



Prime Hydraulics Pty Ltd T/as Prime Motion & Control
 4/471 Victoria Road, MALAGA WA 6090
 Tel: (08) 92484144 accounts@primehyd.com.au
 A.C.N. 134693342 A.B.N. 66134693342

CREDIT APPLICATION

A. APPLICANT

Name

Trading as:

Type of Business:

Address:

Website address:

If a Company ACN: ABN:

Telephone No.: Facsimile No.: Mobile No.:

Postal Address:

Contact for Accounts Payable: Account's e-mail address:

Contact for Procurement: Procurement's email address:

Estimated Monthly Purchases:

Preferred Sales Person at Prime Motion and Control:

i. DIRECTORS

Surname	Christian Names	Residential Address	Date of Birth	Telephone
.....
.....
.....

C. Is the Applicant or any person signing this application a trustee of a trust? If so state in each case:

- | | |
|---------------------|-------------------------------------|
| (i) name of trustee | (iii) date of trustee's appointment |
| (ii) name of trust | (iv) date of creation of trust |

D. ARE BUSINESS PREMISES LEASED (Yes/No)

(If Yes, landlord's name)

(Telephone)

E. PROPERTY HOLDINGS: Attach a list of the properties owned by Directors/Company to sure applicants A/c.

F. TRADE REFERENCES (Companies with whom the applicant is currently trading – No Banks, Fuel or associated companies.)

- Phone:
- Phone:
- Phone:
- Phone:

G Do you always quote order numbers yes/no



H Name of Accountant: Telephone #

In the case of a Company please state: What is the Authorised Capital \$.....

Paid up Capital \$..... Annual Sales \$.....

No. of Employees..... No. of sub-contractors.....

Bank Name..... Branch.....

Security for the Bank Overdraft is:

I **PRIVACY ACT.** The applicant agrees to the Company obtaining from its Bank credit reporting agencies or others a credit report containing personal credit information about the applicant in relation to commercial credit provided by the Company. The applicant agrees that the Company may give to and seek from any trade references or credit providers named in the credit application and any credit providers that may be named in a credit report issued by a credit reporting agency, information about the applicant's arrangements. The applicant understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or received from each other under the Privacy Act. The applicant agrees that the Company may continue to seek or give commercial/consumer credit information relating to the applicant's credit worthiness and relating to the collection of overdue payments.

Signature:..... Witness:.....

Signature:..... Witness:.....

Signature:..... Witness:.....

For and on behalf of: Pty Ltd

As trustee for the Trust COMMON

Dated: SEAL

GUARANTEE

WE the person(s) who have signed this Guarantee ("the Guarantor") IN CONSIDERATION of the Company granting to the Customer the facilities specified below do hereby jointly and each of the severally guarantee payment of the Customer's account and all monies now or hereafter owed by the Customer to the Company and the due and punctual performance of the Customer's obligations under the Terms and Conditions annexed hereto. This guarantee is a continuing guarantee and is irrevocable until the Company has been paid all monies owing to it by the Customer.

INDEMNITY

As a separate independent agreement each Guarantor shall hold the Company fully indemnified against all loss or damages suffered as a result of the whole of any part of the amount owed by the Customer to the Company not being recoverable from the Customer and/or the Guarantor(s) by reason of any legal limitation or any act or circumstances whether known to the Company or not.

CONTINUING GUARANTEE

The continuing guarantee hereby created shall remain in full force and effect and shall not be discharged until the expiry of not less than 7 months from the date of receipt of the last payment by the Company from the Customer and/or Guarantor(s) in satisfaction of any monies due to the Company.

Executed as a Deed the **day of** **201**

Guarantors Full Names and Addresses

1.

2.

3.

1.
Signature

Witness

2.
Signature

Witness

3.
Signature

Witness



TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS:

“ACL” means the Australian Consumer Law;

“Applicant” means the person or entity making this application for credit;

“Price” means the price stated in a quotation referred to in Clause 3;

“Prime” means Prime Hydraulics (Pty) Ltd (ABN 134 693 342), trading as Prime Motion & Control at 4/471 Victoria Road, Malaga, Western Australia 6090;

“Quotation” means any written quotation, tender, schedule or letter intended as quotation;

“These Conditions” means these Terms and Conditions of Trade.

2. CONTRACT TERMS:

2.1 These Conditions apply to every contract for the sale of Goods or Services by Prime to the Applicant and cannot be varied or supplanted by any other terms or conditions, unless agreed by Prime in writing.

2.2 Any quotation provided by Prime to the Applicant concerning the proposed supply of Goods or Services is valid for 30 days and constitutes an invitation to the Applicant to place an order based upon that quotation.

2.3 An order becomes a contract only on acceptance thereof by Prime or when Prime has provided the Goods or Services to the Applicant.

2.4 If there is any inconsistency between these conditions and any subsequent agreement for the supply of Goods or Services by Prime, the latter shall be read down to the extent necessary to give effect to these Conditions.

3. PRICES:

3.1 Unless otherwise stated, Prices quoted for the supply of Goods and Services exclude GST, as well as the cost of freight, insurance and other charges arising from the point where the Goods are loaded by the Applicant or delivered to a courier or carrier consigned to the Applicant. Any such amounts are payable to Prime together with the Price.

3.2 If the Applicant requests any variation to its order after acceptance by Prime, Prime may increase the Price to account for the variation.

4. PAYMENT:

4.1 Unless and until credit terms have been agreed, payment of the Price must be made in full on delivery of the Goods or completion of the Services.

4.2 If a credit facility is approved by Prime, payment must be made within 30 days from the end of the month in which the invoice is raised.

4.3 The credit facility may be withdrawn or amended or any limit/s decreased or increased at the sole discretion of Prime without prior notice to the Applicant or Guarantor (if any).

4.4 Any other payment terms must be agreed in writing and signed by Prime.

4.5 If any amount due is not paid to Prime on or before the due date, interest shall be payable by the Applicant on the amount in arrear calculated daily from the date the arrear payment became due until the actual date of payment at the maximum rate of interest permitted by the law of Western Australia at any relevant time.

4.6 Payments received by Prime will be applied firstly in reduction of any interest payable, thereafter in reduction of any expenses for which the Applicant is liable and then in reduction of the Price of Goods or Services.

4.7 Prime may, however, in its absolute discretion, apply any amounts received from the Applicant toward the amount owing to Prime in such order as Prime may determine.

5. DEFAULT:

5.1 If the Applicant fails to meet any payment or other contractual obligation due by it to Prime on or before the due date therefor, then all amounts on account which would otherwise have been payable by the Applicant to Prime at a later date shall become immediately due and payable without the requirement of any notice to the Applicant and Prime may in that event, without prejudice to any other remedy available to it:

(a) charge the Applicant interest in accordance with Clause 4.5;

(b) recover from the Applicant all expenses and costs (including legal fees and disbursements on an indemnity basis) incurred by it as a result of the default and in taking whatever action it deems appropriate to recover any sum due;

(c) cease or suspend for such period as Prime thinks fit, supply of any further Goods or Services to the Applicant as well as all or any of Prime's obligations arising from any agreement with the Applicant, with no effect on the accrued rights of Prime under such agreement;

(d) retain any security given or monies paid by the Applicant or available through the enforcement of any guarantee or security and apply this in reduction of any sum lawfully recoverable by it from the Applicant;

(f) enter upon the Applicant's premises or elsewhere to take possession of and remove any goods not yet fully paid for;

(g) take such steps as it may deem necessary to mitigate the damages suffered by it, including the putting to use, hiring out, sale or disposal of any goods supplied or to be supplied by it and in its possession.



- 5.2 The rights and remedies referred to in Clauses 5.1(c) to 5.1(g) may also be invoked by Prime, at its option, where the Applicant:
- (a) being a natural person, commits an act of bankruptcy or dies; or
 - (b) being a company, takes or has any action taken against it for its winding up, placement under Management, Administration and/or Receivership or enters into any scheme of arrangement or assignment or composition with or for the benefit of its creditors.
- 5.3 The Applicant and the Guarantor (if any) agree that the certificate of Prime or any person authorized by Prime to give the same shall be conclusive evidence as to the amount owing to Prime by the Applicant and Guarantor.

6. **OWNERSHIP**

- 6.1 Until full payment is received by Prime for all Goods and Services supplied to the Applicant, the Goods remain the property of Prime and ownership will not pass to the Applicant.
- 6.2 Prime, however, agrees to allow the Applicant to deal, sell or trade with the Goods in the normal course of business and for the Applicant to retain the proceeds of such sale or dealing provided the Applicant adheres to the terms of these Conditions or any agreement.
- 6.3 Prime may in the circumstances envisaged in clause 12, without notice, enter any premises where the Goods may be and remove them and for this purpose the Applicant irrevocably licences Prime to enter such premises and also indemnifies Prime from and against all costs, claims, demands or actions by any party arising from such action.

7. **INTELLECTUAL PROPERTY:**

- 7.1 The Applicant acknowledges Prime's title to any Intellectual Property attaching to the Goods or Services.
- 7.2 Illustrations, drawings and measurements supplied by Prime are only approximate and not binding except where so agreed or clearly implied.
- 7.3 Cost estimates, drawings and other documents relating to quotations may not be made available to third parties without Prime's prior written consent.

8. **RISK:**

The risk and all insurance responsibility for theft, damage or otherwise in and in respect of the Goods passes to the Applicant on the Goods being loaded by the Applicant or delivered to the Applicant by Prime or to a courier or carrier consigned to it.

9. **DELIVERY:**

- 9.1 Any period or date for delivery of Goods or provision of Services furnished by Prime is intended as an estimate only and is not a commitment unless specifically otherwise agreed in writing by Prime. Prime will, however, use reasonable endeavours to meet any estimated dates for delivery of the Goods or completion of the Services. Any delivery date to which Prime agrees to commit is hereinafter referred to as a "fixed delivery date".
- 9.2 Prime may, at its discretion make part delivery of the Goods or Services.

10. **LIMITED WARRANTY:**

- 10.1 Prime warrants its products against defects in material and workmanship when used for their intended purpose and in accordance with any instructions furnished.
- 10.2 The Warranty is for a period of 6 months from the date on which the risk passes to the Applicant or such other period as Prime and the Applicant may agree in writing, and is subject to the further provisions of this Clause 10.
- 10.3 The Applicant is to immediately notify Prime in writing of any defects. If any Goods are defective at the time of passing of risk, Prime may elect to either remedy the defect or supply a replacement.
- 10.4 The Applicant must not attempt to remedy any defect either itself or via a third party unless Prime is in default in remedying the defect or the Applicant is forced to remedy the defect due to urgent operational requirements or to avert imminent danger. Any attempt to remedy any defect, except in the circumstances mentioned above, will invalidate the warranty and Prime will then be under no obligation to fulfill the warranty.
- 10.5 To claim warranty, the Applicant must first obtain Prime's agreement to return the goods. Prime is entitled to reject any warranty claim:
- if the goods have been disassembled, tampered with or attempts to repair have been made;
 - the goods are out of the warranty period;
 - the goods stopped performing due to incorrect application or use or for any other reason attributable to the fault of any user of the goods.
- 10.6 Where there is a warranty claim, the Applicant shall pre-pay any transport costs, which will be credited to the Applicant if the claim is accepted.
- 10.7 The warranty is provided in addition to any other rights, remedies and warranties available to the Applicant which cannot be excluded under the ACL or any other statute or law. The Applicant is entitled under the ACL to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage or, if the goods fail to be of acceptable quality and the failure does not amount to a major failure, to have the goods repaired or replaced. Prime shall be entitled to elect whichever of these remedies the ACL or any other applicable statute allows in any given situation.



- 10.8 Except as set out in these Conditions or contained in any warranty statement provided with the Goods or Services or as envisaged in Clause 10.7, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is expressly excluded.
11. **LIABILITY:**
- 11.1 Replacement or repair of the Goods or the re-supply of or taking of action to remedy the Services is the absolute limit of Prime's liability howsoever arising under or in connection with the sale, use or storage of or any other dealings with the Goods or Services by the Applicant or any third party.
- 11.2 Prime will not be liable for any loss or damage suffered by the Applicant or any third party:
- where Prime has failed to meet any delivery date or cancels or suspends the supply of Goods or Services for a reason permitted or in circumstances where such failure is excused in terms of these Conditions;
 - if delivery of the Goods is prevented or, in the case of a fixed delivery date, where delivery is delayed and where the circumstances of the non-provision or delay are outside its control, for reasons such as flood, fire, Act of God, war or threat of war, physical unrest, riots, civil disturbances, terrorist activities (threatened or actual), strikes or other activity or for any other reason beyond the control of Prime.
- 11.3 Prime will under no circumstances whatsoever, except to the extent that the provisions of Clause 11.4 are applicable, be liable for any indirect or consequential losses or expenses suffered by the Applicant or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 11.4 For the avoidance of doubt, nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
12. **PERSONAL PROPERTY SECURITIES ACT (2009) (the "PPSA")**
- 12.1 If, as a condition of granting or keeping in place the credit facility, Prime requires and the Applicant agrees to Prime effecting a registration on the PPSA register in relation to any security interest arising under or in connection with or contemplated by these terms, the Applicant agrees in that event to promptly execute any documents, provide all relevant information, fully cooperate with Prime and do any other act or thing that Prime requires to ensure that Prime has a perfected security interest in, and has priority over any other security interest in, the Goods.
- 12.2 The Applicant agrees that, until all monies owing to Prime are paid in full, it shall not sell or grant any other Security interest in the Goods.
- 12.3 Notices or documents required or permitted to be given to Prime for the purposes of the PPSA must be given in accordance with the PPSA.
- 12.4 The Applicant agrees to reimburse, upon demand, Prime for all costs and/or expenses incurred or payable by Prime in relation to registering or maintaining any financing statement, releasing in whole or in part Prime's security interest or any other document in respect of any security interest.
13. **MISCELLANEOUS:**
- 13.1 Prime reserves the right to use the services of a Mercantile Agency.
- 13.2 Prime shall not be deemed to have waived or agreed to vary any of the terms of these Conditions unless it has done so expressly and in writing.
- 13.3 The Applicant and the Guarantor(s), if any, agree that the certificate of Prime or any person authorised by Prime to give the same shall be conclusive evidence of the amount owing to Prime by the Applicant or the Guarantor.
- 13.4 The Applicant and the Guarantor(s), if any, hereby agree that for the purposes of securing their liability and obligation hereunder they do hereby charge with the due and punctual and complete performance by each of them of all their liabilities and obligation hereunder all their real property both present and future. The continuing guarantee created herein shall remain in full force and effect and shall not be discharged until the expiry of seven (7) months from the date of receipt of the last payment by Prime from the Applicant in satisfaction of any monies due by the Applicant made by or on behalf of the Applicant.
- 13.5 Should there be any variation to any of the information supplied by the Applicant to Prime or in the structure of the Applicant's business (such as conversion to or from a company or trust), the Applicant shall forthwith notify Prime in writing. Unless notification of such variation or is given and accepted in writing by Prime, the original Applicant and the persons who signed as Guarantors on this Application Form shall remain liable to Prime as though any goods or services supplied by Prime were supplied to the original Applicant.
- 13.6 Where the Applicant is a trustee, the Applicant:
- (a) warrants that he/it has full power and authority for the benefit purposes and objects of the trust to make this Deed on behalf of the trust and that he/it shall be bound by the terms of this Deed both personally and as trustee; and
 - (b) confirms that the trustees shall be liable for the account and that in addition the assets of the trust shall be available to meet payment of the account.



- 13.7 The Applicant hereby agrees that the facility hereby applied for does not extend to, and the Applicant will not use the facility for, any transaction which is or may be a “regulated contract” as that expression is defined in the Credit Act.
- 13.8 Any legal costs or any other expenses incurred by Prime in respect of this Application, agreements, guarantees, securities or other documentation required by Prime or reasonably incurred by Prime pursuant to this Application shall be paid by the Applicant on demand.
- 13.9 The law of Western Australia from time to time governs these Conditions and the parties agree to the exclusive jurisdiction of the Courts of Western Australia and the Federal Court of Australia, if applicable.
- 13.10. Should any one or more of the clauses in these Conditions be void or unenforceable, this shall not affect the validity of the remaining provisions.
- 13.11. Headings are for convenience only and do not affect the interpretation of this agreement. Words in the singular shall be construed so as to include the plural and words in any gender so as to include any other gender.