

**APPLICATION FOR CREDIT ACCOUNT**

CONSUMER (insert legal name): ..... ACN: .....

TRADING NAME: ..... ABN: .....

DELIVERY ADDRESS: ..... Post Code: .....

POSTAL ADDRESS: ..... Post Code: .....

EMAIL ADDRESS: .....

TELEPHONE NO: ..... FACSIMILE NO: .....

ACCOUNT CONTACT NAME: ..... REQUIRES ORDER NO. YES/NO

ORDER CONTACT NAME: ..... HOW LONG ESTABLISHED: .....

CREDIT LIMIT REQUESTED: ..... EST. MONTHLY PURCHASES: .....

CONSUMER'S BANK: ..... BRANCH: .....

TRADING AS (please tick) CORPORATION:  PARTNERSHIP:  SOLE TRADER:

NAME OF PERSONS AUTHORISED TO USE ACCOUNT: .....

**NAME OF DIRECTORS (GUARANTORS - see below):**

(1) NAME: .....

ADDRESS: .....

(2) NAME: .....

ADDRESS: .....

(3) NAME: .....

ADDRESS: .....

**CURRENT TRADE/BUSINESS REFERENCES:**

NAME: ..... TELEPHONE NO: .....

ORGANISATION: ..... EMAIL: .....

NAME: ..... TELEPHONE NO: .....

ORGANISATION: ..... EMAIL: .....

NAME: ..... TELEPHONE NO: .....

ORGANISATION: ..... EMAIL: .....



**APPLICATION**

The Consumer hereby applies for a credit account and agrees that it has read and understood the terms and conditions attached which will govern all dealings between the Consumer and the Supplier.

The Consumer declares and warrants that all information supplied is true, complete and accurate and any credit will be used wholly or predominantly for commercial, business and/or investment purposes and not for the Consumer's personal, domestic or household use or consumption.

**GUARANTEE** (COMPLETE AND SIGN WHERE THE CONSUMER IS A CORPORATION)

I/We, the person(s) specified above, being Director(s) of the Consumer, in consideration of the Supplier accepting the Consumer's application for credit do hereby guarantee the payment of any monies payable to the Supplier by the Consumer and all obligations of the Consumer under the Credit Trading Terms Agreement attached. We hereby acknowledge that we have read and accept the Credit Trading Terms Agreement attached. We further hereby acknowledge and declare that this guarantee shall be a continuing guarantee and the Supplier shall be at liberty to regard each of us as principal debtors and shall not be required to take action against the Consumer before enforcing this guarantee. We also agree to indemnify the Supplier for any loss it may incur in providing credit to the Consumer in the event that any agreement between the Supplier and the Consumer is unenforceable. Where this Guarantee and Indemnity is given by more than one person it binds them jointly and severally.

**IN WITNESS WHEREOF the Guarantor(s) execute this Guarantee as a deed on the \_\_\_\_ day of \_\_\_\_ 20\_\_\_\_**

Signed sealed and delivered by the Guarantor(s)

in the presence of ) ..... Guarantor  
 ) ..... Guarantor  
 ) ..... Guarantor

Witness .....

**PRIVACY ACT 1988 AUTHORITY** The Consumer, its proprietors/directors hereby authorise any person whom the Supplier contacts for a reference (including the Consumer's Bank) to disclose to the Supplier any information in their possession or control regarding the Consumer's accounts, trading history and personal information.

**SIGNED** for and on behalf of the Consumer: ..... POSITION: .....  
 ..... DATE: .....  
**(Print Name in Capitals)**

**OFFICE USE ONLY**

Credit Application Approved  Yes  No  
 Approved by: \_\_\_\_\_  
 Credit Limit Approved: \$ \_\_\_\_\_ on / /  
 New Credit Limit \$ \_\_\_\_\_ on / /



## CREDIT TRADING TERMS AGREEMENT

### RSC DIESEL PTY LTD (ABN 11 092 772 819) ("the Supplier")

All dealings between the Supplier and the Consumer (including the sale of goods or the provision of services by the Supplier to the Consumer) are subject to this Agreement:

1. The Consumer warrants that it had the opportunity to read this Agreement and to seek its own independent advice (including legal advice) about the Agreement and further warrants that it enters into this Agreement with full understanding of its terms and after undertaking such negotiations about its terms as it desired. Without limiting any other method of acceptance, the placing of an order with the Supplier indicates the Consumer's acceptance of this Agreement. This Agreement applies notwithstanding the terms of any order placed by Consumer. This Agreement constitutes the entire agreement between the Supplier and the Consumer and all previous negotiations, warranties, undertakings and understandings are hereby superseded.
2. The Supplier reserves the right to accept, reject or accept on conditions (determined in the Supplier's absolute discretion) the Consumer's application for credit. In particular the Supplier reserves the right to set the Credit Limit (notwithstanding the credit limit applied for) and to change the Credit Limit from time to time, in the Supplier's absolute discretion.
3. If the Consumer requests the Supplier to supply goods and/or services to the Consumer, the Supplier may give the Consumer a written quote specifying the work proposed to be done in order to fulfil the Consumer's request and an Estimate for that work. The Supplier is not required to commence work until the quote has been accepted by the Consumer. Acceptance may be in writing (including email) and until it is accepted the quote does not give rise to a binding contract. Upon acceptance the Supplier will perform the work and the Consumer will pay for the work in accordance with the quote and this Agreement. If there is any discrepancy between the quote and this Agreement the terms of the quote prevail. Upon acceptance of the quote the Consumer may not cancel the work. Quotes remain valid for 30 days from the date they are given and may be withdrawn by the Supplier at any time by notice to the Consumer prior to acceptance. The Estimate in the quote is based on the cost of production at the time of the quote and is subject to amendment before or after acceptance of the quote according to the terms of this Agreement and the Supplier reserves the right to amend an Estimate at any time before the order is completed to take into account any rise or fall in the cost of performing the order. Notwithstanding that the Supplier has given a quote the Supplier reserves the right to accept or reject an acceptance of the quote by the Consumer in whole or in part for any reason.
4. Subject to this Agreement, all invoices must be paid in clear funds within 30 days of the date of invoice or within seven days of the termination of this Agreement (whichever comes earlier).
5. The Consumer must make all orders in writing and using the form (if any) required by the Supplier. All orders must include such information as the Supplier notifies the Consumer that the Supplier requires. The Supplier reserves the right to accept or reject any order in whole or in part for any reason, including the unavailability of any goods.
6. The Supplier may require the Consumer to pay a deposit of 10% of the total order price before accepting an order. The Consumer may not cancel an order unless the Supplier fails to dispatch the goods ordered or supply the services within a reasonable time. However the Consumer may not cancel an order if it is a special order or if the Supplier has given the Consumer written notice that the goods have been shipped to the Supplier by its supplier. The internal records of the Supplier are conclusive proof of the placement and terms of any order (except in case of demonstrated manifest error). Clerical errors are subject to correction and do not bind the Supplier.
7. The goods are at the Consumer's risk from the time the goods are collected on behalf of the Consumer, or from the time they are dispatched to the Consumer (if the goods are to be delivered to the Consumer).
8. Even though the goods are delivered to Consumer title does not pass to the Consumer but remains with the Supplier until payment for such goods has been received in full. The Consumer is granted a licence to dispose of goods supplied by the Supplier by retail sale in the normal course of the Consumer's business provided that the proceeds are deposited to a separate bank account and not mixed with other monies. Until the date of full payment the Consumer must store the goods so that they are clearly identified as the property of the Supplier. If the Consumer defaults in any of the terms of this Agreement then the Supplier has the right (without giving notice) to retake possession of the goods and the Consumer hereby authorises the Supplier or its representatives to enter into any of the Consumer's premises upon which the goods are housed or stored for the purpose of retaking possession and the Supplier will not be liable for any costs, loss, damages incurred or lost by the Consumer as a result directly or indirectly of the Supplier retaking possession of the goods.



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The Consumer is deemed to deal with the goods on a first in first out basis. The Consumer acknowledges and agrees that this clause constitutes the grant of a security interest by the Consumer in favour of the Supplier in relation to all goods supplied under this Agreement and that:

- (a) The Supplier may, in its discretion, register that security interest on the Personal Property Securities Register;
  - (b) The Consumer will do all things (including signing relevant documents) as may be required to ensure registration of the security interest on the Personal Property Securities Register;
  - (c) The Consumer will not object to the registration of the security interest on the Personal Property Securities Register;
  - (d) For the purposes of registration, the parties agree that the security interest under this Agreement constitutes a financial statement where the duration is seven years or less;
  - (e) This Agreement provides for an ongoing supply arrangement whereby it is anticipated that the Supplier will make repeated supplies of property to the Consumer;
  - (f) The Consumer waives the right to receive notice of a verification statement in relation to any registration of security interest on the Personal Property Securities Register;
  - (g) If chapter 4 of the *Personal Property Securities Act 2009 (Cth)* ("PPSA") would otherwise apply to the enforcement of a security interest arising in connection with this clause, the Consumer agrees the following provisions of the PPSA will not apply to the enforcement of this Agreement: Section 95, to the extent that it requires the Supplier to give notice to the Consumer, Section 96, Section 121(4), Section 125, Section 130, to the extent that it requires the Supplier to give a notice to the Consumer, Section 132(3)(d), Section 132(4), Section 135, Section 142 and Section 143.
9. The Consumer will be in default of this Agreement if: the Consumer fails to make payments when due or otherwise fails to comply with this Agreement, if (in the Supplier's reasonable opinion) there is a material adverse change in the Consumer's financial position, the Consumer becomes bankrupt or commits an act of bankruptcy or enters into a scheme or arrangement or composition with the Consumer's creditors or, being a Corporation if an administrator, liquidator, receiver or receiver and manager is appointed or if the Consumer becomes incapable of managing its own affairs. Upon default, the Supplier may in its discretion:
- (a) declare that all amounts owing to the Supplier are immediately due and payable, whereupon such amount must be paid by the Consumer on demand;
  - (b) if the default includes failure to pay money owed to the Supplier, the Supplier may charge interest on the amount of the invoice from the due date for payment until the date payment is made at the rate calculated as the aggregate of the rate charged by the Supplier's principal bankers on unsecured overdrafts of \$50,000.00 or less plus 2% per annum compounded annually;
  - (c) withhold or suspend delivery of any further goods or provision of further services to the Consumer;
  - (d) withdraw or suspend the credit facilities provided to the Consumer.
10. The Supplier may withhold or suspend delivery of further goods or provision of further services if the amount owing to the Supplier by the Consumer exceeds (or on fulfilment of the proposed order will exceed) the Credit Limit.
11. If the Consumer has not placed an order during any twelve month period then the Supplier is not obliged to extend credit and may withdraw the credit facility.
12. Notwithstanding approval of credit facilities the Supplier is entitled to require payment for some goods and/or services upon invoice, in the Supplier's discretion, including sales of exchange engines, transmissions, final drives and overhauls.
13. Payments by credit card incur additional 1.5% transaction fee.
14. The Consumer must pay the Supplier's legal costs (on an indemnity basis) of enforcing any of the Supplier's rights under this Agreement. The Consumer must also pay fees and expenses payable to any debt collection agency engaged by the Supplier to obtain or attempt to obtain payment of amounts due by the Consumer. The Consumer acknowledges that those expenses may be calculated on a commission basis. Amounts received by the Supplier may be applied first against legal costs and debt collection agency costs, then to interest and then to payment of the overdue invoices. The Consumer agrees to indemnify and keep indemnified the Supplier against any loss, claim or expense (including legal costs on indemnity basis) relating to any breach of this Agreement by the Consumer.

15. The Supplier will notify the Consumer when goods ordered and/or completed works are ready for collection. The Consumer must pay the Supplier's holding costs if the goods and/or works are not collected within seven days of such notification.
16. The Supplier will arrange delivery of the goods to an address nominated by the Consumer if the Consumer so requests however the Consumer is responsible for any freight, transportation, insurance, packing, storage and handling charges. The Supplier reserves the right to require the Consumer to use the Consumer's freight account or own freight supplier to deliver the goods. The Supplier makes no warranty as to time or delivery and is not responsible for delays in delivery or failure to deliver due to causes beyond the Supplier's control. The Supplier may part deliver an order. The Consumer must:
  - (a) provide a delivery address at the time of placing the order;
  - (b) ensure that the delivery address provides for safe and unobstructed access via properly formed roadway;
  - (c) be present at the time of delivery (failing which the Supplier may unload the goods, without responsibility for any claims, damages, expenses or costs resulting or arising therefrom); and
  - (d) pay the Seller's costs of delivery and return fee if the Goods cannot be delivered for whatever reason.
17. The Consumer is deemed to have inspected and accepted the goods as being in satisfactory condition and in conformity with the description of the goods upon collection of the goods on behalf of the Consumer, or in the case of delivery, upon the expiration of 48 hours from the time of delivery unless during that period the Supplier receives notice from the Consumer as to delivery of faulty goods or incorrect goods.
18. All property of the Consumer left with the Supplier remains at the risk of the Consumer and the Consumer releases the Supplier from any action or demand due to any damage or loss, (including consequential loss) while the property of the Consumer is with the Supplier or under the Supplier's care, custody or control.
19. If the Australian Consumer Law applies to this Agreement then the goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. The customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Consumer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Where it is lawful to do so the Supplier limits its liability for failure to comply with a consumer guarantee to one or more of the following:
  - (a) in the case of goods:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired;
  - (b) in the case of services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.

If the Australian Consumer Law does not apply to this Agreement then except for any terms, conditions or warranties implied by law which are not capable of exclusion, or as otherwise expressly provided in this Agreement, all conditions, warranties, terms, undertakings, duties and obligations expressed or implied by law in any way relating to goods or services (including as to merchantability, fitness or otherwise) are hereby excluded and the Supplier shall not be liable in contract, tort, negligence, breach of statutory duty or otherwise in respect of any loss or damage claimed for demands of any nature arising directly or indirectly out of provision of goods or the supply or services by the Supplier.
20. Further to clause 19, for goods and services provided in relation to any commercially operated watercraft (being any vessel, craft or thing (other than a hovercraft or submersible, fixed pontoons, berths or jetties) designed to float on or in or travel on or through water) then except for any terms, conditions or warranties implied by law which are not capable of exclusion, the Supplier's liability for loss or damage whatsoever and howsoever caused is excluded.
21. The Consumer warrants that as at the date of submitting the credit application and on the date of placing each order that the Consumer is able to pay its debts as and when they fall due.
22. This Agreement is governed by and constructed under the laws of Queensland, Australia. Any legal action in relation to this Agreement may be commenced in Cairns, Queensland, Australia.



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23. The Supplier may vary any of the terms of this Agreement or add further terms upon giving thirty (30) days notice in writing to the Consumer. The Consumer may by notice in writing to the Supplier advise that it does not accept the new terms at which time these credit facilities will be deemed withdrawn and all monies owed to the Supplier will immediately become due and payable. The placing of an order with the Supplier indicates the Consumer's acceptance of the new terms. In that event, the Consumer will be bound by this Agreement including the new terms and any Guarantor will be deemed to have consented to the new terms and will be bound by the terms of their Guarantee as though reference to this Agreement included the new terms. Except as aforesaid this Agreement can only be varied in writing signed by the Supplier and the Consumer. If the Supplier's dealer increases prices the Supplier will advise the Customer and the Customer may cancel the order (provided that it has not yet been delivered to the Supplier) provided written notices is given to the Supplier within five (5) days, after the notice or change in price has been given.
24. Signatories to the Application for Credit Account warrant that they have authority to enter into this Agreement and to bind the Consumer to this Agreement. If the Consumer enters into this agreement as trustee for a trust, then the Consumer and its successors as trustee for that trust will be liable under this Agreement in its own right and as trustee for the trust. Nothing releases the Consumer from any liability in its personal capacity. The Supplier is entitled to act upon instructions without the necessity for the Supplier to enquire into the authority of the person who gives those instructions or makes that order even if that person is not listed as having authority to use the Consumer's account. If the Consumer consists of two or more persons then: (a) instructions given or orders placed by any one of those persons is binding on the others and the Supplier is not required to enquire into the authority of the person who instructs the Supplier or places the order; (b) this Agreement binds them jointly and severally.
25. If any term or condition is or becomes illegal or unenforceable it will be severed and none of the remaining terms or conditions will be affected.
26. If the Supplier is prevented from or restricted in carrying out its obligations on any matter beyond the Supplier's reasonable control, then the Supplier is excused from carrying out its obligations to the extent of the cause of the non-performance but the Supplier must use its best endeavours to avoid or remove the cause of the non-performance as quickly as reasonably possible.
27. Any failure by the Supplier to exercise any right under this agreement does not operate as a waiver and the single or partial exercise of any right by the Supplier does not preclude any other or further exercise of that or any other right by the Supplier.
28. The Supplier's rights under this agreement are cumulative and not exclusive of any rights provided by law.
29. Unless specified otherwise in writing, all figures and amounts are exclusive of GST. The Consumer must pay GST on the cost of the supply of any goods or services that the Supplier provides.
30. The Supplier retains information in relation to the Consumer and uses it only for the purpose for which it was collected or where the Consumer would reasonably expect the Supplier to use or disclose information as part of normal business activities, or when required by law. The Consumer may access its information and correct and update that information at any time by contacting the Supplier. The Consumer authorises the Supplier to provide information about the Consumer and the Consumer's dealings with the Supplier to Scania Australia Pty Ltd.
31. The Consumer must give written notice to the Supplier within seven days of any change on the Consumer's details as recorded in the Application. Changes to the Consumer (even if notified to the Supplier) do not relieve the Consumer and the Guarantors of any liability to the Supplier. The Supplier may treat a notification as a new Application for Credit Account in which case the Supplier may terminate the existing account and consider the Application in its discretion.
32. The Supplier may assign or licence any or all of its rights and obligations under this Agreement without requiring the Consumer's consent. The Consumer may not assign any of its rights or obligations under this Agreement, unless it obtains the Supplier's prior written consent, which may be given, withheld or given on conditions in the Supplier's absolute discretion.