



2 Western Avenue
Sunshine VIC 3020
PH: (03) 9311-5729
Email: accounts@exhaustfluids.com.au

CONFIDENTIAL – SUPPLY AGREEMENT

(This form must be completed in full in order to process)

I/We hereby apply to **EXHAUST FLUIDS AUSTRALIA PTY LTD - ACN 166 500 563** ("the Supplier") for a Credit Account and submit the following information:

TRADING NAME : ("the Customer")

TRADING ADDRESS:

TELEPHONE NO.: FAX NO.: E-MAIL:

POSTAL ADDRESS:

NATURE OF BUSINESS (e.g. Distributor, Retailer, Manufacturer etc)

DATE WHICH YOU COMMENCED THIS BUSINESS:

PROPRIETORSHIP DETAILS

Type of Business: SOLE TRADER PARTNERSHIP COMPANY **COPY OF UTILITIES NOTICE & DRIVERS LICENCE**

Personal details of: SOLE TRADER PARTNERS DIRECTORS

1. Surname: First and Middle Names: Date of Birth:

Residential Address:

Home Telephone Number: Mobile Number: E-mail:

2. Surname: First and Middle Names: Date of Birth:

Residential Address:

Home Telephone Number: Mobile Number: E-mail:

If a COMPANY please complete the following:

COMPANY NAME: A.B.N.

REGISTERED OFFICE ADDRESS:

Signature:

DATE OF INCORPORATION: STATE OF INCORPORATION PAID UP CAPITAL: \$

AMOUNTS OF ANY DEBENTURES OR LOANS, WHETHER SECURED OR UNSECURED:

Please Note: Directors guarantees included with this form must be signed by all directors of the Company in order for this application to be processed. Guarantees from other persons may also be required at the Supplier's discretion. If the Applicant is a Sole Director Company, guarantees from other persons may be required in order for this Application to be processed.

BANK DETAILS:

BANK: BRANCH ACCOUNT NO.

TRADE REFERENCES:

1. Name: Account Type: Days
Address Telephone No:
Email Address Fax No:
2. Name: Account Type: Days
Address Telephone No:
Email Address Fax No:
3. Name: Account Type: Days
Address Telephone No:
Email Address Fax No:

TRADING TERMS:

All applications for Credit are treated as strictly COD Terms until Trading Terms are offered.

Please Provide Copy of Drivers Licence of All Company Director's / Owner's and Guarantor's.

If further terms are required please indicate security of a Bank guarantee to be offered.

Bank Guarantee Credit Card Number Expiry Date CVV No

AMOUNT OF CREDIT REQUIRED PER MONTH ONLY IF BANK GUARANTEE \$.

PERSON(S) TO CONTACT REGARDING PAYMENT OF ACCOUNT

Telephone: E-mail

Signature

TERMS AND CONDITIONS

1. ACCOUNT TERMS

- 1.1. The Supplier may in its absolute discretion refuse the Customer credit facilities or suspend or discontinue the supply of goods and/or services to the Customer or to increase or vary the Customer's credit limit at any time without any obligation to provide to the Customer or the Customer's guarantors prior notice or a reason for such action.
- 1.2. For **five** day's accounts, all accounts must be paid for in full by the Customer from date of invoice. For further day accounts, all accounts must be paid for in full by the Customer on or before the Supplier's last trading day in the month following the month of date of invoice ("the Due Date").
- 1.3. If the Customer fails to make full payment by the Due Date, interest will be charged at a rate which is 12% per annum calculated on daily balances on monies owed by the Customer to the Supplier both before and (as a separate and independent obligation) after any judgment until paid in full.
- 1.4. The Customer will pay the Supplier for any and all of the Supplier's expenses including but not limited to any legal costs on an indemnity basis, stamp duties and other expenses payable under these terms and conditions together with any collection costs or dishonoured cheque fees incurred in connection with the enforcement of, or the preservation of any rights under these terms and conditions. Such costs, duties and other expenses as well as interest payable pursuant to clause 1.3 may be recovered as a liquidated debt.

2. GENERAL

- 2.1. The Supplier may vary these terms and conditions by a notice of variation in writing to the Customer. The Customer agrees that the purchase of any goods and/or services after the date of a notice of variation will be deemed to be an acceptance of such varied terms and conditions by the Customer.
- 2.2. Should there be any variation to any of the information supplied by the Customer to the Supplier in the credit account application, to the nature of the Customer's business, or the structure, ownership, management or control of the Customer (including but not limited to the conversion to or from a company or trust), the Customer shall notify the Supplier in writing within seven (7) days of such variation. The Customer agrees to execute such further documents as may be required by the Supplier in respect of the account from time to time.
- 2.3. The Customer warrants that this application for credit is for the supply of goods and/or services for use in a commercial operation and is not for personal and/or consumer use.

3. EVIDENCE OF MONIES PAYABLE AND OTHER MATTERS

A statement in writing signed by any director, secretary, administration manager or credit manager of the Supplier stating the balance of the monies due to the Supplier by the Customer shall be conclusive evidence of the amount of indebtedness of the Customer to the Supplier and/or any act, matter or thing arising under these terms and conditions, including but not limited to the quantity of goods and/or services delivered and the rates applicable at the time of delivery, as at the date of that statement.

4. CREDIT LIMIT

- 4.1. Any credit limit is solely for the benefit of the Supplier.
- 4.2. The obligations of the Customer under this Agreement remain unchanged if the credit limit is exceeded or not specified at any time.

5. DEFAULT

If there is any default by the Customer in making due payment to the Supplier of any monies owing by the Customer, or if an administrator, liquidator or provisional liquidator, receiver and manager or controller is appointed in respect of the Customer, or if the Customer goes into bankruptcy or commits any act of bankruptcy, or if there is a breach by the Customer of any of these terms and conditions then:-

- 5.1. All monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding that the due date for payment of any of the monies shall not have expired;
- 5.2. The Supplier may suspend any further supply to the Customer; and/or
- 5.3. The Supplier may terminate this Agreement forthwith and without notice.
- 5.4. The Supplier has the right to seize any of the Suppliers Goods that has been delivered to Site Address or to any other Address on behalf of the Customer which has not been paid for.

6. SEVERANCE

In the event that the whole or any part or parts of any clause in this Agreement is found to be unenforceable by a Court then such clause or part thereof shall be to that extent severed from these terms and conditions without effect to the validity and enforceability of the remainder of these terms and conditions.

7. JURISDICTION

These terms and conditions shall be governed by and construed in accordance with the laws of the State of Victoria. The parties submit to the exclusive jurisdiction of the Courts of Victoria and agree that proceedings may be commenced in any Court in the State of Victoria and consent to that Court having jurisdiction by virtue of this clause notwithstanding that the Court would not otherwise have such jurisdiction.

8. NOTICE

Notice required to be given by the Customer to the Supplier pursuant to these terms and conditions must be delivered personally or sent by registered post to the credit manager of the Supplier at the Supplier's postal address of 2 Western Avenue, Sunshine, Victoria, 3020 and unless the contrary is proved shall be taken as delivered when received by the Supplier. Notice to be given to the Customer by the Supplier may be delivered personally, by facsimile or e-mail transmission or sent by post to the Customer's last known address and shall be taken as delivered on the second business day following posting.

9. CHARGING CLAUSE

- 9.1. To secure payment of all monies which are or may become payable by the Customer to the Supplier under this Agreement the Customer (or where the Customer is comprised of two (2) or more persons then each person jointly and/or severally) hereby charges with the due payment of all of those monies all of the Customer's right, title and interest in all and any real property wherever located both present and future and the Customer consents to the Supplier lodging a caveat or caveats over such property to protect the Supplier's interest.
- 9.2. Upon demand by the Supplier, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure the Customer's indebtedness to the Supplier.
- 9.3. Should the Customer fail within a reasonable time of such demand to execute such mortgage or other instrument then the Customer appoints irrevocably the credit manager or a duly authorised officer of the Supplier to be the Customer's lawful attorney to execute any such mortgage or other instrument.

Signature.....

10. **FORCE MAJEURE**

The Supplier shall not be liable for any delay or for the consequences of any delay in performing or failure to perform any of its obligations under this Agreement if such delay is due in full or in part to any cause whatsoever beyond its reasonable control. Such delay or failure shall not constitute a breach of this Agreement and the Supplier shall be entitled at its option to either extend the time for delivery or performance for a reasonable period or to determine the contract without any recourse by the Customer to any claim for damages.

11. **LIABILITY OF THE SUPPLIER**

- 11.1. If under any law any terms which apply to the supply of goods and/or services under this Agreement cannot legally be excluded, restricted or modified then those terms apply to the extent required by that law.
- 11.2. All terms which would otherwise be implied are excluded except as stated in this Agreement.
- 11.3. To the extent permitted by law the Supplier's sole liability for any breach of any term is limited to the supply of the goods and/or services again or the payment of the cost of having the goods and/or services supplied again.
- 11.4. The Customer may not rely on any representation, warranty or other term made by or on behalf of the Supplier which is not set out in this Agreement.
- 11.5. The Supplier is not liable for any damage, economic loss or loss of profits whether direct, indirect, general, special or consequential:-
 - 11.5.1. Arising out of a breach of an implied or expressed term; or
 - 11.5.2. Suffered as a result of the negligence of the Supplier or its employees or agents, apart from liability as set out in this clause.

12. **RETENTION OF TITLE**

- 12.1. Ownership, property and title in and to any goods supplied by the Supplier shall only be transferred to the Customer when payment in full has been made by the Customer to the Supplier for all sums owing to the Supplier whether under this agreement or any other contract, agreement or arrangement and until such payment is made the Supplier has the right to call for and the Customer is under an obligation to deliver up the goods to the Supplier forthwith upon such demand.
- 12.2. No documentation affixed to or referring to the goods shall be removed from the goods and/or destroyed by the Customer until such time as title to the goods has passed to the Customer under these terms and conditions.
- 12.3. Until the goods have been paid for in full the Customer shall store the Goods in a manner which clearly indicates the ownership of the Supplier and shall hold the goods in a fiduciary capacity as bailee for the Supplier.
- 12.4. Where the goods have not been paid for in full the Customer may only on sell the goods to a third party in the ordinary course of business of the Customer and on the condition that:
 - 12.4.1. the Customer keeps proper records of the sale of the goods;
 - 12.4.2. where the purchaser does not immediately pay for the goods, the purchaser is given written notice of the Supplier's interest in the goods and the existence and operation of this retention of title clause;
 - 12.4.3. where the Customer is paid by the purchaser, the Customer holds the whole of the proceeds of sale on trust for the Supplier and such proceeds are to be held in a separate bank account; and
 - 12.4.4. where the Customer is not paid by the purchaser, the Customer shall assign its claim against the purchaser to the Supplier upon the Supplier so requesting, which request is solely within the Supplier's discretion.
- 12.5. For the purpose of giving effect to and perfecting the agreements specified in sub-clause 12.4 the Customer hereby irrevocably appoints the Supplier as its Attorney.
- 12.6. If payment of any monies is overdue in whole or in part, the Supplier may recover and/or resell all or any of the goods.
- 12.7. If payment of any monies is overdue in whole or in part and the Customer has affixed the goods to any other goods or property, has mixed the goods with any other goods or property or has incorporated the goods into any other goods or property in breach of sub-clause 12.3, the Supplier may retrieve the goods provided that the retrieval does not damage other goods and/or property to which the goods have been affixed or mixed, and the Customer shall thereafter continue to be liable to the Supplier for such part or balance of the indebtedness of the Customer to the Supplier after deducting the realisable value (to be determined at the sole and absolute discretion of the Supplier) of the goods so retrieved.
- 12.8. For the purposes of sub-clauses 12.6 and 12.7 the Supplier is hereby authorised to enter any premises occupied by the Customer and the Customer indemnifies the Supplier against any loss, claims or damages in connection with the retaking of possession of the goods provided that the Supplier (including its servants and agents) acts with reasonable care and caution and commits no act or acts of trespass in so retaking possession of the goods and does not wilfully damage any other goods or property not belonging to the Supplier and does not willingly breach or induce any breach of any other legal rights vested in any other person associated with such premises entered upon or goods and/or property so dealt with.

13. **PERSONAL PROPERTIES SECURITY ACT 2009 CTH ('PPSA')**

- 13.1 Creation of Security Agreement: The Customer acknowledges that by accepting the terms of this Agreement and/or an associated agreement, the Customer also agrees to and accepts that an agreement (held within this Agreement or an associated agreement, whether severable or not), is created which gives rise to a 'security interest' pursuant to and for the purposes of the PPSA (whether it be a 'Purchase Money Security Interest' or a 'Personal Properties Securities Lease' or another form of interest as defined by the relevant legislation). Under this arrangement, the Customer will be the Grantor of the secured interest and will be the Secured Party. The Goods or Stock under the security agreement will be the Collateral.
- 13.2 The security interest will apply to all goods supplied under agreement and in all future goods supplied under agreement.
- 13.3 Permission to Register Security Interest: The Grantor consents to the registration of the Secured Parties' interest in the Personal Properties Securities Register and any details provided therein, including the registration of a financing statement.
- 13.4 The Grantor agrees that it will provide all the necessary information to allow for effective registration.
- 13.5 Waiver of notice requirements under PPSA: The Grantor expressly waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required and cannot be excluded by the PPSA. In particular, the Customer agrees to waive rights under section 157 to receive a copy of the verification statement. This and any other material will be available to the Customer on specific request.
- 13.6 Confidentiality Agreement: The Grantor and the Secured Party agree to keep information required under the PPSA, and in particular required by section 275(1) of the PPSA confidential and will not disclose this information to any person or any interested person without written consent from the Secured Party. This clause constitutes a confidentiality agreement for the purposes of section 275(6)(a) of the PPSA. This clause is subject to the information allowed by section 275(7) of the PPSA, which is to be available to interested persons by law.
- 13.7 The Grantor is not permitted to do any of the following:
create or allow another interest (other than the present interest) in any Collateral to be created or dispose of;

Signature.....

13.7.1. assign or declare a trust over the Collateral;

13.7.2 lease or licence the Collateral;

13.7.3 change the nature of the Collateral;

13.7.4 permit any of the Collateral to become an accession to any goods except with permission from the Secured Party;

13.7.5 permit any of the Collateral to be commingled with any product or mass that is not Collateral or subject to the Security Agreement;

13.7.6 change the location of the Collateral from the Grantor carries on business;

13.7.7. remove or permit the removal of the Collateral to any place outside Australia; and/or

13.7.8. part with possession of any of the Collateral except with written agreement from the Secured Party.

13.7.9 The Grantor irrevocably grants to the Secured Party the right to enter the Grantor's premises to seize its Collateral if the Secured Party is exercising its rights under section 123 and/or 128 of the PPSA. If such an exercise takes place, the Grantor agrees to keep the Secured Party indemnified against any claims as a result of such exercise.

14. **PRIVACY ACT 1988 ACKNOWLEDGMENT**

If the Supplier considers it relevant in assessing this application or whether to accept a guarantor hereunder for credit applied for by or provided to the Customer, the Customer agrees to the Supplier seeking and obtaining from a credit reporting agency a credit report containing personal and/or commercial credit information about the Customer and/or a guarantor in relation to personal and/or commercial credit provided by the Supplier. The Customer acknowledges and understands that pursuant to Section 18E(8)(c) of the Privacy Act 1988, the Supplier is permitted to give a credit reporting agency personal information about any named entities or individuals named in the credit application. The Customer acknowledges that the information which may be so provided is set forth in Section 18E(1) of the Privacy Act 1988.

The Customer agrees that the Supplier may give to and seek from any credit providers named in this application or in any credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are permitted to give or receive from each other under the Privacy Act 1988.

The Customer agrees that if the Supplier approves the application for credit herein, this acknowledgment remains in force until the credit facility ceases. The Customer warrants that the person(s) signing this application is/are duly authorised to make this acknowledgment on behalf of the Customer and/or any person named herein and have the authority to do so from any person named herein.

I/We, the undersigned, hereby acknowledge, affirm and agree that I/we have read, fully understand and agree to be bound by these terms and conditions and certify that the information supplied herein as the basis of the Supplier's decision to grant credit is true and correct. I/We acknowledge and agree that I/we am/are duly authorised to make this application on behalf of the Customer and warrant that I/we am/are authorised to disclose all information contained herein on behalf of any person named herein.

Dated the day of 2015

Signed: Name: (please print)

Witness: Witness name: (please print)

Signed: Name: (please print)

Witness: Witness name: (please print)

Signed: Name: (please print)

Witness: Witness name: (please print)

Signature.....

GUARANTEE AND INDEMNITY

TO: **EXHAUST FLUIDS AUSTRALIA PTY LTD - ACN 166 500 563**

IN CONSIDERATION of **EXHAUST FLUIDS AUSTRALIA PTY LTD - ACN 166 500 563** ("the Supplier") agreeing to supply (either now or at some future time) or to continue to supply

or to cause to be supplied at the Supplier's cost to ABN

("the Customer") goods and/or services on credit, the person identified below as guarantor ("the Guarantor") HEREBY GUARANTEES the due payment by the Customer of all moneys now due and owing or which become due and owing by the Customer on any account whatsoever (including on account of goods sold, services supplied and/or work done) to the Supplier AND the Guarantor agrees:

- 1 That in this Guarantee, unless a contrary intention appears from the context, persons is defined to include but not limited to a company, trust, partnership or incorporated association and the singular number shall include the plural and vice versa.
- 2 That this Guarantee:
 - 2.1 will be a continuing Guarantee;
 - 2.2 will be irrevocable irrespective of any amount or amounts which may be paid to the Supplier by or on behalf of or for the credit of the Customer at any time during the continuance of any credit which may be given by the Supplier to the Customer;
 - 2.3 shall not be determined or affected by the death, bankruptcy, liquidation, official management, administration, control or receivership (as the case may be) of the Customer;
 - 2.4 shall remain in full force and effect until all moneys owing to the Supplier from time to time by the Customer have been paid or satisfied and this Guarantee has been discharged in writing by the Supplier;
 - 2.5 shall be a principal obligation and shall not be treated as ancillary to or collateral with any other obligation however created and in particular shall be independent of any other security which the Supplier may hold now or in the future in respect of the moneys intended to be secured by this Guarantee to the effect that this Guarantee shall be enforceable without first having recourse to any such security and without taking any steps or proceedings against the Customer regardless of whether any other security shall be in whole or in part unenforceable by reason of any rule of law or equity and notwithstanding the loss by the Supplier of any other security through acts or omissions on the Supplier's part; and
 - 2.6 shall be governed by the laws of the State of Victoria and each party submits to the exclusive jurisdiction of the Courts of Victoria for any claim or matter arising under this Guarantee.
- 3 The Guarantor will not, while any monies are owing to the Supplier by the Customer, claim or receive the benefit of any dividend or payment in a winding up/bankruptcy of the Customer and will not prove or claim in a winding up/bankruptcy of the Customer nor in any arrangement relating to the Customer in competition with the Supplier so as to diminish any dividend or payment which but for such proof or claim the Supplier would be entitled to receive and that the receipt of any payment by the Supplier out of a winding up/bankruptcy of the Customer or any arrangement relating to the Customer shall not affect the Supplier's right to recover from the Guarantor under this Guarantee.
- 4 Any settlement, discharge or release between the Guarantor and the Supplier will be conditional upon no security or payment to the Supplier by the Customer or any other person being voided or reduced by virtue of any provisions or enactments relating to insolvency or bankruptcy, and the Supplier may recover the value or amount of any such security or payment so voided or reduced from the Guarantor subsequently as if that settlement, discharge or release had not occurred.
- 5 That the liability of the Guarantor under this Guarantee will not be impaired or discharged:-
 - 5.1 by any reason of any time or other indulgence granted by the Supplier to the Customer or by any arrangement entered into whereby the Supplier's rights are in any way modified or abrogated and that no notice of the granting of any time or indulgence or of the entering into of any arrangement need be given to the Guarantor;
 - 5.2 if any amounts owed by the Customer may be unrecoverable (temporarily or permanently) for any reason at all;
 - 5.3 if any change in the status or structure of the Customer occurs;
 - 5.4 by any release or compromise with the Customer or any one or more Guarantors by operation of law or otherwise; or
 - 5.5 by the omission of any name or address of any Guarantor.
- 6 That the liability of the Guarantors (if more than one):
 - 6.1 is joint and/or several and every reference to the Guarantor in this Guarantee will bind each of those persons;
 - 6.2 will be effective even if any of the intended co-Guarantors have not executed the Guarantee or that the Guarantee has been held to be ineffective or unenforceable against one or more of the Guarantors.
- 7 The Guarantor warrants and agrees that:
 - 7.1 it will pay the Supplier for any and all of the Supplier's expenses including but not limited to any legal costs (on an indemnity basis), stamp duties and other expenses payable under this Guarantee together with any collection costs or dishonoured cheque fees incurred in connection with the enforcement of, or the preservation of any rights under this Guarantee. Such costs, duties and other expenses may be recovered as a liquidated debt; and
 - 7.2 it has made independent investigations and enquires and has not entered into this Guarantee nor executed this instrument as a result of or by reason of any promise, information, representation or statement of any kind whatsoever given by or on behalf of the Supplier.
- 8 In the event that the whole or any part or parts of any clause in this Guarantee is judged to be unenforceable by a Court of competent jurisdiction then such clause or part thereof shall be to that extent severed from this Guarantee without effect to the validity and enforceability of the remainder of these clauses.
- 9 To secure payment of all monies which are or may become payable by the Guarantor to the Supplier under this Guarantee, the Guarantor hereby charges with the due payment of all of those monies all of the Guarantor's right, title and interest in all and any real property wherever located both present and future and the Guarantor consents to the Supplier lodging a caveat or caveats to protect the Supplier's interests. Upon demand by the Supplier, the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure the Guarantor's indebtedness to the Supplier. Should the Guarantor fail within a reasonable time of such demand to execute such mortgage or other instrument then the Guarantor appoints irrevocably the credit manager or a duly authorised officer of the Supplier to be the Guarantor's lawful attorney to execute any such mortgage or other instrument.
- 10 If the whole or any part of the monies hereby secured are or may be irrecoverable from the Customer by the Supplier for any reason whatever whereby the amount thereof or resulting therefrom is not recoverable from the Guarantor as a surety, then and in each such case:-
 - 10.1 the Guarantor as a separate and additional liability under this Guarantee indemnifies the Supplier in respect of the monies secured by this Guarantee;
 - 10.2 the Guarantor as a principal debtor agrees to pay to the Supplier a sum equal to the amount of the monies secured by this Guarantee; and
 - 10.3 for the purposes of this indemnity, this clause shall be construed as if the monies secured by this Guarantee were recoverable and the terms of this Guarantee will apply as far as possible, with any necessary changes being made.
11. A statement in writing signed by any director, secretary, administration manager or credit manager of the Supplier stating the amount of monies due to the Supplier by the Customer and/or the Guarantor under this Guarantee shall be conclusive evidence of the amount of indebtedness of the Customer and/or the Guarantor to the Supplier and/or any act, matter or thing arising under this Guarantee as at the date of that statement.

Dated the day of 2015

Signature of Guarantor:

Full Name & Address:

Signature of Witness:

Full Name & Address:

Signature of Guarantor:

Full Name & Address:

Signature of Witness:

Full Name & Address:

Signature.....

