



TRADING ACCOUNT APPLICATION

TRANSPORT HYDRAULIC SOLUTIONS PTY LTD (hereinafter called "the Supplier") ABN 77 116 411 664
34B Randor Street, Campbellfield, Victoria 3061, PO Box 634, Somerton, Victoria 3062 Australia
Phone (03) 9357 7251 Fax (03) 9357 7621 www.transporthydraulics.com

Business Legal Name:
Trading Name: ABN/Reg'd Business No:
Business Address:
Postal Address:
State Postcode
Contact Position Phone Fax
Email for Accounts
Email for Sales
(hereinafter called "the Applicant")

Type of Entity: Sole Trader Partnership Public Company Private Company Trust

If you have ticked Sole Trader/Partnership/Trust, the following information is required:

Registered proprietor(s) of Applicant:

Name
Address:
Name of Trust:

If you have ticked Public/Private Company, the following information is required:

Name & Address of each Director:

1. Name:
Address:
Telephone: Fax/Mobile: Email:
Date of Birth:
2. Name:
Address:
Telephone: Fax/Mobile: Email:
Date of Birth:

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

Date business commenced trading: Previous trading name(s):
Type of business: Are you a member of a buying group:
If yes, please nominate group:

Trade references:

1. Phone:
2. Phone:
3. Phone:

Your Bank: Branch: Contact: Phone:

Name and address of external accountant authorised to confirm financial details:

Name: Address:
Telephone: Fax/Mobile: Email:
Premises: Owned Leased Total estimated value of first order: \$

* Please read and sign conditions of trade following

CREDIT TERMS

All applicants must read this section

UPON THE SUPPLIER APPROVING THIS APPLICATION THE APPLICANT AGREES TO THE FOLLOWING:

1. To pay for all goods and purchasers on or before the 20th of the month following the date of purchase.
2. The Supplier shall be at liberty to withdraw account facilities offered to the applicant at any time without prejudice to any other right the supplier may have without being liable for any consequences to the Applicant.
3. The Applicant shall be liable for all costs charges, commission, fees, legal costs and disbursements incurred by the Supplier to recover any unpaid accounts including charges for any dishonoured cheques received together with interest accruing from the date of invoice at the rate of 2.5% per month.
4. The Applicant agrees to notify the Supplier no later than 14 days prior to any change of ownership of greater than 50% of the Applicant. Failure to do so could result in the applicant being responsible for the further debts and it must be noted that credit facilities will not automatically be transferred to a new owner or entity.
5. No deduction or set off shall be made on any account for any reason save that the Applicant may give notice of a deficiency in delivery within 24 hours of that delivery in which case the supplier shall issue an amended account.
6. If the Supplier considers it relevant in assessing an application for commercial credit or recovery of an outstanding amount I/we agree to the supplier disclosing any of the information contained in this application to a credit reporting agency and obtaining a credit report containing personal information about me/us in accordance with section 18E (B) and 18K (b) of the Privacy Act 1988.
7. Declare that the Applicant or any Partner or Director of same has never been made Bankrupt under the Bankruptcy Act or been a Director of a company which has gone into liquidation or had a receiver/manager appointed.
8. Declare that "We have read and understood and agree to abide by these Terms and Conditions".
9. That the credit provided by this agreement is solely for business and commercial purposes.
10. That purchase orders will only be made by the Applicant and not any associated business or company.
11. Notwithstanding delivery of the goods to the Applicant, until the Applicant has effected full payment for the goods and any other goods previously supplied by the Supplier:
 - a. legal title to the goods will remain with the Supplier
 - b. the risk in the goods will pass to the Applicant upon delivery to the Applicant or its agent;
 - c. the relationship between the Supplier and the Applicant will be fiduciary and the Applicant will hold the goods as bailee for the Supplier and keep them separate from other goods and the Applicant will label the goods so that they are identifiable as the goods of the Supplier; and
 - d. in the event that the Applicant uses the goods/product in some manufacturing or construction process of its own or some third party, then the Applicant will hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for the Supplier. Such part will be deemed to equal in dollar terms the amount owing by the Applicant to the Supplier at the time of the receipt of such proceeds.
12. The Applicant is not an agent of the Supplier in

any sale by the Applicant of the goods.

13. If the goods are resold (save where products manufactured using the goods are sold), by the Applicant, the Applicant will hold such part of the proceeds of any such sale as represents the invoice price of the goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of the Supplier and will pay such amount to the Supplier upon request.
14. Until title to the goods passes to the Applicant, the Applicant will store the goods in such a manner that clearly identifies them as being the property of the Supplier.
15. While the Supplier endeavours to keep delivery dates, any delay of delivery, for any reason whatsoever, will not entitle the Applicant to claim for any consequential loss or damage or to cancel, rescind or terminate the contract.
16. Should circumstances beyond the control of the Supplier prevent or hinder delivery, the Supplier will be free from any obligation to deliver goods while such circumstances continue. For as long as such circumstances exist, the Supplier may, at its option, cancel, rescind or terminate all or any part of the contract or keep the contract on foot until such circumstances have ceased. Such circumstances beyond the control of the Supplier include, but are not limited to: strikes, lockouts, rebellions, fire, acts of God, shortages of raw materials, Government decrees, proclamations or orders, transport difficulties, and failures or malfunctions of computers or other information technology systems.
17. This agreement shall be governed in all respects by the laws in force in the State of Victoria. The parties accept and submit to the non-exclusive jurisdiction of the courts of the State of Victoria.

AGREEMENT, CHARGE AND GUARANTEE ACKNOWLEDGEMENT AND PRIVACY ACT

18. Each of us acknowledges that the information provided in this application is the basis for evaluation by the Supplier of the financial standing and credit worthiness of each of us (and the incorporated body) and do hereby:
 - a. Certify that the information provided in this application is true and correct.
 - b. Authorise the Supplier to make such enquiries and receive such information from the bankers accountants and business referees mentioned in this application and otherwise from anyone as the Supplier may reasonably consider necessary.
 - c. Acknowledge that the Supplier has informed me/us, in accordance with the Privacy Act 1988 as amended that certain items of personal information, including an opinion about me/us are permitted to be kept on a credit information file and might be disclosed to credit reporting agencies.
 - d. In accordance with the Privacy Act 1988 as amended.
 - i. Agree to the Supplier obtaining from a business which provides information about the commercial credit worthiness of persons, information concerning my/our commercial activities or commercial credit worthiness and using such information for the purpose of assessing this application or assessing whether to accept me/us as guarantors as the case may be.
 - ii. Authorise the Supplier to exercise my/our rights of access to my/our credit information files and credit reports.
 - e. Agree that the Supplier may give to and seek from any credit providers (whether or not named in this application) reports and information that has any bearing on my/our credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:

- i. To assess an application by me/us for credit or commercial credit.
- ii. To notify other credit providers of a default by me/us.
- iii. To exchange information with other credit providers as to the status of my/our account where I am/we are in default with the Supplier or other credit provider.
- iv. To assess our credit worthiness or commercial credit worthiness at any time.
- v. To assess whether to accept me/us as guarantors or to continue supplying credit to the applicant.
- f. Agree that the Supplier may seek from a credit reporting agency a credit report containing personal information about me/us to assess whether to accept me/us as a guarantor for credit applied for or provided to the Applicant.
- g. Agree that this authorisation shall continue to have effect for the duration of the period during which commercial credit is provided or sought by the applicant from the Supplier.

CHARGE ON LAND

19. We jointly and each of us severally (and if the applicant or any guarantor is an incorporated body then each incorporated body) do hereby charge all of our real property both present and future wheresoever situated with an amount of our indebtedness to the Supplier from time to time and each of us shall immediately upon demand being made on us by the Supplier sign all documents and do all things that the Supplier may reasonably require to be signed and done to further secure to the Supplier the amount of such indebtedness to the Supplier including such indebtedness to the Supplier including such guarantee and or indemnity instruments in such terms as are required by the Supplier before or after approval of credit by the Supplier and each of us hereby irrevocably appoint the Supplier each successor of the Supplier each assignee to the Supplier and each of them severally to be duly constituted attorney of each of us to execute in our several names and as our several acts and deeds such consents to such caveats as the Supplier may wish to lodge against any dealings in any real property in the Land Titles Office. "Real Property" includes estates and interest including leasehold.

GUARANTEE

20. If the Applicant is an incorporated body in consideration of and as an essential condition of the acceptance of this application by the Supplier we do jointly and severally with the incorporated body and in our own names:
 - a. Accept liability to the Supplier for the payment as principal debtor of all monies owned by the incorporated body to the Supplier together with any recovery costs, interest, expenses or legal fees incurred by the Supplier from time to time and waive all rights as a mere surety which may be inconsistent therewith.
 - b. Bind the incorporated body and warrant our authority to bind the incorporated body.
21. In consideration of the Supplier agreeing to grant credit facilities to the Applicant we the undersigned do hereby jointly and severally guarantee payment of the Applicant account and all monies now and hereafter owed by the applicant to the Supplier and agree to be bound by the terms and conditions contained in this Application form and that the Supplier may at all times act as if we were the principal debtor.

TRUSTEE

22. In the cases of a Trustee Company we acknowledge that the Trustee shall be liable on the account and that in addition the assets of the Trust shall be available to meet payment of the account.

STANDARD TERMS OF SALE

SOLE TERMS

1. These conditions of sale apply to all transactions between the Applicant and the Supplier, including all quotations, offers, acknowledgements, orders or sales.
2. These conditions (which will only be waived or varied in writing signed by the Supplier) will prevail over all conditions of the transaction to the extent of any inconsistency. Acceptance of the Supplier's product shall constitute acceptance of these terms and conditions of sale.

DELIVERY

3. While the Supplier endeavours to keep delivery dates, any delay of delivery, for any reason whatsoever, will not entitle the Applicant to claim for any consequential loss or damage or to cancel, rescind or terminate the agreement.
4. Should circumstances beyond the control of the Supplier prevent or hinder delivery, the Supplier will be free from any obligation to deliver goods while such circumstances continue. For as long as such circumstances exist, the Supplier may, at its option, cancel, rescind or terminate all or any part of the contract or keep the contract on foot until such circumstances have ceased. Such circumstances beyond the control of the Supplier include, but are not limited to: strikes, lockouts, rebellions; fire; acts of God; shortages of raw materials; Government decrees, proclamations or orders; transport difficulties; and failures or malfunctions of computers or other information technology systems.

RISK

5. Risk in each order will pass to the Applicant when it is delivered to the carrier at the supplier's premises for the purpose of transmission to its destination but the property in the consignment does not pass other than in accordance with clause 8 of these terms of sale.
6. Subject to clause 5, where, in accordance with these terms, the Supplier accepts return of any goods, risk in those goods will revert to the Supplier upon delivery of the goods to the Supplier or upon collection of the goods by the Supplier's agent or courier as the case may be.
7. Any property of the Applicant's under the Supplier's custody or control will be entirely at the Applicant's risk as regards loss or damage caused to the property or by it.

RETENTION OF TITLE

8. Notwithstanding delivery of the goods to the Applicant, until the Applicant has effected full payment for the goods and any other goods previously supplied by the Supplier:
 - a. legal title to the goods will remain with the Supplier;
 - b. the risk in the goods will pass to the Applicant upon delivery to the Applicant or its agent;
 - c. the relationship between the Supplier and the Applicant will be fiduciary and the Applicant will hold the goods as bailee for the Supplier and keep them separate from other goods and the Applicant will label the goods so that they are identifiable as the goods of the Supplier; and
 - d. in the event that the Applicant uses the goods/product in some manufacturing or construction process of its own or some third party, then the Applicant will hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for the Supplier. Such part will be deemed to equal in dollar terms the amount owing by the Applicant to the Supplier at the time of the receipt of such proceeds.
9. The Applicant is not an agent of the Supplier in any sale by the Applicant of the goods.
10. If the goods are resold (save where products manufactured using the goods are sold), by the Applicant, the Applicant will hold such part of the proceeds of any such sale as represents the invoice price of the goods sold or used in the

manufacture of the goods sold in a separate identifiable account as the beneficial property of the Supplier and will pay such amount to the Supplier upon request.

11. Notwithstanding the provisions above the Supplier will be entitled to maintain an action against the Applicant for the purchase price plus costs etc.
12. Until title to the goods passes to the Applicant, the Applicant will store the goods in such a manner that clearly identifies them as being the property of the Supplier.

PAYMENT

13. The Applicant will pay the full price of each order to the Supplier on or before the 20th of the month following the date of purchase (the due date). If payment is not made by the due date, the Supplier may without demand retake possession of the goods and may without notice sell the goods on such terms and in such manner as it may determine and will be entitled to deduct all expenses incurred. For the purpose of recovering possession and without limiting the generality of the foregoing the Applicant hereby irrevocably authorises and licenses the Supplier and its servants and agents to enter upon any premises where any goods may be stored and to take possession of the goods.
14. If the Supplier is not paid for any goods on the due date specified in this agreement, without prejudice to any other right or remedy:
 - a. interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month; and
 - b. the Supplier may recover the price of the goods together with all interest forthwith from the Applicant as a liquidated debt in a court of tribunal of competent jurisdiction irrespective of any claim that the Applicant may have also buying etc against the Supplier for any thing or matter related to the goods delivered under this contract.
15. All applicable taxes, duties or levies (including GST) on the sale of the goods will be to the Applicant's account
16. The Supplier may, at its option and without prejudice to any of its rights, either suspend further deliveries, require payment in advance or terminate any contract by written notice to the Applicant where the Applicant:
 - a. defaults on any payment due under the agreement;
 - b. being a natural person, commits an act of bankruptcy;
 - c. being a corporation, is subject to:
 - i. a petition being presented, an order being made or a meeting being called to consider a resolution for the Applicant to be wound up, deregistered or dissolved;
 - ii. a receiver, receiver and manager or an administrator being appointed to all or any part of the Applicant's property and undertaking;
 - iii. the entering of a scheme of arrangement (other than for the purpose of restructuring); or
 - iv. any assignment for the benefit of creditors.

ACCEPTANCE OF GOODS

17. The Applicant will inspect the goods immediately upon delivery to the Applicant or upon collection of that order by the Applicant's agent or courier as the case may be.
18. All claims against the Supplier regarding the quality, nature, fitness, suitability, conformance with description or defects of the goods must be made in writing to the Supplier within 14 days of delivery. The Supplier does not accept liability for any such claim not made in accordance with these terms.
19. In the event of justified objection notified by the Applicant to the Supplier in accordance with these terms, the Supplier may, at its option:

- a. reduce the purchase price by agreement with the Applicant;
- b. accept the return of the goods and, subject to the goods being returned in the same condition as when they were delivered to the Applicant, refund to the Applicant the purchase price; or (less restocking fee, outside 14 days)
- c. replace the goods and no additional claims of any nature whatsoever may be made against the Supplier.

INDEMNITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

20. Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade secrets, or other industrial or intellectual property rights, passing off or misleading or deceptive conduct ("**Intellectual Property Rights**") except as provided in this clause 20. Seller will defend and indemnify Buyer against allegations of infringement of Intellectual Property Rights. Seller will defend at its expense and will pay the cost of any settlement or damages awarded in an action brought against the Applicant based on an allegation that a good sold pursuant to this contract infringes the Intellectual Property Rights of a third party. Seller's obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller within 10 days after Buyer becomes aware of such allegations of infringement, and Seller having sole control over the defence of any allegations or actions including all negotiations for settlement or compromise. If a good sold is subject to a claim that it infringes the Intellectual Property Rights of a third party, Seller may, at its sole expense and option, procure for Buyer the right to continue using the good, replace or modify the good so as to make it non-infringing, or offer to accept return of the good and return purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Seller shall have no liability for claims of infringement based on information provided by Buyer, or directed to goods delivered under this contract for which the designs are specified in whole or part by Buyer, or infringements resulting from the modification, combination or use in a system of any good sold. The foregoing provisions of this clause 20 shall constitute Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for infringement of Intellectual Property rights. If a claim is based on information provided by Buyer or if the design for a good delivered is specified in whole or in part by Buyer, Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right.

PERSONAL PROPERTIES SECURITY ACT 2009 (PPSA)

21. The customer grants and the Company may register on the Personal Property Securities Register, a security interest in all and any sale of Goods under this agreement, including but not limited to intellectual property and all other present or after-acquired property. The Customer warrants that all purchases under this agreement are for commercial purposes only and, accordingly, the provisions of the Consumer Credit Act will not apply. The Customer and the Company agree to contract-out of the PPSA in accordance with Section 115 of the PPSA to the extent that the section applies for the benefit of, and does not impose a burden on, the Company. The Customer waives its right to receive a copy of any Financing Statement or any Financing Change Statement registered by the Company in respect of the security interest created by these terms and conditions. The Customer agrees to execute any documents, provide all relevant information and co-operate fully with the

Company to ensure that the Company has a perfected security interest in the personal property charged and, if applicable, a Purchase Money Security interest (PMSI). The Customer agrees to notify you of any change in the Customer's structure or management including any sale or disposition of any part of the business of the Customer, any change in Directorships, shareholders or management or change in partnership or trusteeship **7 days prior** to any such change taking effect. The Customer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant any other Security interest in the Collateral. The Customer agrees to reimburse the Company for all costs and/or expenses incurred or payable by the Company in relation to registering, maintaining or releasing any financing statement or any other document in respect of any security interest under this agreement.

BUYERS PROPERTY

22. Any designs, tools, patterns, materials, drawings, confidential information or equipment furnished by Buyer, or any other items which become Buyer's property, may be considered obsolete and may be destroyed by Seller after two consecutive years have elapsed without Buyer placing an order for the items which are manufactured using such property. Seller shall not be responsible for any loss or damage to such property while it is in Seller's possession or control.

CHANGES, RESCHEDULES AND CANCELLATIONS

23. Buyer may request to modify the designs or specifications for the goods sold as well as the quantities and delivery dates of the items, or may request to cancel all or part of this order, however, no such requested modification or cancellation shall become part of the contract between Buyer and Seller unless accepted by Seller in a written amendment to this document. Acceptance of any such requested modification or cancellation shall be at Seller's discretion, and shall be upon such terms as Seller may require.

WARRANTY

24. Any written warranty that the Supplier provides to the Applicant will also form part of these terms and conditions of trade. No other representation, condition, warranty or premise expressed or implied by law or otherwise applies to the goods except where goods are supplied or services provided pursuant to the Trade Practises Act or otherwise by law.

ADVICE AND INFORMATION

25. Any advice, recommendation, information, assistance or service given by the Supplier in relation to goods sold or manufactured by the Supplier or their use or application is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability and the Supplier does not accept any liability or responsibility for any loss suffered from the Applicants reliance on such advice, recommendation, information, assistance or service.

EXCLUSION OF LIABILITY

26. The terms in this agreement that exclude or limit the Supplier's liability will apply only to the extent permitted by law. Provisions of statutes from time to time in force cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent. This agreement must be read and construed subject to any such statutory provisions. If any such statutory provisions apply, then to the extent to which the Supplier is entitled to do so, its liability under those statutory provisions will be limited as its option to:

- a. the replacement of the goods or the supply of equivalent goods; or the repair of the goods; or
- b. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- c. the payment of the cost of having the goods repaired.
- d. In no event shall the Supplier be liable for any incidental, consequential or special damages of any kind or nature whatsoever, including but not limited to lost profits arising from or in any way connected with this agreement or goods sold, whether alleged to arise from breach of contract, express or implied warranty, or in tort, including without limitation, negligence, failure to warn or strict liability.

GOVERNING LAW

27. This document shall be governed in all respects by the laws in force in the State of Victoria. The parties accept and submit to the non-exclusive jurisdiction of the courts of the State of Victoria. No actions arising out of the sale of the goods or this document may be brought by either party more than three (3) years after the cause of action accrues

We hereby acknowledge, affirm and agree that we have read fully understand and comprehend the Credit Terms and Standard Terms of Sale of this Application.

DATED _____

Only a director, partner or sole trader who is authorised can sign this form

<p>SIGNED _____</p> <p>PRINT NAME _____</p> <p>POSITION _____</p> <p style="text-align: center;"><i>Director/Sole Trade/Partner</i></p>

<p>SIGNED _____</p> <p>PRINT NAME _____</p> <p>POSITION _____</p> <p style="text-align: center;"><i>Director/Sole Trade/Partner</i></p>
