

# Trade Application

Amalgamated Casket Company Pty Ltd T/A ACC Higgins

("The Company")

ACN 005 014 004

2 Braid Street

WEST FOOTSCRAY VIC 3012

Phone: (03) 9689 3299 Fax: (03) 96893654

Email: accounts@acchiggins.com.au

## CUSTOMER CONTACT DETAILS

Contact Name & Position: \_\_\_\_\_

Name of Business: \_\_\_\_\_

Trading Name of Business: \_\_\_\_\_

Sole Trader Partnership Company Other: Describe: \_\_\_\_\_

A.B.N: \_\_\_\_\_ A.C.N: \_\_\_\_\_

Address of Business: \_\_\_\_\_

Trading Address of Business: \_\_\_\_\_ Post Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ Mobile: \_\_\_\_\_

Nature of Business Activity: \_\_\_\_\_

Nominated Contact: \_\_\_\_\_ Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

Number of years trading as this entity: \_\_\_\_\_ Credit Amount sought: \_\_\_\_\_

Bank: \_\_\_\_\_ BSB & Account number: \_\_\_\_\_

Details of Partners (if Partnership)	Details of Directors (if Proprietary Company)
1. Full Name: _____ Home address: _____ Home phone: _____	1. Full Name: _____ Home address: _____ Home phone: _____
2. Full Name: _____ Home address: _____ Home phone: _____	2. Full Name: _____ Home address: _____ Home phone: _____

## Trade References:

Company	Contact	Telephone
1.		
2.		
3.		

I ..... acknowledge that I have been given a copy of this Credit Application by the Company and that:

1. I am authorised by the Customer to make this application on its behalf and warrant that the information contained in this application is true and correct.
2. **I have read and understand the terms and conditions overleaf.**
3. I agree that all dealings between the customer and the Company will be subject to the Terms and Conditions overleaf unless otherwise agreed in writing.

.....  
Applicant's Signature

.....  
Date

**Amalgamated Casket Company Pty Ltd T/A ACC Higgins**  
**ACN 005 014 004**  
**TERMS AND CONDITIONS**

**1. GENERAL**

- (a) In these terms and conditions "the Company" means Amalgamated Casket Company Pty Ltd T/A ACC Higgins to which this application for credit is made and includes its successors and assigns and "the Customer" means the entity which is applying for credit in the application overleaf.
- (b) These terms and conditions shall apply to the exclusion of all others including any terms and conditions of the Customer (whether on the Customer's order form or otherwise). The Customer acknowledges that these terms and conditions constitute the whole agreement between the parties unless otherwise agreed in writing.

**2. PRICES**

Orders are accepted on the condition that the goods will be invoiced at the price quoted or if none at the price ruling at the date the goods are despatched. Unless specified to the contrary, prices quoted are inclusive of all GST, stamp duty and like levies or taxes. The Company may amend prices at any time without prior notice.

**3. PAYMENT**

- (a) The Customer shall make payment to the Company for all goods and services and services supplied within thirty (30) days from the end of the month of invoice unless otherwise agreed in writing. The Customer acknowledges that time is of the essence with regard to payment and that any breach of this term will enable the Company to exercise all of its rights contained herein including (but without in any way limiting its rights) the right to cancel further credit and to take legal action for the recovery of all sums outstanding. Payment in full shall be made for all non-account holders prior to the dispatch of, or at pick up of the goods. Credit Card payments will incur a processing fee of 1.5%.
- (b) If the Customer commits an act of insolvency or is in breach of this agreement, or provides false information to the Company in this application or otherwise, then in addition to any other rights, all monies outstanding on the account become immediately due and payable and the Company may terminate this agreement, cancel the Customer's credit account and recover all such monies immediately and without prior notice.

**4. INTEREST**

Should payment remain outstanding beyond the Company's payment terms as outlined in clause 3 above, the Customer agrees to pay interest on all amounts outstanding from the due date until the date of payment at a rate equal to 2% above the rate set out in section 2 of the Penalty Interest Rates Act.

**5. COSTS**

Should payment remain outstanding beyond the Company's payment terms set out in clause 3, the Customer agrees to pay:

- (a) all legal costs incurred by the Company for the recovery of the debt (on a solicitor/own client basis);
- (b) all Mercantile Agent's fees (including commission) payable by the Company for the recovery of the debt;
- (c) an administration fee equal to 1% of the balance outstanding.

**6. DELIVERY**

- (a) The Company is responsible for arranging delivery from the Company's premises to the Customer at its delivery address set out in the order, but the Company shall not be liable for any loss or damage if it is unable to deliver the goods to the address specified by the Customer for any reason not of its causing. The Customer is liable for any additional delivery charges of which it is advised by the Company before the order is placed.
- (b) In the event that the Customer specifies a delivery date, the Company shall use its best endeavours to comply with the Customer's requests. In no circumstances will the Company be liable for any loss or damage of any kind whatsoever in the event that it is not able to comply with the Customer's request for delivery at a certain time. The Customer acknowledges and agrees that it will not make any claim against the Company for any loss or damage incurred as a result of late delivery.
- (c) Delivery of the goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- (d) The Customer shall not be entitled to repudiate the agreement as a result of the failure of the Company to deliver the goods.
- (e) The Company may refuse to deliver any goods ordered by the Customer if any monies are owing by the Customer to the Company and are beyond the Company's payment terms set out in clause 3.
- (f) The goods will be at the Customer's risk from the time they leave the Company's premises.

**7. CLAIMS**

- (a) It is the responsibility of the Customer to check each delivery to ensure that the delivery is complete and in good condition. The Customer will be deemed to have accepted the goods as being in accordance with its order and received in good condition unless it notifies the Company in writing of any claim within seven (7) days of receipt of the goods.
- (b) The Company will not accept a return of goods unless the goods are defective and if so the Company's liability is limited (to the extent permitted by law) to the replacement of any defective goods. No return of goods will be accepted unless the returned goods are in their original condition and packaging. The Customer is responsible for any freight or delivery costs to return goods to the Company unless otherwise agreed.

**8. JURISDICTION**

The proper law of all contracts arising between the Company and the Customer is the law of the State where the order is placed and the parties agree to submit to the jurisdiction of the Courts of that State.

**9. WARRANTY**

- (a) If the goods are supplied to a consumer (as defined in the Australian Consumer Law) then the goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (b) All warranties whether express or implied and whether statutory or otherwise with regard to the goods supplied by the Company as to quality, fitness for purpose or any other matter are hereby excluded except in so far as any such warranties are incapable of exclusion at law, and the liability of the Company is limited to the extent permitted under s 64A of Schedule 2 of the Competition and Consumer Act 2010.
- (c) Where a manufacturer's warranty exists then the Customer may only rely on such warranty and shall not be entitled to rescind or cancel the agreement or sue the Company for damages or claim restitution arising out of any misrepresentation made to him by any servants or agents of the Company. The Customer acknowledges that it has relied on its own skill and judgement in deciding to enter

into this agreement and has not relied on any representation, condition, warranty, covenant, or promise made by the Company or for and on behalf of the Company.

- (d) Any warranty provided by the Company shall not cover any defect or damage which may be caused by:
- (i) Failure on the part of the Customer to properly maintain any goods and services; or
- (ii) Failure on the part of the Customer to follow any instructions or guidelines provided by the Company;
- (iii) Any use of any goods and/or services otherwise than for any application specified on any documentation supplied with the goods and services; or
- (iv) The continued use of any goods and/or services after any defect becomes apparent to a reasonably prudent operator or user; or
- (v) Fair wear and tear, any accident or Act of God.
- (e) Any warranty provided by the Company shall be voided in the event that the goods and/or services are repaired or altered or replaced without the Company's consent.

**10. INTELLECTUAL PROPERTY**

- (a) The Company shall retain the copyright in all drawings of any products produced for the Customer unless otherwise agreed in writing.
- (b) If the Customer provides the Company with any specifications, designs or drawings for the production or manufacture of any item or items then the Customer hereby warrants that the use of these designs, drawing or specifications will not infringe any third party's rights and the Customer hereby indemnifies the Company against any claims demands suits or actions in relation thereto.

**11. RIGHTS OF THE COMPANY TO DISPOSE OF GOODS**

In the event that the Company retains or regains possession of the goods ordered by the Customer and the Customer has not paid for the goods within the Company's terms of trade then the Company may dispose of the goods and may claim from the Customer any loss the Company has suffered in relation to same.

**12. CHANGE OF OWNERSHIP**

The Customer agrees to notify the Company in writing of any change of ownership of the Customer within seven (7) days from the date of such change and indemnifies the Company against any loss or damage incurred by it as a result of the Customer's failure to notify the Company of any change.

**13. CANCELLATION**

Orders placed with the Company cannot be cancelled without the written approval of the Company. In the event that the Company accepts the cancellation of any order placed with it, it shall be entitled to charge a reasonable fee for any work done on behalf of the Customer to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

**14. LIEN**

The Customer hereby acknowledges that the Company has a lien over all goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

**15. RETENTION OF TITLE AND PPSA**

- (a) Defined terms in this clause have the same meaning as given to them in the PPSA "PPSA" means the Personal Property Securities Act 2009 (Cth)
- (b) It is agreed by the Company and the Customer that property in any goods supplied by the Company to the Customer shall not pass until:
- (i) the Customer has paid all amounts owing for all goods supplied to it by the Company, and
- (ii) the Customer has met all other obligations by the Customer to the Company in respect of all contracts between the Company and the Customer.
- (c) Until the Company has been paid in full for all the goods the Customer must:
- (i) not dispose of the goods to a third party except by sale to bona fide buyers for market value in the ordinary course of business;
- (ii) not charge the goods or grant any security over or interest in the goods or the proceeds;
- (iii) keep any proceeds separate from other moneys of the Customer;
- (iv) not deal with the proceeds in any way which may be adverse to the interests of the Company.
- (d) The Company may require the Customer to return any goods it has supplied to the Customer on demand and may enter any premises occupied by the Customer to inspect and/or repossess any such goods. The Customer indemnifies the Company in respect of any damage to property or person occasioned by such entry and repossession.
- (e) The parties acknowledge that these terms and conditions constitute a security agreement and give rise to a purchase money security interest in favour of the Company over any goods supplied to the Customer pursuant to these terms and conditions. The security interest attaches to any goods supplied by the Company at the time of delivery of the goods to the Customer.
- (f) The Customer acknowledges that the Company may register its interest in any goods supplied to the Customer on the PPSA register and agrees that it will do all things necessary to assist the Company to register a financing statement and will indemnify the Company in respect of the costs and expenses of any such registration and the enforcement of the Company's security interest on a solicitor/own client basis.
- (g) The Customer agrees that the Company does not need to give the Customer any notice under the PPSA (including without limitation a verification statement) unless the requirement for such notice cannot be excluded under the PPSA.

**16. CHARGE**

The Customer hereby charges all its property whatsoever whether currently owned by the Customer or acquired in the future with its indebtedness to the Company.

**17. CONSENT TO CREDIT CHECK - PRIVACY ACT 1988**

The Customer acknowledges and authorises the Company pursuant to the provisions of the Privacy Act 1988 to:-

- (a) seek from or give to a Credit Reporting Agency personal information about the Customer at any time after signing this form;
- (b) contact any trade references or other credit providers and acquire from them or give to them personal information in relation to the Customer and its credit worthiness; and
- (c) disclose and receive all such personal information concerning its affairs as may be disclosed pursuant to the provisions of the Privacy Act 1988

**18. SUB-CONTRACTING**

The Customer acknowledges that the Company may sub-contract all or any part of the works that the Company has been contracted to carry out on such terms as it deems fit and to which the Customer hereby agrees.

**19. FORCE MAJEURE**

The Company will not be in default or breach of any dealing with the Customer as a result of Force Majeure.

**DEED OF GUARANTEE AND INDEMNITY**

**BY DIRECTORS OF A COMPANY**

I/We the undersigned, being the Company Director(s) of the Customer named in the credit application to which this guarantee is attached ("the Customer"), and in consideration of Amalgamated Casket Company Pty Ltd T/A ACC Higgins ACN 005 014 004 ("the Company") at my/our request granting credit to the Customer and/or agreeing to supply goods or services to the Customer from time to time, **HEREBY JOINTLY AND SEVERALLY, ABSOLUTELY, UNCONDITIONALLY AND IRREVOCABLY GUARANTEE** the due and punctual payment by the Customer of all debts owing to the Company by the Customer from time to time ("the guaranteed money") and **UNDERTAKE** that if the Customer does not pay to the Company any of the guaranteed money when due, I/we will pay the guaranteed money to the Company immediately on demand and I/we hereby charge my/our real property with payment of the guaranteed money for the benefit of the Company.

**I /WE AGREE AND ACKNOWLEDGE THAT: -**

1. This is a continuing Deed of Guarantee and indemnity.
2. This Deed of Guarantee and indemnity will not be discharged by any time, credit, waiver, indulgence or other concession given to the Customer by the Company (including without limitation the failure of the Company to register any interest under the Personal Property Securities Act 2009).
3. The Company may enforce this Deed of Guarantee and indemnity against me/us without first taking any steps or proceedings, or exercising any rights which the Company may have against the Customer.
4. This Deed of Guarantee and indemnity shall be valid and enforceable against any guarantor who has executed it notwithstanding that any one or more other guarantor has refused, failed or neglected for whatever reason to sign this guarantee and indemnity.

**I/WE JOINTLY AND SEVERALLY, ABSOLUTELY, UNCONDITIONALLY AND IRREVOCABLY INDEMNIFY** the Company against all losses, damages, costs, charges and expenses whatsoever which the Company may incur or suffer as a result of any breach by the Customer of its agreement with the Company including but not limited to its failure to pay any debts as and when due.

**THIS IS AN IMPORTANT DOCUMENT. PLEASE READ IT CAREFULLY AND ENSURE THAT YOU UNDERSTAND IT BEFORE SIGNING.**

Dated:

**SIGNED SEALED and DELIVERED by:**

**SIGNED SEALED and DELIVERED by:**

.....  
Director

.....  
Director

.....  
Print Name

.....  
Print Name

.....  
Witness

.....  
Witness