

# CREDIT APPLICATION FORM

This is an application for a credit account (Credit Application) to be provided by ThermaGalv Pty Ltd ABN 28 680 359 488 trading as ArmorGalv and includes the following:

1. Credit Application Details
2. Credit Account Terms and Conditions
3. Deed of Guarantee & Indemnity (to be completed where Applicant is a company or trust)

**WARNING: THIS IS AN IMPORTANT LEGAL DOCUMENT. IF YOU DO NOT UNDERSTAND THIS DOCUMENT, YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE.**

## Section 1 - All Applicants Must Complete this Section

Enter all details relevant to your Business:

Business operates as ☐ Pty Ltd / Ltd Company ☐ Trust ☐ Sole Trader ☐ Partnership

Business/Company Name \_\_\_\_\_

Trading Name \_\_\_\_\_

Trust Name \_\_\_\_\_

ABN/ACN \_\_\_\_\_

Postal Address \_\_\_\_\_

Business/Street Address \_\_\_\_\_

Phone Business \_\_\_\_\_ After Hours \_\_\_\_\_ Mobile \_\_\_\_\_

Fax \_\_\_\_\_ Email \_\_\_\_\_

Date Business Commenced \_\_\_\_\_ Nature of Business \_\_\_\_\_

Business Premises Are ☐ Owned ☐ Leased

If Business Premises are Leased, Name and Phone Number of Agent \_\_\_\_\_

(Business) Bank Name \_\_\_\_\_

BSB No. \_\_\_\_\_ Account No. \_\_\_\_\_

Credit Amount Required. Provide an estimated amount required per month for Services provided by Hunter Galvanizing Pty Ltd.

Credit Required \$ \_\_\_\_\_

Estimated amount required per month \$ \_\_\_\_\_

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Section 2 - Companies, Trusts, Sole Traders and Business Partnerships

Enter details of all Directors, Trustees, Sole Traders and Business Partners:

Full Name

DOB

Residential Address

Postcode

Residence

Owned

Rented

Full Name

DOB

Residential Address

Postcode

Residence

Owned

Rented

Full Name

DOB

Residential Address

Postcode

Residence

Owned

Rented

Full Name

DOB

Residential Address

Postcode

Residence

Owned

Rented

Section 3 - All Applicants Must Complete this Section

Enter Trade References (The Applicant must be a credit customer of these referees. Minimum of 3 required)

Name	Location	Phone No.	Email

Enter Details of Assets and Liabilities (if insufficient space attach separate sheet)

Note: The Applicant should be aware that any real estate owned by the Applicant is subject to a security interest as set out in clause 3.

Assets		Liabilities	
Description	\$ Value	Description	\$ Amount
Total		Total	

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Enter details of the Assets and Liabilities of the directors or proprietors\* (not required for Public companies)

Assets		Liabilities	
Description	\$ Value	Description	\$ Amount
Total		Total	

\* Please enter the consolidated position where there is more than one director or proprietor

Enter details of the Applicant’s financial performance over the last three years:

Assets	Liabilities	Profit

It will assist us to assess your credit application if you could please provide a copy of the most recent set of financial statements prepared by an external accountant.

## CREDIT ACCOUNT TERMS AND CONDITIONS

The following terms and conditions apply to this Credit Application. By signing this Credit Application, you agree to be bound by such terms and conditions upon you being advised by the Supplier of your successful application.

In this Credit Application, unless otherwise specified:

- **“Agreement”** means this Credit Application read together with any Deed of Guarantee and Indemnity and/or other document annexed to or incidental to this Credit Application
- **“Applicant”** means the party applying for credit under this Credit Application and noted as such in sections 1 and 2.
- **“Charged Securities”** means all real and personal property, whether owned solely or jointly, at present or at future time, together with any proceeds of the same.
- **“Default Event”** means the non-payment of any amount(s) owed by the Applicant under this Agreement and/or the non-fulfilment of or breach of the Applicant’s other obligations under this agreement.
- **“Guarantor”** means the person or persons named in the Guarantee and Indemnity.
- **“Services”** includes all goods and services of the Supplier supplied to the Applicant from time to time.
- **“Supplier”** means trading as ArmorGalv.
- headings are for convenience only and do not affect interpretation.
- the singular includes the plural and vice versa and words importing a gender include other genders.
- a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed.
- a reference to a party includes its executors, administrators, successors and permitted assigns.
- a reference to ‘A\$', ‘\$A’, ‘dollar’ or ‘\$’ is a reference to Australian currency.
- if more than one Applicant, the terms and conditions apply to each Applicant jointly and severally.
- a reference to a document (including this Credit Application) is to that document as varied, novated, ratified or replaced from time to time.
- a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements.
- a reference to the ‘Credit Application’ and ‘Agreement’ means one and the same thing.
- “includes” in any form is not a word of limitation.

- no provision of this Credit Application is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.
- the Applicant cannot at any time assign, deal with or otherwise transfer any of its rights or obligations under this Credit Application without the prior written consent of the Supplier. The Supplier may at any time assign, deal with or otherwise transfer any of its rights or interests pursuant to this Credit Application without the prior written consent of the Applicant.
- this Credit Application and the transactions contemplated by this Credit Application are governed by the laws of New South Wales and each party agrees to irrevocably submit to the jurisdiction of the relevant Courts of New South Wales in respect of any claims, proceedings and matters arising out of or in respect of this Credit Application.
- to the extent of any inconsistency or conflict between this Credit Application and any terms and conditions of sale of ThermaGalv Pty Ltd, the terms and conditions of sale prevail.

## 1. General Account Provisions

- (a) The Applicant acknowledges and agrees that all accounts must be paid in full and without deduction or set off on that date (the "Due Date") advised to the Applicant from time to time by the Supplier being within thirty (30) days after the end of the calendar month during which the invoice was issued.
- (b) The Supplier reserves its right to refuse to extend credit to the Applicant at any time, in its absolute discretion and without the necessity to provide any reason. Furthermore, the Supplier may require payment of a deposit or pre-payment at any time and for any order (including, any special orders).
- (c) The Applicant acknowledges the Supplier is relying on the accuracy of all of the information and representations provided by the Applicant in this Credit Application. The Applicant agrees to inform the Supplier in writing of any changes to its business structure and other information as provided in this Credit Application within 7 days of such change.
- (d) The Supplier may at any time withdraw or vary the terms on which credit is given, upon first providing notice in writing to the Applicant.
- (e) If the Applicant does not make any payment by the Due Date, exceeds its credit limit at any time, commits a Default Event or any other material breach of these terms and conditions or an insolvency event in respect of the Applicant arises or is reasonably suspected by the Supplier, the Supplier may (without limitation to any other right or claim it may have against the Applicant) do any or all of the following:
  - (i) charge the Applicant interest calculated on a daily basis on any portion of the Applicant's account that is overdue at the Westpac Banking Corporation Limited Business Overdraft rate plus 2% calculated from the Due Date until the date payment is made (both dates inclusive);
  - (ii) vary or withdraw any approved credit limit and/or terms of trade;
  - (iii) cancel or suspend the provision of the Services;
  - (iv) terminate any contracts between the Supplier and the Applicant and demand immediate payment of any monies due and outstanding under those contracts;
  - (v) institute any recovery process as the Supplier, in its discretion, decides at the Applicant's cost and expense;
  - (vi) require that the Guarantor pay all amounts outstanding and all costs incurred by the Supplier incidental to the enforcement or attempted enforcement of this Credit Application; and
  - (vii) lodge a caveat on title on all or any of the Applicant's Charged Securities in accordance with clause 3.
- (f) If any part of an invoice is in dispute, the balance will remain payable and must be paid when due. The Applicant has no right to set-off any claim against the Supplier from monies owing to the Supplier.
- (g) The Applicant agrees to pay all legal costs and any expenses incurred by the Supplier (at the higher of indemnity or on solicitor and own client basis) in recovering overdue accounts, including but not limited to fees payable to the Supplier's collection agents or lawyer.
- (h) The parties acknowledge that, for all intents and purposes, this Credit Application constitutes a contractual agreement ('Agreement') for the supply of goods and services between the Supplier and the Applicant which is enforceable in a court of law.
- (i) if any part of this Agreement becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

## 2. Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Credit Application:

- (a) must be in writing;
- (b) must be signed by the party making it or on that party's behalf by the solicitor for, or any attorney, director, secretary, or authorised agent of that party;
- (c) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee, set out in this Credit Application or notified by that party to each other party from time to time; and
- (d) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the day of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the day of posting by airmail;
  - (iii) (in the case of email) when the sender receives an automated message confirming delivery, or 30 minutes after the time sent as recorded on the device from which the sender sent the email, unless the sender receives an automated message that the email has not been delivered, whichever happens first.; and
  - (iv) (in the case of delivery by hand) on delivery; but if the communication is taken to be received on a day that is not a working day or after 5.00pm, it is taken to be received at 9.00am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered.)

### 3. Security Interest/Caveat Clause

It is agreed between the Applicant and the Supplier that:

- (a) the Applicant hereby grants to the Supplier a security interest in all its Charged Securities, as security for any payment which becomes payable to the Supplier under this Agreement and for the full performance of its obligations under the Agreement.
- (b) on the occurrence of a Default Event, the Applicant consents to the Supplier lodging and registering a caveat on title in respect of all or any of its Charged Securities which relate to real property in accordance with Section 74F of the Real Property Act 1900.
- (c) on the occurrence of a Default Event, the Supplier may have recourse to clause 3(b) at its own discretion, in connection with the security interest granted by the Applicant pursuant to clause 3(a).
- (d) where a caveat has been registered in accordance with clause 3(b), the Applicant will not apply to lapse the caveat under Sections 74I and 74J of the Real Property Act 1900 and will indemnify the Supplier from any claims of loss, whether monetarily or otherwise, made by the Applicant or any other party as a result of the caveat being registered.
- (e) the Supplier will withdraw any caveat registered on title as referred to in clause 3(b) upon receipt of full payment of any monies owed by the Applicant under this Agreement and upon the fulfilment of any other obligations pertaining to clause 3(a).
- (f) the Applicant will be responsible for any fees and legal costs associated with registering a caveat on title and where applicable, the cost of withdrawing the caveat.
- (g) if a Deed of Guarantee and Indemnity has been provided to the Supplier in connection with this Agreement, nothing in this clause 3 prevents the Supplier from exercising its rights under this clause 3 and under the Deed of Guarantee and Indemnity at one and the same time, in relation to the same Default Event.
- (h) The Applicant warrants that:
  - (i) it has entered into this Agreement on its own volition, after having read and fully understood the terms of this Agreement and particularly, the legal implications of granting a security interest to the Supplier under this clause 3; and
  - (ii) the Supplier has afforded the Applicant the opportunity to seek legal advice in relation to the Agreement and the granting of any security interest.

### PRIVACY NOTICE, CONSENT AND WARRANTY

By signing where indicated below, you:

1. Consent to us collecting any personal information for the purpose of assessing this Credit Application and acknowledge that you may access any information we may hold about you on request;
2. Acknowledge that if you do not disclose all the information requested in this Credit Application, we may not be in a position to provide you with credit;
3. Acknowledge that we may disclose your personal information or that of any directors, officers or related entities in accordance with our policy, which may include our legal and other professional advisors and collection agencies in order to recover any monies due and payable by you;
4. Acknowledge that, in order to assess your creditworthiness, we may seek from any other credit providers or the trade references named in this Credit Application, information about your personal or commercial credit arrangements or that of your related entities and may obtain a credit report about you and your related entities from a credit reporting agency;
5. Acknowledge that you have received, read and understood our terms and conditions of sale and agree to be bound by them;
6. Warrant that all information provided by you in connection with this Credit Application is true and correct and not misleading or deceptive; and
7. Warrant that you are duly authorised to sign this Credit Application on behalf of the Applicant.

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## SIGNATORY DETAILS

The Applicant and each individual signatory hereunder agree to be bound by the terms and conditions of this Credit Application.

The Applicant must complete (as applicable) and sign where indicated. If the Applicant is a company or trust, the Guarantee and Indemnity must be completed and signed by the directors or trustee directors of the company or trust.

**Section A** - *this section must be completed if the Applicant is a company or trust*

*\* Either two Directors OR Director & Company Secretary OR Sole Director to sign*

Applicant Name: \_\_\_\_\_  
(Insert company/trust name)

Street Address: \_\_\_\_\_

### Director/Trustee 1

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full name of person signing: \_\_\_\_\_ Position held: \_\_\_\_\_

In the presence of \_\_\_\_\_  
(insert full name of Witness - please print) Signature of Witness

of \_\_\_\_\_  
(insert full address of Witness - please print)

Note: the Witness must be unrelated to the person signing

### Director/Trustee 2

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full name of person signing & position held: \_\_\_\_\_

In the presence of \_\_\_\_\_  
(insert full name of Witness - please print) Signature of Witness

of \_\_\_\_\_  
(insert full address of Witness - please print)

Note: the Witness must be unrelated to the person signing

**Section B** - *this section must be completed if the Applicant is an Individual*

Full Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

In the presence of \_\_\_\_\_  
(insert full name of Witness - please print) Signature of Witness

of \_\_\_\_\_  
(insert full address of Witness - please print)

Note: the Witness must be unrelated to the person signing

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**THIS IS AN IMPORTANT DOCUMENT. IF YOU SIGN IT, YOU ARE UNDERTAKING SIGNIFICANT FINANCIAL OBLIGATIONS. BEFORE YOU SIGN THIS DOCUMENT YOU MAY WISH TO SEEK INDEPENDENT LEGAL AND FINANCIAL ADVICE.**

## DEED OF GUARANTEE AND INDEMNITY

THIS DEED OF GUARANTEE AND INDEMNITY BETWEEN

ThermaGalv Pty Ltd ABN 28 680 359 488 trading as ArmorGalv (“we”/“us”); and

Guarantor (“you”) whose details are specified in the execution clause of this deed.

At your request, we have extended or may extend or continue to extend credit to the Applicant whose details are noted on page 1 of the Credit Application (together with its successors) on condition that you enter into and execute a Guarantee and Indemnity on the following terms.

### It is Agreed:

1. This Guarantee and Indemnity is entered into in consideration of us providing or continuing to provide credit in connection with the provision of Services to the Applicant.
2. You unconditionally and irrevocably guarantee the payment of all amounts payable by the Applicant to us for any reason or circumstance in connection with any agreement between the Applicant and us. If the Applicant fails to pay any amount payable to us on time and in accordance with any arrangement under which it is expressed to be owing, then you agree to pay the amount outstanding on demand by us, without any deduction or set off.
3. As a separate obligation, you unconditionally and irrevocably indemnify us and agree to pay us on demand for any liability, loss, cost, charge, expense or damage we may suffer or incur for any reason if the Applicant does not pay us any amounts which the Applicant owes us under, or in connection with, any agreement or we cannot for any reason recover any amount from you under the guarantee contained in clause 2. You agree to pay us on demand a sum equal to the amount of any such liability, loss or damage.
4. This Guarantee and Indemnity is continuing and is irrevocable until discharged under the terms of this Guarantee and Indemnity and the credit facility covered by the Applicant's Credit Application ceases.
5. Your obligations are principal obligations and not ancillary or collateral to any other obligation.
6. When any payment becomes due under this Guarantee and Indemnity, we may at our own discretion demand payment or exercise our other rights under this Guarantee and Indemnity prior to, in addition to or without instituting proceedings against the Applicant or exhausting any other remedy available to us against the Applicant.
7. You will remain liable under this Guarantee and Indemnity even if:
  - (a) we give the Applicant extra time to pay;
  - (b) we tell the Applicant that it does not have to pay;
  - (c) we do not exercise our rights under this Guarantee and Indemnity immediately upon payment becoming due but at any time later while the Guarantee and Indemnity remains in force in accordance with clause 4;
  - (d) we amend any part of the Credit Application without notice to you;
  - (e) a second Guarantor signs and remains liable under this Guarantee and Indemnity or not; and
  - (f) anything else happens which would otherwise have the effect of releasing you from your obligations contained in this Guarantee and Indemnity.
8. Until the whole of the Applicant's obligations have been paid or satisfied, you must not (except with our written consent):
  - (a) reduce your liability under this Guarantee and Indemnity by claiming that you or the Applicant or any other person has a right of set-off or counterclaim against us; and/or
  - (b) claim an amount in the insolvency of the Applicant or another guarantor a party to this Guarantee and Indemnity.
9. You acknowledge that you are responsible for making yourself aware of the financial position of the Applicant and any other person who guarantees the payment of money under this Guarantee and Indemnity.
10. You declare that you are not signing this Guarantee and Indemnity as a result of a representation, statement or promise made by us or anyone on its behalf other than as set out in this Guarantee and Indemnity.
11. You are liable for all the obligations under this Guarantee and Indemnity both separately, on your own and jointly with any one or more other persons named in this Guarantee and Indemnity.
12. The laws of Australia apply to this Guarantee and Indemnity. The parties irrevocably submit to the jurisdiction of the courts of New South Wales in respect of any claims, proceedings and matters arising out of or in respect of these terms and conditions.
13. You consent to us:
  - (a) in accordance with S18K(1) of the Privacy Act 1988 (Cth) obtaining from a credit reporting agency, a consumer credit report containing information about you or your related entities for the purpose of assessing whether to accept you as a Guarantor for credit applied for by the Applicant and to assist in collecting overdue payments. Furthermore you agree that we may from time to time:
    - (i) obtain information about your commercial activities and personal or commercial credit worthiness from:
      - A. your bank or trade referee disclosed in the Credit Application;

- B. any other credit provider; or
- C. any credit reporting agency; and
- (ii) use, disclose or exchange with other credit providers information about your personal or commercial credit arrangements in order to assess your suitability to be a Guarantor under the Credit Application, monitor credit worthiness, and collect overdue accounts;
- (iii) disclose to any credit reporting agency any personal or commercial information (including an opinion) relating to you in order to maintain or create a credit file;
- (iv) disclose the contents of a credit report by a credit reporting agency to our contractors or agents including a solicitor or credit reporting agency;
- (b) disclosing to a credit reporting agency information about any default by you or your related entities under this Guarantee and Indemnity.

#### 14. Security Interest/Caveat Clause

When payment becomes due under this Guarantee and Indemnity in connection with clauses 2 and/or 3, you expressly and irrevocably consent to the following:

- (a) You hereby grant us a security interest in all your Charged Securities, as security for any payment which becomes payable to us under the Guarantee and Indemnity.
- (b) We may at our own discretion lodge and register a caveat on title in respect of all or any of your Charged Securities which relate to real property in accordance with Section 74F of the Real Property Act 1900, in connection with the security interest granted by you under clause 14(a).
- (c) Where a caveat has been registered in accordance with clause 14(b), you will not apply to lapse the caveat under Sections 74I and 74J of the Real Property Act 1900 and will indemnify us from any claims of loss, whether monetarily or otherwise, made by you or any other party as a result of the caveat being registered.
- (d) We will withdraw any caveat registered on title as referred to in clause 14(b) upon receipt of full payment under this Guarantee and Indemnity.
- (e) You will be responsible for any fees and legal costs associated with registering a caveat on title and where applicable, the cost of withdrawing the caveat.
- (f) You warrant that have signed this Guarantee and Indemnity at your own volition, after having fully understood the legal implications of granting a security interest to us under this clause 14.

#### 15. By signing below as Guarantor, you certify that:

- (a) you have read and fully understood the terms of this Guarantee and Indemnity;
- (b) you understand that it is an important legal document;
- (c) you acknowledge your obligations and our rights under this Guarantee and Indemnity;
- (d) you understand that if the Applicant fails to make any payment due to us, we may recover the full amount of these payments from you personally in accordance with the terms of this Guarantee and Indemnity; and
- (e) you have read and fully understood the terms of the Credit Application as executed by the Applicant.

#### 16. You certify that prior to the execution of this Guarantee and Indemnity, you have had the opportunity of taking independent legal advice regarding its meaning and effect together with independent financial advice as to your and the Applicant's capacity to enter into the arrangement contemplated by this Guarantee and Indemnity and the Credit Application . You certify that you have obtained such advice as you have thought appropriate prior to the execution of this Guarantee and Indemnity.



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**EXECUTED AS A DEED**

**Signing the Personal Guarantee - All Directors, Trustees, Sole Traders, Business Partners and other Guarantor(s)**

All Directors, Trustees, Sole traders, Business Partners and any other Guarantor(s) must complete and sign below as Guarantor in the presence of independent witnesses (not spouses or family members).

Dated this \_\_\_\_\_ day of \_\_\_\_\_

**SIGNED SEALED and DELIVERED**

by \_\_\_\_\_  
(insert full name of Guarantor - please print) Signature of Guarantor

of \_\_\_\_\_  
(insert full address of Guarantor - please print)

in the presence of \_\_\_\_\_  
(insert full name of Witness - please print) Signature of Witness

of \_\_\_\_\_  
(insert full address of Witness - please print)

Note: the Witness must be unrelated to the Guarantor

**SIGNED SEALED and DELIVERED**

by \_\_\_\_\_  
(insert full name of Guarantor - please print) Signature of Guarantor

of \_\_\_\_\_  
(insert full address of Guarantor - please print)

in the presence of \_\_\_\_\_  
(insert full name of Witness - please print) Signature of Witness

of \_\_\_\_\_  
(insert full address of Witness - please print)

Note: the Witness must be unrelated to the Guarantor