or any part of parts of any provision in this agreement should be held to be void or unenforceable in while or in part such provision or part thereof shall to that extent be severed from these terms and conditions but the validity and enforceability of the remained of these terms and conditions shall not be affected.

14. NOTICE OF DISCLOSURE OF YOUR PERSONAL INFORMATION TO A CREDIT REPORTING AGENCY (Privacy Act 1988)

Evins Stores Pty Ltd may give information about you to a credit reporting agency for the following purposes:

- to obtain a consumer and commercial credit report about you, and/or
- allow the credit reporting agency to create or maintain a credit information file containing information about you.

I _____ the applicant on behalf of _____

Acknowledge that I have read and understood the terms of trade and agree to be bound by the said terms.

Signed: _____ Print Name: _____ Date: _____

CONSUMERS

Mr /Mrs /Miss_____ Christian Names: _____

Name of Spouse: _____

Address: _____ Telephone: _____

Name & address of nearest relative: _____

Occupation:_____ Telephone:_____ Mobile: _____

Employer's name & address: _____ Telephone:_____ Employment Status: _____

Period Employed: _____ Net Weekly Income $: _____ Previous Employer: _____

Home: (Owned, Buying, Leased, Renting, Boarding) _____ How long at present address: _____

Landlord: (Agent or Mortgage Holder) _____ Rental / Repayment Per Week $ _____

Bankers & Branch: _____ Cheque Account: _____ Saving Account:_____

Credit Card Limit $ _____ Current Balance (all cards) $_____ Driver's Licence Number: _____ DOB: _____

Vehicle Registration Number: _____ Make / Model: _____ Approximate Value $ _____ Liability on Vehicle $ _____

REFERENCES - Other Accounts (state whether still current)

_____ Balance $ _____ Weekly Payments $ _____

_____ Balance $ _____ Weekly Payments $ _____

_____ Balance $ _____ Weekly Payments $ _____

COMPANY / SOLE TRADER OR PARTNERSHIPS

Name, address and phone number of three trade references:

Name (1): _____ Address:_____ Phone: _____

Name (2): _____ Address:_____ Phone: _____

Name (3): _____ Address:_____ Phone: _____

ALL APPLICANTS

Anticipated volume of trading monthly $ _____

Name of person authorising payment of accounts: _____

Position: _____

Names of people other than the Applicant/s authorised to charge to the account (i.e. all staff): _____

Do you wish to use order numbers?: _____

INTERNAL USE ONLY

Approved credit limit $	Discount code applicable:

Store/s account applies at: _____

Shopper group: _____ Recommended by:_____

Approved by: _____ Approval Date: _____

Office Comments:_____

_____

_____

_____

_____

_____

_____

_____

AGREEMENT, CHARGE AND GUARANTEE

1. Each of us acknowledges that the information provided in this application is the basis for evaluation by the Supplier of the financial standing and credit worthiness of each of us (and the incorporated body) and do hereby;
   (a) Certify that the information provided in this application is true and correct.
   (b) Authorise the Supplier to make such inquiries and receive such information from the bankers and business referees mentions in this application and otherwise from anyone as the Supplier may reasonably consider necessary.
   (c) Acknowledge that the supplier has informed me/us, in accordance with the Privacy Act 1988 as amended, that certain items of personal information, including an opinion about me/us permitted to be kept on credit information file and might be disclosed to credit reporting agencies.
   (d) In accordance with the Privacy Act 1988 as amended:
      i) agree to the Supplier obtaining from a business, which provides information about the commercial credit worthiness of persons, information concerning my/our commercial activities or commercial credit worthiness and using such information for the purpose of assessing this application or assessing whether to accept me/us as guarantors as the case may be.
      ii) authorise the Supplier to exercise my/our credit rights of access to my/our credit information files and credit reports.
   (e) Agree that the Supplier may give to and seek from any credit providers (whether or not named in this application) reports and information that has any bearing on my/our credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:
      i) to assess an application by me/us for credit of commercial credit.
      ii) to notify other credit providers of a default by me/us.
      iii) to exchange information with other credit providers as to the status of my/our account where I/we are in default with the Supplier or other credit provider.
      iv) to assess my/our credit worthiness or commercial credit worthiness at any time.
      v) to assess whether to accept me/us as guarantors or to continue supplying credit to the applicant.
   (f) 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 applicant.
   (g) Agree that these authorizations shall continue to have effect for the duration which credit or commercial credit is provided or sought by the applicant from the Supplier.
2. (a) Each of us does (being the Applicant each director of the Applicant and any other guarantor) hereby charge all of his real property both present and future or whatsoever situate to secure all monies now owing or payable or hereafter to become owing or payable to the Supplier by us or any one or more of us including without limitation all monies now owing or payable or here after owing or payable to the Supplier in respect of goods supplied by the Supplier to us or to any one or more of us.
   (b) Each of us shall immediately upon demand being made on him by the Supplier execute in favour of the Supplier as a mortgagee a mortgage, payable on demand. In registrable form ('the mortgage') containing such covenants as the Supplier may require including without limitation, the covenants referred to in Clause 2 (c).
   (c) The supplier shall, in its absolute and unfettered discretion, be entitled to incorporate in each Mortgage referred to in Clause 2(b), in addition to any other covenants and having regard to the State or Territory in which the relevant real property is situate, any of the following Memorandum presently filed in the Titles Offices referred to: - NSW – Memorandum No W484502, Vic – Memorandum No AA342, QLD - memorandum No 700099781, ACT – Memorandum No 871453. In all other States and Territories the Supplier may incorporate the Provision of Memorandum No W484502 filed in the NSW Land Titles Office, subject to the Supplier being entitled to make such amendments to the said provisions necessary to refer to relevant local, State or Territory legislation.
   (d) Each of us hereby irrevocably appoints the Supplier his true and lawful attorney with free power in his name at any time to execute the Mortgage and to do all such acts matters and things as such attorney may consider necessary for carrying out or in connection with the exercise of all or any of the rights or powers contained or implied in the Mortgage or for the protection of the Mortgage and with full power to any such attorney for all or any such purposes from time to time to appoint a substitute or substitutes and to revoke any such appointment and each of us fully agrees to ratify and confirm every matter or thing which such attorney shall do or cause to be done in pursuance of the authority hereby conferred.
   (e) The supplier shall be entitled to lodge a caveat in respect of the Mortgage or agreement to grant a Mortgage hereunder over all and any real property referred from a titles Clause 2(a) and we shall not, nor shall any one or more of us object to the lodgment of a caveat or take any steps to have any such caveat removed from a titles office register.
3. If the Applicant is an incorporated body, in consideration of and as an essential condition of the acceptance of this application by the Supplier we do jointly and severally with the incorporated body, and in our own names:
   (a) Accept liability to the Supplier for the payment as principal debtor of all monies owed by the incorporated body to the Supplier from time to time and waive all rights as a more surety, which may be inconsistent therewith.
   (b) Bind the incorporated body and warrant our authority to bind the incorporated body.
4. In consideration of the Supplier agreeing to grant credit facilities to the Applicant we the undersigned do hereby jointly and severally guarantee payment of the Applicants account and all monies now and hereafter owed by the applicant to the Supplier and agree to be bound by the terms and conditions contained in this Application Form and that the Supplier may at all times act as if we were the principal debtor.
5. The guarantor shall not be discharged from liability by:
   (a) The administration in insolvency of the debtor of the guarantor or either of them ('administration in insolvency' includes any receivership, or receivership and management, any winding up (voluntary or compulsory) and any official management or composition arrangement with or assignment for the benefit of creditors in the administration in enquiry or otherwise of the estate or assets in whole or in part of the Debtor or Guarantor as the case may be).
   (b) From time to time any variation, modification or novation in the terms of supply or of the obligations of the Debtor or of other aspects of the relationship between the Supplier and the Debtor.
   (c) The Suppliers act, neglect, omission, delay or default by which the whole or part of the liability of the Guarantor or all or any part of the liabilities guaranteed would but for this provision have been affected or discharged.
   (d) The release of the Debtor and or one or more Guarantors by operations of law or otherwise.
6. In these cases of the Trustee Company, we acknowledge that the Trustee shall be liable on the account and that in addition the assets of the Trust shall be available to meet payment of the account.

ALL APPLICANTS

GUARANTORS

Directors Signature:_____ Witness Signature:_____

Print Name: _____ Print Name: _____

Date: _____ Date: _____

Directors Signature:_____ Witness Signature:_____

Print Name: _____ Print Name: _____

Date: _____ Date: _____

The Common Seal of _____ Pty Limited was here unto affixed by authority of its Board Directors

_____

We hereby acknowledge, atrium and agree that we have read, fully understand and comprehend the Terms and Conditions contained in the application. This application is signed as a Deed.

SHOULD BE SIGNED BY ALL DIRECTORS AS GUARANTORS AND EACH SIGNITURE WITNESSED.

SIGNED IN THE STATE OF _____

SIGNED FOR AND ON BEHALF OF THE APPLICANT/DEBTOR:

_____ Pty. Ltd. by _____ (DIRECTOR)