

APPLICATION FOR CREDIT

STILLWELL TRUCKS PTY LTD

Please Tick Box/s

ABN 19 008 014 720

POSTAL ADDRESS: PO BOX 80, MILPERRA NSW 2214

Admin Fax: 02-97712539

Admin Email: mareeh@stillwelltrucks.com.au

The APPLICANT hereby applies to APE for credit and submits the following confidential information for this purpose only. (In this application, 'APE' means AP Eagers Limited ACN009 680 013 as agent for its subsidiaries listed from time to time on the website www.apeagers.com.au.)

Corporation Sole Trader/Partnership (each collectively referred to as "Applicant")

Applicant's Trading Name: _____ ABN: _____

Applicant's Full legal entity name: _____ ACN: _____

Applicant's Trading Address: _____

Applicant's Postal Address: _____

Applicant's Phone: _____ Fax: _____ Admin e-mail: _____

Applicant's premises are: Owned Leased Rented How long until lease/rental expires: _____

If leased/rented who is agent: _____ Phone: _____

Type of business: _____ How long has it been established: _____ Order Number Required: Yes/No

If the Applicant is a Corporation:

Directors : _____

Address: _____

Phone: _____

If Applicant is a Partnership/Sole Trader:

Name: _____

Address: _____

Phone: _____

Please list four companies where the Applicant currently conducts a monthly account.

1) _____ Phone: _____ Av Per Month\$: _____

2) _____ Phone: _____ Av Per Month\$: _____

3) _____ Phone: _____ Av Per Month\$: _____

4) _____ Phone: _____ Av Per Month\$: _____

Φ APE may exercise the right to cancel credit without notice in circumstance where it considers its ability to recover the credit is compromised for any reason.

Φ APE's trading terms are 30 days and payment must be made without demand or notice within that time frame.

Φ Until all monies are paid, APE retains title to the goods. A copy of APE's terms and conditions of sale is on the reverse.

Φ Applicant confirms that it has read and understood the terms and conditions including the charging and security clauses and understands that by signing the terms and conditions it is consenting to, amongst other things, the creation of a charge over its property, or, in the case of a company or partnership, over company or partnership property as the case may be, to secure the repayment of credit provided and repayable under this Agreement.

Φ Applicant's signature on this application will be accepted as its express agreement to be bound by these terms and conditions, and, if signing on behalf of a company or partnership, Applicant warrants that it has the authority to do so.

SIGNATURE: _____ DATE: _____

POSITION IN THE COMPANY: _____

NOTE:-

NO APPLICATION WILL BE CONSIDERED UNLESS ALL RELEVANT QUESTIONS ARE ANSWERED

CHARGE AND GUARANTEE AND INDEMNITY

To: **AP Eagers Limited** as agent for its subsidiaries listed from time to time on the website www.apeagers.com.au ("APE")
80 McLachlan Street, Fortitude Valley 4006 / PO Box 93 Fortitude Valley 4006

Guaranteee:

In consideration of APE at the Applicant's request, agreeing to supply _____ (name of Applicant customer) of

_____ (address of Applicant customer)

("the Applicant") with goods and services on credit ("the Agreement"), I/We the person/s signing as guarantors below ("the Guarantors") hereby agree with APE as follows:

1. To guarantee to APE the punctual performance of all obligations of the Applicant pursuant to the Agreement including payment of all moneys due;
2. To indemnify APE for all money due and owing to APE pursuant to the Agreement as a primary liability;
3. The liability of the Guarantor hereunder shall not be affected or discharged by:
 - (a) APE granting time to or compromising with or releasing or granting an indulgence to the Applicant in respect of the payment of money or any other obligation to which the Applicant is bound;
 - (b) The cancellation by APE of the Agreement;
 - (c) Any disclaimer of the Agreement by the Applicant for any reason whatsoever and the Guarantor shall indemnify and hold APE harmless against any loss which may result to APE from any such disclaimer;
 - (d) The Applicant or any one or more Guarantors becoming bankrupt, being wound up, appointing a voluntary administrator or entering into an arrangement with its Creditors;
 - (e) The death of one or more of the Guarantors or by notice of such death; or
 - (f) Any payment of money received by APE which is subsequently repaid to a trustee or liquidator of the Applicant.

Charge:

4. The Guarantor agrees to secure the payment of the monies owing under the Agreement and the performance of the terms of the Agreement by the Applicant, by:
 - (a) charging, in favour of APE, all of the Guarantor's rights, title and interests in real property owned by the Guarantor, beneficially or otherwise, from time to time;
 - (b) consenting to a caveat or other registerable interest, such as a mortgage, being lodged to register such a charge over the real property with the relevant government department and providing all reasonable assistance to enable APE to protect its security interest at APE's request;
 - (c) authorising APE or its solicitors to execute any consent form or other security document as its attorney for the purpose of registering the said caveat or such other registerable interest over real property referred to in the preceding sub-paragraphs;
5.
 - (a) The Guarantor grants a charge over all its personal property from time to time to secure the payment by the due date of all moneys due and owing under the Agreement together with interest and legal costs on an indemnity basis.
 - (b) The Guarantor consents to the registration of a financing statement in respect of the personal property charge and the retention of title of goods delivered under the Agreement being registered with the Personal Properties Securities Register.
 - (c) The Guarantor authorises APE or its solicitors to execute any document as its attorney for the purpose of registering the said security interests over the assets and undertaking of the said Guarantor.
6. The Guarantor acknowledges that it understands the full force and effect of these terms and has had a reasonable opportunity to obtain legal or other advice in respect of them, or has waived that right.
7. The Guarantor acknowledges and agrees, to the extent it is permissible at law, to exclude requirements on APE to deliver notices under the *Personal Property Securities Act 2009* (Cth) as amended from time to time.
8. In the event that APE registers a security charge over the Guarantor's real or personal property and money is payable under the Agreement, the parties agree that APE may enter the Guarantor's property or premises at any time to remove the secured collateral and APE may itself or through its agent, sell that collateral to recover the monies secured in any manner APE consider reasonably necessary, and account to the Guarantor for the proceeds.

Full Name of Guarantor: _____

Address: _____

Signed: _____

Witness: _____

Full name of witness: _____

PRIVACY NOTICE

APE's handling of personal information is consistent with the National Privacy Principles for the fair handling of personal information, as set out in the *Privacy Act 1988* ("The Privacy Act"), as amended.

Upon request, the Guarantor may gain access to his or her personal information. Any questions or concerns about privacy should be addressed to the Privacy Officer at APE's address given above. APE's Privacy Policy is available on the website www.apeagers.com.au.

APE may use the personal information contained in this guarantee and indemnity and the credit application and any information disclosed by a credit reporting agency to APE in accordance with the *Privacy Act*, in assessing the Applicant's credit application, and whether to accept this guarantee. APE gives notice in accordance with Section 18E(8)(c) of the *Privacy Act* that the Guarantor's personal information which is permitted to be kept on a credit information file might be disclosed to a credit reporting agency now or in the future. Personal information may also be disclosed by the Supplier to or between APE's related companies, contractors, other credit providers, finance providers, service providers and, if necessary, APE's risk insurer and debt collectors.

If all or part of the information requested by APE is not provided by the Guarantor, APE may not be able to process the Applicant's application for credit.

The Guarantor hereby consents to APE obtaining from a credit reporting agency, a credit report containing consumer credit information and/or commercial credit information about the Guarantor, for the purpose of assessing this guarantee and indemnity.

Name: _____

Signed: _____

**PRIVACY PROTECTION OF INFORMATION
IMPORTANT NOTICE TO APPLICANT(S) FOR CREDIT**

Section 18E(8)(C) Privacy Act 1988

Please read carefully.

AP Eagers Limited (as agent for its subsidiaries listed from time to time on the website www.apeagers.com.au, collectively referred to as APE) is permitted to give a credit reporting agency personal information about your credit application, but only limited kinds of information permitted under the *Privacy Act 1988* (Cth) ("The Privacy Act").

This includes:

- identity particulars - this only includes your name, sex, date of birth, current known address, two immediately previous addresses, your current or last known employer and your driver's licence number;
- the fact that you have applied for credit and the amount;
- payments which have become overdue for more than 60 days and for which collection action has commenced and subsequent advice that payments are no longer overdue;
- cheques drawn by you which have been dishonoured more than once;
- in specified circumstances, the opinion of APE that you have committed a serious credit infringement; and
- that credit provided to you has been paid or otherwise discharged.

STATEMENT BY APPLICANT(S) FOR CREDIT

Please read carefully before signing.

Where more than one Applicant, each Applicant is to sign.

1. Type of Credit for the purposes of National Consumer Credit Code and other legislation

I represent and warrant that:-

- (a) the credit I am applying for is wholly commercial credit;
- (b) the goods and services that I acquire from APE in connection with this credit will be used solely for commercial purposes;
- (c) the goods and services that I acquire from APE in connection with this credit will not be used for personal or domestic purposes.

I understand that APE has relied upon these representations and warranties in agreeing to provide me with credit and that APE may suffer loss and damage and liability if these representations and warranties are not true and correct and I will indemnify APE for such loss, damage and liability.

2. Giving information to a Credit Reporting Agency (Section 18E(8)(c) Privacy Act 1988)

APE has informed me that it may give certain personal information about me to a credit reporting agency.

I/we understand that it can only give limited kinds of information which are set out in the *Privacy Act 1988* and examples of which are listed at the beginning of this form.

3. Exchanging information with Other Credit Providers (Section 18N(1)(b) Privacy Act 1988)

I/we agree that APE may give to and seek from any credit providers named in my credit application, and with other credit providers that may be named in a credit report issued by a credit reporting agency about my credit arrangements. I/we understand that this information can include any information about my credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act 1988*.

4. Access to Commercial Credit Information (Section 18L(4) Privacy Act 1988)

If APE considers it relevant for the purpose of assessing my application for credit, I/we consent to APE obtaining a report containing information about my commercial activities or commercial credit worthiness, from a business which provides information about the commercial credit worthiness of a person.

5. Access to Consumer Credit information for a Commercial Credit Application (Section 18K(1)(h) Privacy Act 1988)

If APE considers it relevant to assessing my application for commercial credit, I/we consent to APE obtaining from a credit reporting agency a credit report containing personal credit information about me in relation to commercial credit provided by APE.

6. Use of Credit Reports for Collecting Overdue Payments (Section 18K(1)(h) Privacy Act 1988)

If APE considers it relevant to collecting overdue payments in respect of commercial credit provided to me, I/we agree to APE receiving from a Credit reporting agency a credit report containing personal information about me in relation to collecting all overdue payments.

7. Access to Consumer Credit Information by Trade Insurers (Section 18K(1)(e) Privacy Act 1988)

I/we consent to a trade insurer obtaining a credit report about me containing consumer credit information, in order to assess whether to insure the credit provider for credit given to me, or the risk of providing insurance, or to assess the risk of a default by me in relation to my application for commercial credit with APE.

APPLICANT NAME (Please Print) _____

Signature _____

Date _____

WITNESS NAME (Please Print) _____

Signature _____

Date _____

TERMS AND CONDITIONS OF SALE

Unless otherwise stated in a written quote provided by APE to the Applicant, acceptance of the Applicant's order is subject to the Applicant's acceptance of APE's standard conditions printed below:

1. Settlement/Terms of Payment

- (a) Trading terms are strictly cash before delivery unless prior lease, hire purchase or credit account arrangements are made.
- (b) If prior lease, hire purchase or credit account arrangements are made, payment is to be as per APE's quote and if the terms of payment are not set out in the quote, by cash within thirty days of the end of the month in which the goods are delivered.
- (c) Failure to comply within the terms of payment or those set out in the quote will constitute a breach of contract and APE may treat the whole contract as repudiated and act accordingly.
- (d) APE may refuse without prejudice to any other rights it may have to supply or deliver further products to the customer pursuant to the quote or otherwise until such time as the Applicant has remedied any default under this Clause.
- (e) Reasonable interest may be charged by APE on any amount overdue from time to time at such rate as shall be charged from time to time to APE by its bankers for overdraft accommodation on such amount as notified to the Applicant.

2. Price

- (a) All prices quoted are ex APE's warehouse - delivery, packaging, freight, insurance etc, are extras.
- (b) All prices quoted are current as at the date of the quote, but are subject to change on 14 days' notice if considered by APE to be reasonably necessary.
- (c) All prices quoted are exclusive of Goods and Services Tax.

3. Delivery

- (a) Any times or dates quoted for dispatch or delivery, following APE's acceptance of the Applicant's order are based on receipt by APE of full and final instructions enabling APE to proceed uninterrupted with the work. APE cannot accept responsibility for any delays due to causes outside its control and while delivery time is estimated as accurately as possible, it cannot be guaranteed nor is any such estimation of essence to or a condition of the contract.
- (b) APE is not responsible for loss, damage or delay from any cause outside APE's control and the Applicant is not entitled to any compensation from APE of any nature for such loss, damage or delay.
- (c) All goods are at the Applicant's risk during transit and APE's liability for the goods ceases on delivery to any authorised third party carriers, agents or representatives of the Applicant.
- (d) Visible damage to goods must be reported to APE within twenty-four (24) hours of receipt of the goods.

4. Return of Goods

Credits for amounts paid on returned goods which the Applicant can demonstrate are faulty or defective, may be allowed where in APE's reasonable opinion, the following conditions apply:

- (a) Credit will not be considered unless goods are returned in the condition in which they were delivered and freight prepaid;
- (b) The original invoice number and date must be quoted;
- (c) A full credit is available only if, as well as the above conditions being met, the goods are returned to APE's store within thirty (30) days of the date of supply; and
- (d) APE reserves the right to deduct a reasonable re-stocking fee from any credit.

5. Title

Until all monies owing by the Applicant have been paid in full, APE shall retain the legal title in all goods supplied. When such goods are used, even with loss of identity, the legal title to the resultant product shall vest in APE. Proceeds of sale of unused goods or resultant products shall be received by the Applicant as agents of APE and on APE's account, such proceeds to be kept in a separate account or to be accounted for to APE on demand.

If goods are in the possession of an Applicant to which title has not passed, the Applicant is under an obligation to retain them in a good and merchantable condition until either paid for or collected and to allow APE and/or its servants or agents onto the premises where they are stored for the purpose of inspecting and collecting the goods. The Applicant acknowledges that APE may by themselves or through their agents at APE's discretion sell or otherwise dispose of the goods and recover the amounts payable by the Applicant, in such manner as APE reasonably considers appropriate.

6. Creation of Charge

- (a) As security for the payment by the Applicant of all or any monies outstanding under this agreement, for interest and the reasonable legal costs and recovery costs on an indemnity basis incurred by APE and for the performance of the terms of this agreement, the Applicant:
 - (i) hereby charges, in favour of APE, all of its rights, title and interests in real property owned by the Applicant beneficially or otherwise at the time of this Agreement and from time to time, and
 - (ii) consents to a caveat or other registrable interest being lodged with the relevant government department in respect of such charge.
- (b) The Applicant also:
 - (i) charges, in favour of APE, all of its rights, title and interests in its personal property, owned by the Applicant, beneficially or otherwise from time to time, to secure the payment by the Applicant of all moneys outstanding under this agreement together with interest and reasonable legal costs and recovery costs on an indemnity basis;
 - (ii) will do all acts and things necessary or desirable for APE to register its security interest and to lodge a financing statement in respect of the charge and the retention of title in clause 5 in accordance with the Personal Property Securities Register.

7. Limits of Offer

When APE supplies whole goods to the Applicant APE's quote covers only the goods listed in the basic specification of equipment offered. All descriptive material, drawings, particulars of weights and dimensions submitted with APE's quotation are approximate. Certified information for installation purposes can be supplied on request.

8. Performance

Any performance figures given by APE in any quote for whole goods are based upon normal design experience and are such as APE expects to obtain on test. APE will, however, accept no liability if these figures are not obtained, unless they are specifically guaranteed in writing

in which case they would be subject to the recognised tolerance and rejection limits applicable to such figures.

9. Limitation of Liability

- (a) Any stipulations, terms or conditions contained in the Applicant's order form which conflict with any of these terms and conditions, are not accepted by APE and will be deemed to be inapplicable to any order placed with APE unless agreed upon in writing by APE prior to delivery of APE's products.
- (b) Subject to any conditions or warranties mandatorily implied by law and to any conditions and warranties contained herein, all conditions, warranties and representations on the part of APE, whether express or implied, are hereby expressly excluded.
- (c) APE shall be under no liability to the Applicant for any loss or damage to any person or property or for death or injury caused by any act or omission by APE, its servants or agents.
- (d) Should APE be liable for breach of a condition or warranty mandatorily implied by law, its liability for such breach shall be limited to one of the following as determined by APE namely, the replacement of goods, or the payment of the cost of having the goods repaired.
- (e) Subject to any legislation or express agreement to the contrary, the Applicant acknowledges that it does not rely on the skill and judgment of APE, its servants or agents in determining whether the goods to be supplied are fit for any particular purpose and the Applicant further acknowledges that any advice furnished by APE with respect to the use of goods is given on the basis that APE assumes no obligation or liability for advice given or results obtained, all such advice being given and accepted by the Applicant is at the Applicant's risk.
- (f) To the maximum extent permitted at law the Applicant has responsibility for ensuring that the goods are not used for any purpose for which they are not suitable and the Applicant warrants and represents that it has had adequate opportunity to inspect the goods and to obtain independent expert advice if required. To the extent that any warranty as to purpose or merchantable quality is implied by law, the parties agree that the sole and exclusive remedy of the Applicant will be to return the goods and obtain a refund or at APE's election for APE to repair or replace the goods as soon as reasonably practical.
- (g) Under no circumstances shall APE be liable for any direct or indirect loss (including without limitation loss of profit) or damage whether special or consequential however arising except for:
 - (i) any loss or damage suffered by the Applicant as a direct result of a failure by APE to perform such contract; or
 - (ii) the actual cost incurred by the Applicant as a direct result of failure by APE to perform such contract.
- (h) No claim or action shall be maintainable against APE unless it shall first have been notified thereof in writing and furnished with fully supporting documentary evidence in relation to the quantum of such claim.

10. Acceptance

Accepting delivery of goods detailed in an invoice is deemed to be acceptance by the Applicant of these conditions of sale.

11. Relevant Law

All Contracts made hereunder are deemed to be made in Queensland and except to the extent that the laws of the Commonwealth of Australia apply, the interpretation thereof and all disputes arising therefrom or connected therewith shall be governed in all respects by the laws of that State and all such disputes shall be referred to a Court of competent jurisdiction in the said State unless the parties agree otherwise in writing.

12. Alteration of Conditions

These conditions may be altered only by APE's management. Such alteration must be in writing and be signed by the duly authorised management and no other employee of APE, and will only take effect for orders received after the Applicant is given notice of the alteration.

13. Verification of Amount Outstanding

A statement in writing made up from the books of APE and signed by any Manager or Accountant of APE of the monies owing hereunder in respect of the account of the Applicant at the date mentioned shall be prima facie evidence that such amount is owing.

14. Contracting out

Where the terms of this Agreement are inconsistent with the *Personal Property Securities Act 2009*, the *Australian Competition and Consumers Act 2009* or any other legislation, to the extent permitted by law, the parties are deemed to have expressly excluded and replaced those statutory provisions.

15. Exclusion of Enforcement Provisions

The Applicant acknowledges and agrees, to the extent it is permissible at law, to exclude the notice requirements of the *Personal Property Securities Act 2009* (Cth) as amended from time to time.

16. Appointment

The Applicant appoints and authorises APE and any director, officer or solicitor of APE from time to time as its attorney to execute and deliver in its name:

- (a) such form of security interest, charge or mortgage as APE may reasonably require to better secure any charge granted under these conditions, and
- (b) any financing statement, consent form, security document or other document whatsoever for the purpose of: (i) registering any caveat or other registrable interest in respect of the charge or any security interest whatsoever granted under these conditions; or (ii) otherwise perfecting and enforcing the security interest.

17. Further Steps

The Applicant must do everything (including obtaining consents, signing and producing documents, completing documents or procuring that they are completed and supplying information) which APE requests and considers necessary for the purposes of the *Personal Property Securities Act 2009* (Cth) (PPSA) including, without limitation:

- (a) ensuring that the security interests arising in favour of APE under these conditions are enforceable, perfected or otherwise effective in accordance with the PPSA;
- (b) enabling APE to apply for any registration, or give any notification, in connection with those security interests; and
- (c) enabling APE to exercise rights in connection with those security interests in accordance with the PPSA.

18. Interpretation

The expression "the Applicant" is a reference to the customer(s) named on reverse side of this document.

The expression "APE" is a reference to AP Eagers Limited or its relevant subsidiary(ies) providing the supply of goods or services.