



Leam Trading Pty Ltd t/as Fabre Australia
 PO Box 6212, Lakemba NSW 2195
 Phone: 02 9758 1966
 Fax: 02 9758 1155

Applicant's Details (All Applicants to Complete)

Please specify the nature of this application

Company Sole Trader Partnership Trust Other (specify)

If Trust, a copy of the trust deed must be provided

Company Name/Trading Name/Individual (s) Name

Address

Contact Name: _____ **Contact Number:** _____

Full name of Company/Partnership or Sole Trader

Nature of Business

ABN/ACN

Registered Business Address

Postal Address (if same as address "As above")

Primary Contact (Name):

Phone (H)

(W)

(MOB)

Facsimile

Email

Individual(s) Director(s)/Proprietor(s)/Guarantor(s) Details

Name	Date of Birth	Drivers Licence

Address

Name	Date of Birth	Drivers Licence

Address

If additional directors/guarantors, please attach a separate sheet with appropriate details

Trade References

Name	Phone Number

Estimated Monthly Credit Required \$..... (this will be subject to Credit Approval)

Have you ever had or are there any current judgements or legal proceedings against you?

Yes No

**LEAM TRADING PTY LTD T/AS FABRE AUSTRALIA
NEW ACCOUNT APPLICATION FORM**

APPLICANT/DIRECTORS' GUARANTEE / CREDIT APPLICATION AND TERMS AND CONDITIONS

Between	Leam Trading Pty Ltd t/as Fabre Australia ("Fabre")	and ("The Applicant")
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GUARANTOR'S DEED OF GUARANTEE: THIS DEED WITNESSES:

- I/We acknowledge that I/we have read and understand the terms and conditions of sale New Account Application and Credit Application attached to this form.
I/We [insert Guarantor's name]
- guarantee as a security interest and charge as collateral under the *Personal Property Securities Act 2009* (Cth) (**PPSA**) on my/our own behalf and on behalf of the Applicant/s (the "Applicant") on page 1 in favour of Fabre all my/our personal property present and future and wheresoever situated including uncalled capital and items as further set out in the Deed of Guarantee and Credit Application with the payment to Fabre (the secured party) of all monies secured by this Agreement for goods or products purchased by the applicant and further guarantee that the Applicant shall comply with all its obligations relating to the **credit terms and the terms and conditions of supply and Deed of Credit Application attached hereto and incorporated into this guarantee**. The Guarantor/s jointly and severally guarantee the performance of the Applicant/s' obligations set out in the deed of credit application. The Guarantor/s acknowledge and agree that they guarantee the obligations of the Applicant, but also covenant as set out herein to perform their own guarantee obligations as set out in the guarantors deed of guarantee and those obligations in the credit terms and conditions of supply in the deed of credit application applicable to the guarantors. My/our liability under this Guarantee is a joint and several liability.
- I/we agree to indemnify Fabre against any loss it suffers including but not limited to interest and legal costs on a solicitor – own client basis as a result of the Applicant not complying with its obligations pursuant to the terms and conditions attached hereto.
- I/We acknowledge and agree that the guarantee and indemnity set out herein is a continuing guarantee and indemnity and does not come to an end until released in writing by Fabre.
- The Guarantor/s further covenants with Fabre that the monies owing shall be repaid on the written demand of Fabre after the happening of any of the following events:
 - The Applicant's default in the due or punctual payment to Fabre of any monies that comprise part of the monies owing; or
 - The Applicant's failure to rectify any default in the due or punctual observance or performance of any of the Applicant's other obligations under this agreement within seven (7) days or such other reasonable period in the circumstances as Fabre may in its absolute discretion require; or
 - If the security interest is or becomes wholly or partly void or voidable or unenforceable; or
 - If the Applicant or Guarantor by act or omission detrimentally in Fabre reasonable opinion affects Fabre security interest; or
 - If the Applicant or Guarantor disposes of or otherwise deals with any of the collateral the subject of the security interest created by this Deed including but not limited to the book debts, stock or goods, without Fabre prior written consent; or
 - If execution or other court process is levied on any collateral forming part of the security interest; or
 - If the Applicant/s or Guarantor/s becomes a bankrupt or goes into liquidation or assigns its or their property or part of it to the benefit of creditors, enters into a composition agreement, part X arrangement under the *Bankruptcy Act*, compounds its, his or hers or their debts as the case may be however described.
- I/We acknowledge and agree that this deed incorporates the PPSA facilitation provisions as set out below in the deed of credit application. I/We acknowledge and agree that this Deed may be registered at any time by Fabre in the Personal Property Securities Register ("PPSR") pursuant to the PPSA.
- The costs associated with registration of this Deed in the PPSR shall be paid by the Guarantors/Applicant.
- This guarantee is given even though there may be no consideration between Fabre and the Guarantor(s) and is given in Deed form for that reason.
- Without detracting from Fabre rights under this Deed of Guarantee, none of the following events varies or discharges the Guarantor's liability to Fabre:
 - Granting of time, credit, indulgence or any concession to the Applicant / Guarantor; or
 - Varying altering or disputing the Applicant/Guarantor liability under this Deed; or
 - The Applicant/Guarantor dying or becoming legally incapable
- The Applicant/Guarantor further agrees that so far as any money remains owing to Fabre under this Deed, the Applicant/Guarantor must not do any of the following things without obtaining Fabre prior written consent regardless of whether or not the Guarantor has become liable to pay the debt owing:
 - Attempt to reduce the Applicant/Guarantor's liability under this Guarantee and indemnity; or
 - Make any claim or enforce any right against Fabre; or
 - Prove any debt in competition with Fabre if the Applicant/Guarantor is placed into liquidation or receivership of bankruptcy
- Notwithstanding anything to the contrary in this Guarantee, Fabre shall be at liberty without notice to me/us at any time and without in any way discharging me/us from liability hereunder, to accept payment from the Applicant in cash or by means of negotiable instruments and to treat me/us in all respects as though I /we were jointly and severally liable with the company and it shall not be necessary for Fabre to seek recovery first from the Applicant/s.
- To the extent that any monies remain outstanding between the Applicant and Fabre, that indebtedness shall constitute a charge over any real property held by the Guarantor and such charge may be registered by Fabre as a charge and constitutes in Fabre an equitable and caveatable interest. The Guarantor or Guarantors as the case may be consents to the registration of any such charge and or caveat and shall neither raise complaint nor require the lapsing of a caveat or charge as the case may be where Fabre registers such interest pursuant to this Deed of Guarantee. This chargeable interest accrues and is applicable under the *Real Property Act 1900* (NSW) and applicable interstate, land registration Acts and under the Common Law.
- The Guarantors acknowledge that prior to executing this deed I/we have been offered and/or understand that I/we may seek independent legal advice as to the effect of this deed, the securities set out and incorporated in it and its terms and that I/we enter into this deed having either obtained such independent legal advice or waiving the right to such legal advice.
- The Guarantor warrants as an essential term that he/she/they have knowledge of the Applicant's financial circumstances and further warrants as an essential term that the Applicant is solvent and that this Agreement will not render the Applicant insolvent.

<p>Guarantor 1 Signed sealed and delivered by:</p> <p>Signature:</p> <p>Name:</p> <p>Position:</p> <p>Date:</p> <p>in the presence of:</p> <p>Witness Signature:</p> <p>Name of Witness:.....</p> <p>Address of Witness:</p>	<p>Guarantor 2 Signed sealed and delivered by:</p> <p>Signature:</p> <p>Name:</p> <p>Position:</p> <p>Date:</p> <p>in the presence of:</p> <p>Witness Signature:</p> <p>Name of Witness:.....</p> <p>Address of Witness:</p>	<p>Leam Trading Pty Ltd t/as Fabre Australia Signed sealed and delivered in accordance with s127 of the <i>Corporations Act 2001</i> (Cth) (if applicable):</p> <p>Signature:</p> <p>Name: _____ Position: Director</p> <p>Date:</p> <p>in the presence of:</p> <p>Witness Signature:</p> <p>Name of Witness:.....</p> <p>Address of Witness:</p>
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**CREDIT APPLICATION INCLUDING APPLICABLE GUARANTEE PROVISIONS:
THIS DEED WITNESSES:**

- Parties**
 - "Fabre" means Leam Trading Pty Ltd t/as Fabre Australia; and
 - The Applicant as defined in "Page 1"; and
 - Any party to the Guarantee as set out in the Director's Deed of Guarantee **if the Guarantee is executed** and this Credit Application shall incorporate those provisions herein applicable to the Guarantee and for the purposes of construing obligations under this Deed, to the extent necessary, "Applicant" shall include "Guarantor" and vice versa, mutatis mutandis.
- Acceptance**
 - Fabre may approve this Application by notice in writing, or by extending credit. Upon acceptance, the Applicant and Guarantors agree/s to comply with these Terms & Conditions to the extent they are affected by them.
 - Any instructions received by Fabre from the Applicant for the supply of goods or services and/or the Applicant's acceptance of goods or services supplied by Fabre constitute acceptance of the terms and conditions herein.
- Credit Limit**
The credit limit is the amount notified to the Applicant in writing that Fabre is willing to extend under these standard Terms & Conditions at its absolute discretion. In the event Fabre agrees to extend the credit limit, this Deed applies to all credit extended to the Applicant.
- Payment**
The due date for payment of the total amount owed to Fabre in respect of all goods and services purchased is the date following supply unless otherwise agreed to in writing.
 - The Applicant is in default if full payment is not received within these credit terms.
 - Payment must be made to the address shown on the Monthly Statement or Invoice.
- The Applicant(s)/Guarantor(s) guarantee(s) the payment of the purchase price due by the Applicant under this agreement.
 - The Applicant(s)/Guarantor(s) shall indemnify Fabre against loss resulting from the Applicant's/Guarantor(s) failure to make payment including but not limited to interest and legal costs.
 - The Applicant(s)/Guarantor(s) guarantees the payment of the purchase price due by the Applicant under this Agreement and agrees to make the payment within seven (7) days of being served with notice of the Applicant's default.
- Fees**
 - The Applicant(s)/Guarantor(s) agrees to pay any fees or charges which Fabre at its discretion, may decide to implement from time to time.
 - "Fees" include and are not limited to transaction fees, dishonoured cheque fees, government fees, account fees, replacement card fees, search fees, credit card

payment fees, stamp duty, and any other fee which may be implemented.

(c) Changes will be notified in writing prior to implementation.

6. Default
If the Applicant fails to pay in accordance with these Terms and Conditions, the Applicant agrees to pay 1.50% per month calculated monthly from the due date plus all legal and collection costs including on a solicitor – own client basis. This Term and Condition does not merge upon termination.

7. Retention of Title and Personal Property Securities Act 2009 (PPSA)

(a) Where any goods or products have been or are to be supplied on credit, title in the goods or products shall remain in Fabre until such time as full payment for the goods or products is received. Where those goods or products have been paid for but have not been on-sold or otherwise dealt with in a third party transaction and the goods or products remain ascertained, then those goods or products shall be charged as a security to secure payment of any other monies due and outstanding to Fabre.

(b) Fabre's staff or agents may enter any premises where goods or products are located in order to take possession of those goods or products at any reasonable time after the due date for payment for the particular goods or products or any goods or products has passed.

(c) The Applicant must pay all costs associated with recovery and/or recaption of unpaid goods or products.

(d) This retention of title clause shall constitute a chargeable security interest in favour of Fabre pursuant to the PPSA and a purchase monies securities interest (PMSI) pursuant to the PPSA.

8. Termination
Either party may terminate the agreement at any time by notice to the other in writing. Upon termination, all amounts owing to Fabre shall become immediately due and payable and the obligations under this Deed shall not expire or cease unless and until such payment is made in full.

9. Acknowledgement that credit information may be given to a credit reporting or credit provided agency (s18E(8)(c) Privacy Act 1988 (Cth))

(a) I/we consent to and acknowledge that Fabre may give and receive certain personal and financial information about me/us to a credit reporting agency or credit provider and I/we authorise the giving and receiving of such information on a continuing basis. The information given is allowed by Section 18E(1) and other sections of the *Privacy Act 1988*.

(b) This includes:-

- Information about me/us which will allow me to be identified.
- That I/we have applied for credit and the amount
- The fact that Fabre is a supplier of credit to me/us
- Payments have been overdue for 21 days and steps taken to recover payments
- Advice that payments are no longer due
- Cheques drawn by me which have been dishonoured more than once
- That in the exclusive opinion of Fabre I have committed a serious credit breach
- When the credit provided to me has been discharged.
- The extent of and existence of any debt or encumbrance or priority under this Application and all information and records for the PPSR and PPSA

10. Charge over Personal Property Collateral of the Applicant/Guarantor

(a) The Applicant/Guarantor as the beneficial owner states that it is absolutely entitled to grant this security interest and hereby charges in favour of Fabre all his, her or its personal property present and future and wheresoever situated including but not limited to uncalled capital, goods, chattels moveable fixtures and fittings (even if temporarily affixed to realty for their better enjoyment), stock in trade, plant, book debts, and goodwill with the payment to Fabre of all monies secured by this Deed. Such security interest shall be a non-circulating and specific security interest on all of the abovementioned personal property now or in the future belonging to the Applicant/ Guarantor and a circulating security interest on all other assets and property of the Applicant/ Guarantor.

(b) The Applicant/Guarantor has no power to create any security interest ranking in priority or of equal rank to this Deed without first obtaining Fabre's written consent. The Applicant/Guarantor has no power before this circulating security interest becomes non-circulating to create a subsequent security interest on any of his, her or its property.

(c) In the event of the Applicant/Guarantor's default in the strict observance of the repayment terms of this Credit Agreement and Guarantee, Fabre shall be at liberty to appoint a receiver and or manager of the Applicant/ Guarantor as the case may be without derogating from its other rights under this Deed of Credit Application/Guarantee.

(d) The Applicant/Guarantor irrevocably appoints Fabre and any receiver or manager appointed by Fabre to be the Applicant/ Guarantor's joint and several attorneys to execute sign and perform in his, her or its name and on his, her or its behalf all Agreements, Deeds, Instruments, acts and things whatsoever which the Applicant/Guarantor is required or reasonably expected to execute sign and perform under the covenants contained in this Deed and/or Agreement and generally to use the Applicant/ Guarantor's name in the exercise of all or any of the powers conferred on Fabre or any receiver or manager appointed by Fabre as the case may be.

11. Charge over Real Property of Applicant

To the extent that any monies remain outstanding between the Applicant and Fabre, that indebtedness shall constitute a charge over any real property held by the Applicant and such charge may be registered by Fabre as a charge and constitutes in Fabre a caveatable interest. The Applicant as the case may be shall neither raise complaint nor require the lapsing of a caveat or charge as the case may be where Fabre registers such interest pursuant to this Deed of Credit. This chargeable interest accrues and is applicable under the *Real Property Act 1900* (NSW) and applicable interstate land registration Acts and under the Common Law.

12. Declaration:

(a) I/we declare that the information provided by all Applicants and Guarantors in this application is true and correct and understand that Fabre may rely on such information to its detriment and if not true and correct this breach may constitute and attempt to or obtain benefit/financial advantage by deception and or may constitute actionable breach of contract, tort and or fraud giving rise to damages and compensation reasonably flowing from such breach.

(b) I/we have read and understood the Terms & Conditions in this Deed of Credit Application and agree that, subject to Fabre's acceptance of this application, those Terms & Conditions shall apply to the provision of credit, as a result of approval of this application.

(c) I/we authorise Fabre to make any checks necessary to satisfy themselves that the information provided by me/us in this application is accurate, and to make any periodic checks and to give and to receive any priority and/or debt information deemed necessary for the continued assessment of my/our financial position.

13. Personal Property Securities Register (PPSR)

(a) The Applicant/Guarantor consents to Fabre notifying this Credit Application Deed in the PPSR.

(b) The Applicant/Guarantor agrees to do all things necessary to perfect this security interest, including but not limited to executing all necessary security documents for registration.

(c) The Applicant must pay all costs associated with searches for and registration of this Credit Application Deed or any notification concerning it, except a discharge/ satisfaction of this security interest or any fee or cost exempted by law.

14. Personal Property Securities Act 2009 ("PPSA") Facilitation

(a) For the purposes of this paragraph

- Financing statement has the meaning given to it by the PPSA;
- Financing change statement has the meaning given to it by the PPSA;
- "Security agreement" means the security agreement under the PPSA created between the Applicant/Guarantor and Fabre whether described as a security interest, charge or other expression herein and without limiting those other expressions; and "security interest" has the meaning given to it by the PPSA and without limiting the meaning in the PPSA includes this document however described and when executed either as a guarantee and/or as a credit application.

(b) The Applicant/Guarantor agrees that the Applicant/Guarantor's execution of their respective parts of this document and the provisions set out herein constitute a security agreement for the purposes of the PPSA and create the security interest as set out in the respective executed document.

(c) The Applicant/Guarantor shall:

- Execute any further document including but not limited to registration notices and forms and/or provide such further information as Fabre may reasonably require for the purposes of perfecting, registering and maintaining any security interest created herein. In this regard, the Applicant/Guarantor's co-operation in a timely manner is an essential term. Any failure to act in a timely manner by the Applicant/Guarantor shall constitute a breach of the deed of guarantee or deed of credit application as the case may be.
- Such assistance from the Applicant/Guarantor shall include but is not limited to registering a financing statement or financing change statement in relation to a security interest in the PPSR; registering any other document required to be registered by the PPSA; or correcting any defect in a statement or other document under the PPSA however described.
- The Applicant/Guarantor shall indemnify or pay Fabre at Fabre's sole discretion for all expenses incurred or to be incurred in registering a financing statement or financing change statement in the PPSR or releasing any interest thereunder.
- The Applicant/Guarantor shall not create or cause or set in chain to be created a financing statement or financing change statement in respect of a security interest without the prior written consent of Fabre.
- The Applicant/Guarantor shall not register, cause to be registered or do any action or execute anything which may enable the registration of a financing statement or a financing change statement in relation to the Personal Property Secured herein in favour of a third party without the prior written consent of Fabre.
- The Applicant/Guarantor shall immediately advise Fabre of any material change in its business practices, corporate structure, financial structure

and solvency which would otherwise jeopardise the security interests of Fabre.

(h) Fabre and the Applicant/Guarantor agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by the deed of guarantee and/or deed of credit Application herein.

(i) The Applicant/Guarantor hereby waives its, his, her or their rights to receive notices under sections 95, 118, 121 (4), 130, 132 (3)(d) and 132 (4) of the PPSA.

(j) The Applicant/Guarantor waives its, his, her and their rights as a grantor and or a debtor pursuant to sections 142 and 143 of the PPSA.

(k) The parties agree that the Applicant is the debtor for the purposes of Section 275(6)(a) of the PPSA and that the parties will not disclose information of the kind mentioned in Section 275(1) of the PPSA. This clause constitutes a confidentiality agreement for the purpose of Section 275(6)(a) of the PPSA.

15. Construction
Where this New Account Application Form is executed simultaneously to or in contemplation of a General Deed of Guarantee and Indemnity, then they shall be read together. To the extent of any inconsistency between this document and the General Deed of Guarantee and Indemnity, this document shall prevail. This document together with any General Deed of Guarantee and indemnity (if any) constitutes the entire agreement of the parties and supersedes any other prior writing or agreement or representation.

16. Applicable Law
These terms and conditions are governed by the law in force in New South Wales. The parties submit to the jurisdiction of the courts of New South Wales.

17. Severability
If any part of these terms and conditions is for any reason unenforceable, that part must be read down to the extent necessary to preserve its operation. If it cannot be read down, it must be severed.

18. Interpretation
The rule of interpretation of this Agreement contra proferentem is abrogated.

19. Good Faith and Commerciality
The Applicant/Guarantor agrees as an essential term of this Deed to act in good faith, and honestly and in furtherance of the commercial efficacy intended by this Deed of Agreement.

Executed as a Deed:

<p>Executed by Leam Trading Pty Ltd t/as Fabre Australia pursuant to s127 of the Corporations Act 2001 (Cth)</p> <p>Date:</p> <p>Name: _____</p> <p>Position: Director/Secretary</p> <p>.....</p> <p>in the presence of:</p> <p>Witness Signature:</p> <p>Name of Witness:.....</p> <p>Address of Witness:</p> <p>.....</p> <p>Signed, sealed and delivered by APPLICANT 1 (pursuant to s127 of the Corporations Act 2001) (if Applicant is a company)</p> <p>Date:</p> <p>Name:</p> <p>Position:</p> <p>.....</p> <p>in the presence of:</p> <p>Witness Signature:</p> <p>Name of Witness:.....</p> <p>Address of Witness:</p> <p>.....</p> <p>Signed, sealed and delivered by Guarantor 1</p> <p>Date:</p> <p>Name:</p> <p>Position:</p> <p>.....</p> <p>in the presence of:</p> <p>Witness Signature:</p> <p>Name of Witness:.....</p> <p>Address of Witness:</p> <p>.....</p>
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