



PROVANS TIMBER & HARDWARE PTY LTD

## ***Account Application Important Information***

The following application has been produced to provide specific information in order for Provans Timber & Hardware Pty Ltd to open a 30-day trading account for your company.

Unless all sections are completed by the applicant Provans Timber & Hardware Pty Ltd will be unable to legitimise this 30-day trading account application and therefore unable to open an account for you.

Please read the following pages carefully and complete/reply to all questions paying particular notice to those with an (\*) alongside the question. Please return the executed application form and guarantee document to us. Faxed or emailed copies will not be accepted.

Upon receiving your application our accounts department will process your application by seeking a credit check through either Dunn & Bradstreet or Veda Advantage. This process normally takes no longer than 1 to 2 hours. We then seek confirmation through your trade references by faxing a request of your trading history with them. This process can take some time depending on their procedures on replying to requests for credit information.

Upon receiving all the information a decision is quickly made by Provans Timber & Hardware to either open or decline the application and you will be notified either way via mail.

Please remember the more information you can provide us will help us in processing your application quickly.

Our accounts department can be contacted on (03) 9482 4400 if further information is required.

Kind regards

A handwritten signature in black ink, appearing to read "P. Calleya", with a long horizontal flourish extending to the right.

Paul Calleya  
**Systems Manager**

### **PROVANS TIMBER & HARDWARE P/L**

A.B.N. 79 972 027 628

62 Alexandra Parade, Clifton Hill, Victoria 3068 **Telephone: (03) 9489 8255** Facsimile: (03) 9482 1426

Website: [www.provans.com.au](http://www.provans.com.au) Email: [sales@provans.com.au](mailto:sales@provans.com.au)

ADMINISTRATION

THE GARD TIMBER GROUP

P.O. Box 167, Clifton Hill, Victoria 3068 **Telephone: (03) 9482 4400** Facsimile (03) 9482 7766 Email: [accounts@gard.com.au](mailto:accounts@gard.com.au)

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**Provans Timber & Hardware Pty Ltd** (ACN 005 257 705)  
 ("the Company")

**APPLICATION FOR A 30 DAY TRADING ACCOUNT**

**\* Applicant's Details**

* Applicant's name:
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* ACN No:	* ABN No:
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* Trading name (if different from name of Applicant):
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* Type of entity of Applicant (Tick one): Sole Trader... Partnership..... Public Company..... Private Company.....Trust.....
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* Trading Address:	*Postcode:
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*Postal Address:	*Postcode:
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* Phone:	* Fax:
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* Mobile:	* Email:
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Registered Address:	Postcode:
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Phone:	Fax:
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Nature of Business:	Date Established:
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**\* Directors/Partners/Proprietors of Applicant:**

Name	Address	Date of Birth	Driver Licence N <sup>o</sup>
1.			
2.			

*(If more than 2 please provide further names on separate page)*

* <b>Bank</b> (Name):	Address	Phone:	Contact:
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**\* Trade References (Major Suppliers)**

<b>1</b>	Name:	Avg Monthly Purchases: \$
	Phone:	Fax:
<b>2</b>	Name:	Avg Monthly Purchases: \$
	Phone:	Fax:
<b>3</b>	Name:	Avg Monthly Purchases: \$
	Phone:	Fax:

*MBA/HIA Reg. No.:		*Builders Reg. No./Lic.No.	
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**\* Anticipated Trading**

* Estimated Monthly Purchases: \$	* Required Credit Limit: \$
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***Provans Timber & Hardware Pty Ltd -Application for a 30 day account***

**TERMS OF PAYMENT**

The Company's Terms of Payment require payment to be made no later than the last day of the month following the month in which the goods are supplied or the services rendered. In the event of payment not being received as specified, the Applicant shall pay to the Company by way of liquidated damages a default charge calculated at the discretion of the Company at the rate prescribed from time to time under the Penalty Interest Rates Act 1983 (Vic), plus an additional 2% from the due date until the date that the total amount due under the Company's Terms and Conditions of Trading ("the Terms") is paid in full.

**APPLICANT'S DECLARATIONS AND ACKNOWLEDGEMENTS**

- The Applicant acknowledges having read and understood the Terms set out overleaf
- The Applicant agrees to be bound by the Terms and acknowledges that they set out the basis upon which the Company shall provide credit and/or supply goods and/or services to the Applicant
- The Applicant requests the Company to open an account on the basis of the Terms
- The Applicant and the Signatory to this Application represent and warrant that the information provided in this Application is true and correct and acknowledge that it has relied upon by the Company to determine whether to grant the Applicant credit
- The Signatory warrants that he/she has full authority to complete this Application Form on behalf of the Applicant.

**CREDIT INFORMATION**

The Applicant agrees that the Company may disclose the information contained in this Application and any relevant trading information regarding the Applicant received from the trade references referred to in this Application to a credit reporting agency in accordance with the Privacy Act and may give or obtain a report regarding the Applicant's commercial activities and commercial credit worthiness from a credit reporting agency or from any credit provider named in this Application or disclosed by a credit reporting agency.

The Applicant further agrees that in the event of the Company granting it credit it shall immediately notify the Company of any change in any of the information or details herein contained.

**PRIVACY**

The Company hereby advises that the information supplied in this document will be collected, used, disclosed and stored in accordance with the National Privacy Principles contained in the Privacy Amendment (Private Sector) Act 2000. If you require any further information regarding our Privacy Policy, please contact the Company's Privacy Officer.

**BUSINESS OR INVESTMENT PURPOSES ONLY**

The Applicant declares and warrants that the credit to be provided to him/her/it by the Company is to be applied wholly or predominantly for business or investment purposes (or for both purposes).

<p style="text-align: center;"><b>IMPORTANT</b></p> <p>You should not sign this declaration unless this loan is wholly or predominantly for business or investment purposes.</p> <p>By signing this declaration you may lose your protection under the Consumer Credit Code.</p>
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**EXECUTION**

\* \_\_\_\_\_ Dated: \* \_\_\_\_\_  
Signature of person signing on behalf of the Applicant

\* \_\_\_\_\_  
Print name of person signing on behalf of Applicant

\* \_\_\_\_\_  
Position of person signing on behalf of the Applicant

# GUARANTEE

TO: **Provans Timber & Hardware Pty Ltd** (ACN 005 257 705) ("the Company")  
of 62 Alexandra Parade, Clifton Hill, Victoria. 3068.

**IN CONSIDERATION** of the Company agreeing to supply the Applicant named on the accompanying application form (hereinafter referred to as "**the Customer**") with goods and services on credit

\*I/We \_\_\_\_\_ (*insert name of first guarantor*)

of \_\_\_\_\_ and (*if more than one*)

\* \_\_\_\_\_ (*insert name of second guarantor*)

of \_\_\_\_\_  
( hereinafter collectively called "**the Guarantor**")

**DO HEREBY** (jointly and severally in the case of more than one Guarantor) **GUARANTEE** the due and punctual payment of all monies which may now or in the future be or become due and payable to the Company by the Customer under the Company's Terms and Conditions of Trading ("**the Terms**") or whether arising in any other way on any account whatsoever operated by the Customer with the Company

**AND I/WE DECLARE AND AGREE as follows:**

1. That this Guarantee shall be a continuing guarantee in respect to all debts, losses, payments, damages and other expenses to which the Company is entitled and shall remain in full force and effect and the Guarantor shall remain liable hereunder notwithstanding the granting by the Company of time, credit or any other indulgence or concession to the Customer or to the Guarantor or the waiver by the Company of any breach by the Customer of its obligations to the Company or to the liquidator, provisional liquidator or administrator of the Customer or the bankruptcy or death of the Guarantor or the liability of the Customer ceasing or becoming extinguished for any reason
2. That I/WE will make due and punctual payments to the Company upon demand being made by notice or letter given to the Guarantor and such demand or notice or letter shall be deemed to be duly made or given if the same shall be in writing and left at or sent by pre-paid post to the address of the Guarantor as set out above
3. That I/We shall pay all costs, fees, charges and expenses including legal costs on a solicitor and own client basis incurred by the Company of and incidental to this Guarantee or any matter arising out of or incidental to this Guarantee or the performance or failure to perform by the Guarantor of the covenants herein contained
4. That I/ We shall forthwith pay on demand the amount that the Company certifies is payable under this Guarantee and/or owed by the Customer under the Company's Terms before being entitled to dispute whether that amount is owing.
5. That a certificate issued by the Company stating any monies owed by the Customer or by the Guarantor shall be conclusive evidence of such amounts owing by the Customer and/or the Guarantor.
6. That the obligations under this guarantee are principle obligations and the Company is not required to take action or make demand first against the Customer or under its security (if any). Further, the Company is not obliged to prove its claim in the assets of the Customer and the Company may lodge a proof of debt in the event of the insolvency of the Customer and hold any distribution or payment received from the Customer on trust for the Company.

7. That if any of the obligations hereby guaranteed shall not be enforceable against the Customer purported to be primary liable this Guarantee shall be construed as an indemnity and the Guarantor hereby indemnifies the Company in respect of any failure by the Customer to make payment or perform or observe any covenant, obligation, term or condition of this Guarantee and from and against all losses, damages, costs, charges and expenses of any kind which the Company may incur because of or arising out of the default by the Customer under the Company's Terms and Conditions of Trading or howsoever arising
8. That the Company may seek from a credit reporting agency a credit report containing personal information about the Guarantor to assess whether to accept the Guarantor as a Guarantor for credit applied for or provided to the Customer; and if the Company approves the Customer's application for credit this Guarantee shall remain in force until the credit facility provided to the Customer by the Company ceases. I/We further agree that the Company may disclose any personal information about our credit history and performance within the possession of the Company to a credit reporting agency.
9. That if requested, I/We will immediately execute a charge, mortgage or other instrument in favour of the Company charging all our estate and interest in real properties and in any other assets (tangible or intangible) in which we have any legal or beneficial interest whether personally or as Trustee or in which we later acquire any interest with payment of all monies owed to the Company by the Customer or any of us. I/We consent to the Company lodging a caveat or caveats over my/our real properties to protect the Company's interest in the same. I/We further agree to pay any stamp duty or other fees that may be payable that are applicable to the Guarantee or any other instruments created pursuant to this Guarantee.
10. That any part of anything contained in this Guarantee shall be severable without affecting any other part hereof.
11. That the proper law of this Guarantee shall be the law of the State of Victoria and that any proceedings to be taken by the Company may be taken in the Courts of such State and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of such State.
12. That I/We understand the nature and effect of the within Guarantee and I/We have had the opportunity of obtaining independent legal advice before signing this Guarantee.

\*DATED the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\*SIGNED by **the first Guarantor**) \_\_\_\_\_

\*In the presence of ) \_\_\_\_\_

\*SIGNED by **Witness**

\_\_\_\_\_  
\*Witness' full name and address

\*SIGNED by **the second Guarantor**) \_\_\_\_\_

\*In the presence of ) \_\_\_\_\_

\*SIGNED by **Witness**

\_\_\_\_\_  
\*Witness' full name and address

**IMPORTANT NOTE:**

**The original executed copy of the Application form and the Guarantee MUST be returned to the Company. Faxed or emailed copies of this document will not be accepted.**

**Provans Timber & Hardware Pty Ltd** (ACN 005 257 705)

62 Alexandra Parade, Clifton Hill, Victoria. 3068

**TRADING TERMS**

**1. Definitions:**

"Company" means Provans Timber & Hardware Pty Ltd (ACN 005 257 705).

"Customer" means the person in whose name an account is maintained by the Company and/or for whom goods/services are supplied/provided by the Company or any authorised representative of the Customer.

"GST" means GST within the meaning of the GST Act. x Transition Act) 1999.

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

The following expressions bear the same meaning as in the GST Act: "tax invoice", "taxable supply" and "value".

**2. General:**

These Trading Terms shall apply to the establishment, operation and use of an account and to all transactions effected by the Customer on an account or on a cash basis and shall apply to the exclusion of all others including any terms and conditions of the Customer. These Trading Terms shall apply as if incorporated into the Customer's orders and no variation shall apply unless with the written agreement of the Company.

**3. Acceptance of Contract:**

A formal contract shall be deemed to have been entered into upon receipt by the Company of an order either written or verbal from the Customer.

**4. Payment:**

(a) The Customer shall pay the Company for services rendered and/or goods supplied by the Company by the last day of the month following the month in which the services are rendered and/or the goods supplied.

(b) If the Customer does not make payment within the time stipulated then the Customer shall pay by way of liquidated damages a default charge calculated at the discretion of the Company at the rate prescribed from time to time under the Penalty Interest Rates Act 1983 (Vic), plus an additional 2% from the due date until the date that the total amount due under these Trading Terms is paid in full.

(c) If the Customer fails to pay for any services and/or for goods supplied by the Company then the whole amount then owing by the Customer to the Company shall become immediately due and payable.

Where payment is by cash the amount owing is due and payable immediately.

**5. Credit Card Payments:**

If a Customer pays its outstanding account by a credit card, the Customer shall pay to the Company the Merchant's Service Fee applicable to the credit card at the time of the transaction. The fee will be added to the sale price of the goods and the services provided by the Company. The Company may, in its absolute discretion, agree to waive the Merchant Service Fee payable under this clause.

**6. GST:**

(a) To the extent that a party makes a taxable supply in connection with these Trading Terms, except where express provision is made to the contrary, the consideration payable by a party under these Trading Terms represents the value of the taxable supply for which payment is to be made.

(b) Subject to clause 6(c), if a party makes a taxable supply pursuant to these Trading Terms for a consideration which, under clause 6(a), represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

(c) A party's right to payment under clause 6(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

## **7. Enforcement Expenses:**

If the Customer defaults under these Trading Terms it shall pay to the Company upon demand all costs including without limitation all legal costs (on a solicitor/own client basis), all mercantile agents fees incurred by the Company in recovering or attempting to recover all amounts outstanding and payable under these Trading Terms, any GST payable by the Company and any dishonour or bank fees incurred by the Company relating to payments made by the Customer.

## **8. General Lien:**

The Company shall, in respect of all unpaid debts due from the Customer, have a general lien of all goods and property produced for the Customer and shall be entitled on the expiration of 14 days notice to the Customer to dispose of such goods or property as the Company thinks fit and to apply the proceeds towards such debts.

## **9. Limitation of Liability:**

(a) Section 68A of the Trade Practices Act 1974 ("the Act") has the effect of enabling a corporation which has contracted to supply goods and services to limit its liability in certain circumstances for breach of conditions and warranties implied by the Act.

(b) Subject to the qualifications in Section 68A of the Act, the Company's liability for breach of a condition or warranty implied by Division 2 of Part V of the Act in the case of goods and/or services supplied to a Customer shall be limited to: in the case of goods, any one or more of the following:

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the repair of the goods;

(iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;

(iv) the payment of the cost of having the goods repaired; or

in the case of services

(i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

(c) Except as required by law and as herein provided all implied conditions and warranties with respect to the goods and services supplied by the Company to the Customer including without limitation warranties as to quality, fitness for purpose and sale by sample are excluded. In particular the Company does not accept any liability for any direct, indirect or consequential loss or damage caused to the Customer or any other person which arises out of the negligence or carelessness of the Company or any of its employees, servants, contractors, suppliers or agents, or which arises directly or indirectly from the use of any information, advice or recommendation of any Company employee or from any alleged breach of duty in respect of any goods or services supplied by the Company. The Company shall not be liable for any damage arising from the goods not being fit for any purpose for which the same may be used or supplied or in respect of any claim that the goods were not of merchantable quality or do not correspond with the description on the Company's invoice and/or the Company's packaging.

(d) Nothing in this clause 9 shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services of all or any of the provisions of Part V of the Act or any relevant or similar State or Federal legislation which by law cannot be excluded, restricted or modified.

## **10. Cancellations of Orders:**

(a) Custom made or custom processed products or products acquired by the Company specifically for the Customer are not returnable.

(b) Specific orders for Customers may be rejected by the Company unless accompanied by a non-refundable deposit or at least 50% of the total order price.

(c) Orders cannot be cancelled except upon terms which will compensate the Company at the rates provided in the Company's quoted charges (or if no charges are quoted at the Company's standard charge rates) for all work done and materials used or specially procured, to the date of the cancellation. The compensation will also take into account any GST payable in accordance with clause 6(b).

## **11. Suspension of Credit:**

The Company may at any time and without assigning any reason therefore refuse to extend any credit to the Customer.

**12. Claims and Returns:**

- (a) A Customer will be deemed to have accepted goods received by it as being in accordance with its order unless it notifies the Company in writing of its claim within 7 days from the date of receipt of the goods.
- (b) No return of the allegedly defective or faulty goods will be accepted by the Company unless the Company has given prior written authorisation for the return of the goods.
- (c) If the Company consents to the return of the goods the Customer must:
  - (i) provide the Company with a written statement setting out the reasons for the goods' return;
  - (ii) provide details of the original invoice number and the date of delivery of the goods;
  - (iii) provide a copy of the receipt or delivery docket relating to the goods sold;
  - (iv) return the goods in their original condition as at the time of their sale;
  - (v) pay to the Company an administrative handling charge of \$25.00 for the Company's processing costs associated with the return of the goods.

**13. Property in Goods Sold:**

- (a) Property in all goods supplied to the Customer remain with the Company until the Company has received payment in full for all goods supplied by the Company to the Customer and the Customer has discharged in full all of its accounts with the Company relating to all contracts made with Company.
- (b) If payment is made by the Customer by way of a cheque ownership shall not pass to the Customer until the cheque has been honoured.
- (c) Until the goods are paid in full the Customer shall hold the goods as bailee for the Company and shall keep the goods as a bailee for the Company and shall store and identify the goods in a manner that clearly shows the Company's ownership thereof.
- (d) The Customer will receive all proceeds (direct or indirect) of any dealings with the goods provided by the Company to the Customer in trust for the Company and shall pay the proceeds of any sale of the goods into a separate bank account and keep such proceeds in a separate account until the liability to the Company shall have been discharged.
- (e) If the Customer fails to pay for the goods by the stipulated due date the Customer (without prejudice to the Company's other rights) agrees to forthwith deliver up the goods to the Company upon demand by the Company and the Customer hereby irrevocably authorises the Company to enter upon its premises and to retake possession of the goods which remain unpaid and thereupon the Company shall be entitled to resell the goods.
- (f) The parties acknowledge that by supplying or accepting goods on the terms herein specified they are not intending to create a charge, mortgage or other security interest over any of the goods supplied. This clause 13 shall be read down (but only to the extent necessary) to avoid creating a charge.

**14. Security for Payment**

- (a) If requested, the Customer will immediately execute a charge, mortgage or other instrument in favour of the Company charging all of their estate and interest in real properties and in any other assets (tangible or intangible) in which they have any legal or beneficial interest whether personally or as Trustee or in which they later acquire any interest with payment of all monies owed to the Company by the Customer or any of us.
- (b) The Customer hereby consents to the Company lodging a caveat or caveats over its real properties to protect the Company's interest in the same and agrees to pay any stamp duty or other fees that may be payable that are applicable to any charge, mortgage or other instrument created pursuant to this clause.

**15. Sales Tax:**

The Company shall in addition to the value of the goods and/or services supplied be entitled to charge the amount of any sales tax payable whether or not included in the quotation unless a signed official order is received by the Company with an exemption certificate or number having been provided in accordance with current sales tax legislation.

**16. Customer's Insolvency:**

If the Customer:

- (i) becomes bankrupt; or
- (ii) is the subject of an application to wind up, or if a Liquidator, Provisional Liquidator, Receiver, a Receiver and Manager, or an Administrator is appointed with respect to the Customer or any of the Customer's assets; or
- (iii) makes an arrangement or composition with the creditors of the Customer or attempts to make such an arrangement or composition; or
- (iv) is unable to pay their debts as they fall due; or
- (v) ceases business; or
- (vi) has execution levied against any of their assets; or
- (vii) has a mortgagee Liquidator, Provisional Liquidator, Receiver, Receiver and manager or Administrator enter or seek to enter into possession of any of their assets ; then all monies then owing to the Company on any accounts (including any amounts which would not otherwise be payable until a later date or dates) shall become immediately due and payable.

**17. Credit Provided for Business Purposes:**

The Customer acknowledges that the credit provided to it by the Company under these Trading Terms shall be applied wholly or predominantly for business or investment purposes (or for both purposes).

**18. Force Majeure:**

Contracts and deliveries may be suspended by the Company in the event of any strike, lockout, trade dispute, fire, tempest, breakdown, theft, crime, force majeure or the inability of the Company to procure necessary materials or articles preventing or retarding performance of the contract and no responsibility shall be attached to the Company for any delay, default, loss or damage due to any of the above causes or to any other cause beyond the control of the Company. In such circumstances, the Company shall be entitled to determine the contract with the Customer and the Customer shall not have any claim for damages arising out of the cancellation.

**19. Power to Sell Goods:**

Nothing in these Trading Terms shall prevent the Customer from selling goods to any third party provided that the proceeds of any sale shall be held in trust by the Customer for the Company.

**20. Company to Provide Information for Sales Tax Credits:**

The Company must make available to the Customer such information that allows the Customer to calculate any special credits in respect of sales tax paid on stock to which the Customer is entitled.

**21. Customer's Property:**

- (a) The Customer's property and all property and materials supplied to the Company by or on behalf of the Customer will be held at the Customer's risk and the Company accepts no liability whatsoever for loss of or damage to property or material unless otherwise agreed by the Company in writing.
- (b) Unless otherwise agreed in writing by the Company, the Company accepts no responsibility for the insurance of the Customer's property or material.
- (c) The Customer shall have no right or title to data stored by the Company on disks or any other electronic form of storage. If the Customer requires any data stored by the Company, the Company may charge the Customer for the cost of down loading such data at its reasonable discretion. Disks and tapes supplied by the Customer and/or authorised persons shall remain the property of the Customer.

**22. Certificate:**

A certificate signed by an officer of the Company will be prima facie evidence of the Customer's liability to the Company under these Trading Terms as at the date of the certificate.

**23. Time:**

Time shall be the essence of all arrangements made between the parties and without limitation for payment of all monies owed by the Customer to the Company pursuant to the provisions specified in these Trading Terms.

**24. Jurisdiction:**

These Trading Terms are governed by the laws of the State of Victoria and the parties agree that all claims and disputes arising hereunder shall be determined in a Court of competent jurisdiction nearest Melbourne and the parties irrevocably agree to submit to the non-exclusive jurisdiction of the Court.

**25. Notices:**

Any notice by one party to the other shall be sufficiently served if served personally or by facsimile transmission or by e-mail or, if posted, by pre-paid post to the party to be served at the registered office of the party or its last known place of business and shall be deemed to have been received within two days of the date of posting if served by post and immediately upon transmission if served by facsimile transmission or by email.