

COSTA'S MITRE 10

COMMERCIAL CREDIT APPLICATION & SUPPLY AGREEMENT

ACN 006 275 181

Postal Address

Po Box 4032

Hoppers Crossing, VIC 3029

**255 Old Geelong Road
HOPPERS CROSSING, 3029
Telephone: 9749 6499
Facsimile: 9748 6397**

To prevent any delay in processing this application please ensure that all details are completed.

TO: COSTA'S BUILDERS MART PTY LTD

1. CUSTOMER:

2. APPLICATION:

The Customer applies for a commercial Credit Account and agrees to be bound by the Supplier's Terms And Conditions of Supply in all dealings with the Supplier

3. PERSON COMPLETING THIS APPLICATION

The person completing this application on behalf of the Customer **HEREBY WARRANTS & REPRESENTS** that the information set out herein is true and correct and that they are authorised to sign this Application on behalf of the Customer and **ACKNOWLEDGES** that the Supplier will rely upon and be induced thereby to grant credit and to deal with the Customer.

Name:

Position:

Address (private):

.....Postcode.....

SIGNATURE:.....Date:...../...../.....

(Signed for & on behalf of the Customer)

4. **CREDIT LIMIT REQUESTED:** \$

5. **EXPECTED MONTHLY PURCHASES:** \$

6. **MEANS & ABILITY TO PAY**

The Customer warrants that it is solvent and has the future ability to pay all of its debts as and when they fall due.

7. **PURPOSE**

The Customer declares and warrants that products and services will be used for commercial purposes and not for the Customer's personal, domestic or household purposes.

8. **CREDIT INFORMATION**

The Customer and the person completing this Application ("we/us/our") irrevocably authorise the Supplier, its servants and agents to make such enquiries as they deem necessary to investigate our creditworthiness from time to time including:

- a. obtaining a report about my/our commercial activities or commercial credit worthiness from a business that provides information about the commercial worthiness of persons (notwithstanding that we may be applying for personal credit from the Supplier)
- b. obtaining a report containing personal credit information about us from a credit reporting agency (notwithstanding that we may be applying for credit from the Supplier)
- c. obtaining a report containing personal information about us from a credit reporting agency in the event the Supplier has provided us with commercial credit and we do not make payments to the Supplier as and when we have agreed and the Supplier considers this information is relevant to collecting such overdue payments.
- d. Contacting and both giving to and seeking from any credit provider named herein as 'Credit References', information about our credit arrangements including information concerning our credit worthiness, credit standing, credit history and credit capacity.
- e. Contacting and both giving to and seeking from any credit providers named in credit reports issued by a credit-reporting agency that same information as in d (above).
- f. Using the information from the Credit References named herein, or from the persons described in e (above).
 - i. to assess an application by us for credit,
 - ii. to notify other credit providers of a default by us,
 - iii. to exchange information with our credit providers as to the status of a loan which the Supplier extends to us where we are in default with our credit providers,
 - iv. to assess our credit worthiness.
- g. giving to any other credit provider or Credit Reporting Agency any credit information and any relevant trading information about us which is within the Supplier's knowledge or in the Supplier's possession or control in circumstances which are permitted by law.

A. TRADING DETAILS

Trading Name		
Business Registration Number		
Business Address		Postcode
Address for correspondence		Postcode
Telephone	Mobile	Fax
E-mail address		
Account Contact Name		
*invoice / delivery docket required at time of purchase *delete either invoice or delivery docket		
Order No. required <input type="checkbox"/> Yes <input type="checkbox"/> No	Job Address required <input type="checkbox"/> Yes <input type="checkbox"/> No	
Date business commenced		ABN No.
Nature of Business		

***PLEASE COMPLETE**

You can access your Costa's Mitre account online. Available 24/7, you can view and print invoices and statements as well as manage your account details. Please provide details below for access.

Contact Details for On-line Access	Email Address
1.	1.
2.	2.
3.	3.

*** PLEASE COMPLETE EITHER B OR C BELOW****B. PARTNERSHIP/ SOLE TRADER**

Name			
Address			
D.O.B.			
Private Phone No.			
Drivers Licence No.			
Residence	owned	rented	buying

Partnership/Sole Trader (continued)

Name			
Address			
D.O.B.			
Private Phone No.			
Drivers Licence No.			
Residence	owned	rented	buying

C. COMPANIES

Company Name	ACN
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Registered Office Address
Postcode

Address for correspondence
Postcode

DIRECTORS

Name			
Address			
D.O.B.			
Private Phone No.			
Drivers Licence No.			
Residence	owned	rented	buying

Name			
Address			
D.O.B.			
Private Phone No.			
Drivers Licence No.			
Residence	owned	rented	buying

Directors (continued)

Name			
Address			
D.O.B.			
Private Phone No.			
Drivers Licence No.			
Residence	owned	rented	buying

Name			
Address			
D.O.B.			
Private Phone No.			
Drivers Licence No.			
Residence	owned	rented	buying

D. TRUSTS

Is the Customer involved or associated in any way with a Trust	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, full name of Trust: <i>*Copy Trust Deed is to be provided with this Application</i>		

E. INSOLVENCY

Has the Customer or any of its' directors or partners been insolvent or involved in any way with an insolvent (liquidation, bankruptcy, receivership, administration or Part X)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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F. FINANCIAL DETAILS

Name of Trading Bank:
Branch:
Phone No.
Trading Account Name:
Account No(s)

G. TRADE REFERENCES (Major Suppliers) – at least 3 Current References supporting credit limit requested

Reference Name	Address	Telephone Number	Monthly purchases

TERMS AND CONDITIONS OF SUPPLY

To the fullest extent legally possible, all dealings between the Supplier and the Customer relating to any products, services or transactions are subject to the following Terms and Conditions of Supply

1. Payment

All goods and other products ("the goods") purchased by the Customer shall be paid for by no later than 30 days from the statement date for the period in which the goods were delivered irrespective of the date upon which any invoice in respect to such goods was received by the Customer or within such other period or time as may be notified to the Customer by the Supplier.

2. Interest

If any moneys payable by the Customer to the Supplier hereunder shall at any time remain unpaid after the same shall have become due (notwithstanding the other rights of the Supplier consequent upon such default) then the Supplier at its election may charge interest at the rate applicable under the Penalty Interest Rates Act 1983 (Vic) plus an additional 2 % from the date on which such moneys fell due for payment to the date on which such moneys are paid.

3. Variation and Notice

The Customer agrees that it will be deemed to have notice of any change to these Terms immediately they are adopted by the Supplier and to be bound by any such changes immediately they are adopted by the Supplier. No terms and conditions sought to be imposed by the Customer shall apply.

4. Risk & Property

- a) Risk in goods ordered shall pass to the Customer upon the sooner of the happening of:-
 - i. Delivery by the Supplier to the destination requested by the Customer;
 - ii. Loading of goods on an outside carrier vehicle or the Customer's carrier; or
 - iii. The expiration of one month from the date on which the Customer is notified that the goods are ready for delivery.
- b) Property in all goods shall not pass until payment in full of all monies owed for such goods and the Supplier reserves the right to take possession and dispose of goods as it sees fit at any time until full payment;
- c) The Customer grants permission to the Supplier to enter upon any premises where the goods are in order to so take possession and to use such force as is necessary;
- d) Upon delivery the Customer accepts liability for the safe custody of the goods and indemnifies the Supplier for any losses relating thereto;
- e) Upon disposition of any goods prior to payment in full, the Customer agrees to hold all proceeds in trust for the Supplier ;
- f) Until payment in full the Customer agrees to keep all goods which are unpaid for as fiduciary for the Supplier;
- g) This clause 4 is not intended to create a charge and shall be read down to the extent necessary;

- h) The Customer agrees that:
- i. goods will be deemed at all times to be dealt with by the Customer on a "first in first out" basis ;
and
 - ii. a certificate signed by an officer of the Supplier identifying goods as unpaid for shall be conclusive evidence that the goods have not been paid for and of the Supplier's title thereto;
- i) If the Customer uses any goods in any manufacturing, fabrication or process then the Customer agrees to hold such part of the proceeds of sale of the finished article which equates to the invoiced price for the goods used upon trust for the Supplier until payment in full for those goods and of all monies owed to the Supplier.

5. Limitation of Liability

- a) The Customer agrees to limit any claim it makes to the cost of supply of equivalent goods;
- b) The Supplier will not be liable for any claim, loss or expense which is made after 14 days from the date of delivery (or at all once goods have been unpacked, on-sold or otherwise used or applied) after which there shall be deemed to be unqualified acceptance;
- c) The Supplier will not be liable for any contingent, consequential, direct, indirect, special or punitive damage arising in any way whether due to the Supplier's negligence or otherwise and the Customer acknowledges this express limit of liability and agrees to limit any claim accordingly; and
- d) No other term, condition, agreement, warranty, representation or understanding whether express or implied, extending to or relating or binding upon the Supplier is made or given.

6. Exclusions

- a) Any material published by the Supplier concerning its' goods or prices which is incompatible with these terms is expressly excluded from this agreement; and
- b) The Customer relies on its own knowledge and expertise in selecting any goods for any purpose and any advice given by or on behalf of the Supplier shall not be deemed to be given as an expert or advisor nor to have been relied on by the Customer.

7. Deposit

The Customer agrees to pay the Supplier any deposit required by the Supplier as a condition of acceptance by the Supplier of any order.

8. Purchase price

All sales are made at the Supplier's ruling price at the time of delivery. Duty, Government charges, etc. including GST("imposts") will be to the Customer's account. The Supplier's price lists exclude imposts unless expressly noted thereon and any volume rebate or discount will be calculated on base price exclusive of imposts.

9. Delivery

- a) The Supplier may charge for delivery;
- b) The Customer will be deemed to have accepted delivery and liability for the goods immediately that the Supplier delivers the goods to a carrier or to the Customer's business premises or wheresoever directed by the Customer whether attended or not;
- c) A certificate signed by an officer of the Supplier confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket; and
- d) The Supplier will not be liable for delay, failure or inability to deliver any goods.

10. Placement of Orders

The Customer agrees that:

- a) In the event of any dispute concerning any order (including any question of identity or authority or any telephone, facsimile, e-mail, e-commerce or computer generated order) that the internal records of the Supplier will be conclusive evidence of what was ordered;
- b) Each order it places shall be and be deemed to be a representation by it, made at the time that the order is so placed, that it is and will remain in the future, solvent and able to pay its' debts as and when they fall due;
- c) Failure to pay the Supplier in accordance with these Terms shall be and be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in 10 b) and that the representations were unconscionable, misleading and deceptive; and
- d) When any order is placed, the Customer shall inform the Supplier of any material facts which would or might reasonably affect the commercial decision by the Supplier to accept the order and/or grant credit in relation thereto. Any failure by the Customer to do so shall be deemed to constitute the taking of an unfair advantage of the Supplier and to be unconscionable, deceptive and misleading.

11. Defaults

Upon any breach of these Terms or default in any dealing with the Supplier by the Customer:

- a) The Supplier may retain all monies paid and/or cease further deliveries and recover from the Customer all loss of profits arising and /or at its' discretion take possession of any goods not paid for in full, without prejudice to any other rights and without being liable to the Customer or any other party;
- b) The Customer agrees not to commence or continue or permit to be commenced or continued through it any action against the Supplier until such default or breach is remedied; and
- c) The Supplier will be deemed to have requested the securities referred to in clause 12 hereof.

12. Security for Payment

The Customer will on request, execute a charge in favour of the Supplier which charges;

- a) by way of fixed charge, all its' books of account, financial records, goodwill, documents of title and current and later acquired property and intellectual property; and
- b) by way of floating charge, the whole of the Customers' other assets;
with payment of all monies owed.

13. Customer restructure

The Customer will notify the Supplier in writing of any change in its' structure or management including any change in director, shareholder, management or change in partnership or trusteeship or of sale of any material part of its' business within 7 days of such change and will be remain liable to the Supplier for any purchases from the Supplier from any party acquiring any material part of the Customer's business until such notice is given.

14. Insolvency

If the Customer commits or is involved in any act of insolvency it agrees that this should be deemed a default under these Terms. For the purpose of this clause an act of insolvency is deemed to include bankruptcy, liquidation, receivership, administration and the like.

15. **Credit Limit**

The Supplier can vary or withdraw any credit facility at any time at its' discretion, without liability to the Customer or any other person.

16. **Force Majeure**

If, as a result of any fact, circumstance, matter or thing beyond its' reasonable control (including any strike or lock out) then the Supplier will not be in default or breach of any contract with the Customer, or any of these terms, and will be relieved of its' obligations to the extent and for the period that it is so unable to perform and shall not be liable to the Customer in respect of such inability.

17. **Jurisdiction**

All dealings with the Supplier shall be deemed to occur in the State of Victoria and the Customer agrees to submit to the jurisdiction of Courts of Victoria.

18. **Waiver**

If the Supplier elects not or fails to enforce the provisions of this agreement or to exercise any rights expressed in this agreement then such failure or election on its' part shall not preclude or prejudice or be a waiver of the same or any other rights it may have irrespective of any previous action taken by it.

19. **Recovery Costs**

The Customer will pay any costs and expenses incurred by the Supplier or its solicitors, legal advisers, mercantile agents and others acting on the Supplier's behalf in respect of anything arising from these Terms or any dealing with the Supplier.

20. **Indemnity**

The Customer indemnifies the Supplier against any claim or loss arising from or related to any dealing with the Supplier or anything arising therefrom or arising as a result of or subsequent to any breach of these Terms or any part of the *Trade Practices Act 1974*.

21. **Severability**

Any part hereof being a whole or part of a clause shall be capable of severance without affecting any other part of these Terms.

These Terms are acknowledged as having been read, understood and agreed.

Name:

Position:

Address (private):

.....Postcode.....

SIGNATURE:.....**Date:**...../...../.....

(Signed for & on behalf of the Customer)

AGREEMENT TO GUARANTEE AND INDEMNIFY

To: **COSTA'S BUILDERS MART PTY LTD** trading as **COSTA'S MITRE 10 HOME & TRADE**

Of: **P.O. BOX 4032 HOPPERS CROSSING VIC. 3029**

In consideration of you, at your discretion, entering into the Supply Agreement and granting credit to the Customer and/or forbearing from taking any legal action against the Customer for one month we agree as follows:

2. Acknowledgement: We acknowledge that:

- a. this is an enforceable agreement intended to be legally binding;
- b. we have been told by You that it is essential that we understand our legal rights and obligations;
- c. we have been told by You to obtain independent legal advice to ensure that we properly understand the nature and effect of this agreement; and
- d. Whether or not we have obtained independent legal advice is a matter solely of our own choosing.

3. Definitions

- a. "**You**" and "**Your**" means each of the parties listed below as "Supplier" jointly and severally and any party who acquires any part of Your business;
- b. "**We**" and "**us**" means each of the Guarantors and Customers jointly and severally;
- c. "**Customer**" means each of the parties listed below as "Customer" jointly and severally and any party who acquires and/or conducts any part of the business of the Customer or has any beneficial interest therein until notice is given pursuant to clause 3(e) and also each member of any franchise/licensed network of which the Customer is a member.
- d. "**Supply Agreement**" means the agreement between You and the Customer for the supply of goods on credit.

4. We guarantee payment to you of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Customer or any of us arising from any past, present or future dealing with you and any GST applicable thereto.

5. **We indemnify you** against all losses, costs, charges and damage arising from any past, present or future dealing you have had with the Customer or any of us or arising from any breach of any part of this Agreement to Guarantee and Indemnify (“this Agreement”) by any of us.
6. **We agree:**
- a. to pay to a stakeholder nominated by you the amount you certify is payable, before being entitled to dispute whether that amount is payable;
 - b. that this Agreement shall be effective despite any conduct or event (including any later agreement to guarantee or indemnify and any other security taken or any Deed of Company Arrangement whether or not you agreed) which may have released or varied any obligation of the Customer or any of us;
 - c. that any payment which is subsequently avoided by law relating to insolvency shall be deemed not to have been paid;
 - d. that we sign in our personal capacity and as trustee of every trust of which we are trustee;
 - e. to notify you within 7 days of any change in the customer’s structure, management or position, including:
 - i. any sale or disposition of any part of the business of the Customer;
 - ii. any change in director, shareholder, management, partnership or trusteeship
 - iii. any new charge, mortgage or security given to any party by the Customer;
 - iv. any involvement in the franchise or licensed business in any capacity.
7. **Charge:** Upon request, we agree to sign a charge in your favour (& in the form you or your solicitors request), charging all our estate and interest in any land or other assets, tangible or intangible in which we now have any legal or beneficial interest personally or as Trustee or in which we later acquire such interest, with payment of all monies owed to you by the Customer or any of us.
8. **Proper Law:** This Agreement and any claim or dispute between the Supplier, the Customer or any of us shall be governed by the law applicable in Victoria.
9. **Several Guarantors:** If more than one Guarantor is intended to sign, we each agree to be liable for the full amount owed even if we are the only one to sign. You may make any arrangement or compromise with any of us, obtain additional guarantees, indemnities or securities from any of us or any other party or release or compromise with any Guarantor or party and any amount may be extinguished or compromised without affecting our liability to you.

10. **Credit Limit:** Any credit limit you grant or apply to the Customer is at your discretion and will not limit our liability to you.
11. **Privacy Act:** You may make any enquiries you deem necessary to investigate us including enquiry with our bankers, any credit provider or credit reporter and any personal credit and consumer credit information, LandData property enquiries and name searches (“the sources”). We authorise the sources to disclose anything about us which is in their possession. We agree that you may disclose information that you have about us to the sources.
12. **Severability:** Any part of anything herein shall be severable without affecting any other part hereof.
13. **Acknowledgement of Current Debt:** We acknowledge that the Customer owes you the sum noted below at item C (if any) but acknowledge and agree that this Agreement to Guarantee and Indemnify is unlimited.
14. **Demand:** We agree that our liability to you arises without any demand upon the Customer or any of us.
15. **Stamp Duty:** We agree to pay any stamp duty applicable to this Agreement or any charge or security created pursuant to clause 7 or otherwise.
16. **Other Guarantees:** We agree to provide details of all guarantees and/or indemnities we have given or subsequently give to any party which the Supplier ought reasonably to have knowledge of, in dealing with the Customer in reliance (in part or in full) upon this Agreement.
17. **Continuing Guarantee:** This Guarantee shall be a continuing Guarantee and Indemnity and shall not be released by:-
 - a. any neglect or forbearance on your part in enforcing payment of any of the moneys payable under the Supply Agreement;
 - b. the performance or observance of any of the agreements, obligations or conditions under the Supply Agreement;
 - c. by time given to the Customer for any such payment performance or observance;
 - d. any election by you not to exercise your rights pursuant to clause 4 of the Supply Agreement;
 - e. by reason of you assigning your rights under the said Supply Agreement; and
 - f. by any other thing which under the law relating to sureties would but for this provision have the effect of releasing us, our executors or administrators.

COSTA'S MITRE 10

MITRE 10 *TradeCentre*

You can
now access your
Costa's Mitre 10
account online.
Available 24/7, you
can view and print
invoices and statements
and manage your
account details.



For more information
on how to use

Tradies Online

contact Louise on

(03) 9974 7022

or email

accountsrec@costasmitre10.net.au

[CLICK HERE](#)

GET IN, GET OUT, GET ON WITH IT

"just what tradies want"

255 Old Geelong Road, Hoppers Crossing

PH: 03 9749 6499

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