

**SECTION 1 - 30 DAY ACCOUNT CREDIT APPLICATION FORM**

COMPANY NAME: \_\_\_\_\_ ABN: \_\_\_\_\_  
 TRADING AS: \_\_\_\_\_  
 TRADING ADDRESS: \_\_\_\_\_ PHONE: (\_\_\_\_) \_\_\_\_\_  
 \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_  
 POSTAL ADDRESS: \_\_\_\_\_  
 REGISTERED OFFICE ADDRESS : \_\_\_\_\_  
 NATURE OF BUSINESS: \_\_\_\_\_ DATE OF INCORPORATION: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 ACCOUNTS CONTACT : \_\_\_\_\_ PHONE: (\_\_\_\_) \_\_\_\_\_  
 AMOUNT OF CREDIT SOUGHT: \$ \_\_\_\_\_ / PER MONTH

DIRECTORS / PARTNERS	RESIDENTIAL ADDRESS	PHONE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

HAVE GUARANTEES OR SECURITIES OVER ANY OF THE ASSETS BEEN GIVEN ? (PLEASE CIRCLE) YES / NO  
 IF YES, PLEASE GIVE DETAILS: \_\_\_\_\_  
 \_\_\_\_\_  
 IS THE COMPANY A TRUSTEE FOR A TRUST ? \_\_\_\_\_

TRADE REFERENCES (PLEASE PROVIDE CREDIT PROVIDERS OF SIMILAR AMOUNT TO CREDIT SOUGHT)

COMPANY NAME	CONTACT NAME	PHONE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

## TERMS AND CONDITIONS OF TRADE

- 1.1 The Applicant acknowledges receipt of M&S Transport Service Pty. Ltd. (hereafter M&S Transport) Terms and Conditions of Trade and agrees to observe them in respect to all goods and services supplied by M&S Transport.
- 1.2 If M&S Transport grants this credit facility to the Applicant, all accounts must be paid in full within 30 days of the end of the relevant invoice period, unless otherwise agreed to by M&S Transport in writing.
- 1.3 Any expenses incurred by M&S Transport in recovering or attempting to recover any outstanding amount from the Applicant or otherwise, including any fees payable to any debt collection agency and legal costs will be paid on a full indemnity basis by the Applicant.
- 1.4 Interest at current bank overdraft rates may be charged on any overdue amount on the account and further, in consideration of any grant of credit, the Applicant expressly undertakes to pay such interest.
- 1.5 I/We agree that M&S Transport may give to and seek from any credit providers listed in this credit application as credit reference or bankers or such other credit providers as M&S Transport may choose and any credit providers that may be named in a credit report issued by a credit reporting agency about my/our credit worthiness and activities that credit providers are allowed to give or receive from each other under the Privacy Act.
- 1.6 M&S Transport may at any time terminate any credit arrangement with the Applicant. In this event, all monies owing by the Applicant to M&S Transport will become immediately due and payable.
- 1.7 M&S Transport will have a lien over and the right to sell any of the property of the Applicant that is in the possession of M&S Transport in order to recover any outstanding amount from time to time.

## PRIVACY ACT - 1988

For the purposes of this section of the document, M&S Transport Service Pty. Ltd shall herein be referred to as the Credit Provider.

- 2.1 The Applicant/s hereby acknowledge that they have been informed by the Credit Provider that personal information about them may be disclosed to or acquired from a credit reporting agency.
- 2.2. The Applicant/s hereby agrees that the Credit Provider may contact any trade references or other credit references at any time whether now or in the future for the purpose of assessing credit worthiness.
- 2.3 The Applicant/s hereby agree to the Credit Provider receiving from any other credit provider or providing to any credit provider any personal credit information whether by way of report, record or otherwise relating to the credit worthiness for the purposes of exchange of information, assessing credit worthiness and notification of default at any time whether now or in the future.
- 2.4 The Applicant/s hereby agree to the Credit Provider obtaining from a credit reporting agency a credit report on the Applicant/s for the purposes of assessing this credit application and the Applicant/s further consent to the Credit Provider obtaining such reports from time to time for the purposes of assessing credit worthiness during the continuance of credit provision.
- 2.5 The Applicant/s hereby agree to the Credit Provider obtaining from a business which provides credit information a report or information in relation to the commercial credit worthiness or commercial dealing of the Applicant/s and using such information for the purposes of assessing this credit application.
- 2.6 The Applicant/s hereby agree that in the event of default of payment of the debts of the applicant/s the Credit Provider may disclose all information relating to the account of the Applicant/s to its collection agency for the purpose of receiving any or all of the amounts outstanding.
- 2.7 The provisions of Sections 2 and 3 are at all times subject to the requirements of the Privacy Act 1988 (Commonwealth) as amended or substituted from time to time.

## TERMS AND CONDITIONS OF CARTAGE

1. M & S TRANSPORT SERVICE PTY LTD (hereinafter referred to as "the Carrier" which expression will include its servants agents and sub-contractors) is not a common carrier and will accept no liability as such. All goods carried or other services performed shall be subject only to these conditions of carriage and the Carrier reserves the right to accept or refuse the carriage of any goods at its discretion.
2. The Consignor or his authorised agent shall not tender for carriage any explosive inflammable or otherwise dangerous or damaging goods without presenting a full description of these goods and in default of so doing shall be liable for all loss and damage caused thereby.
3. The Carrier may arrange with any other person or company to undertake the carriage hereby contracted for or services ancillary thereto and any such person or company its servants agents and employees shall be entitled to the benefit of these conditions to the same extent as the Carrier.
4. All goods are carried subject and liable in every respect to the Bills of Lading issued by and / or conditions imposed by any steamship company railway port or harbour authority or other carriers of the goods and are freighted at ordinary rates unless otherwise instructed in writing by the consignor or the authorised agent.
5. The Carrier accepts no responsibility for any damage, including injury, delay or loss of any nature, arising out of or incidental to the carriage of any service ancillary thereto or which may occur at any time after the goods have been delivered to the Carrier and before the goods have been delivered to the Consignee whether due or alleged to be due to misconduct or negligence on the part of the Carrier or not.
6. It is agreed that the person delivering any goods to the Carrier for the carriage is authorised to sign the consignment note for the Consignor.
7. Unless otherwise directed by notice in writing the Carrier is authorised by the Consignor to collect payment of "C.O.D." goods in legal tender or cheques and to give receipt on behalf of the consignor.
8. If on demand any person fails to pay charges due to the Carrier in respect of any services rendered by the Carrier the Carrier may detain and sell all or any of the goods of such person which are in his possession and out of the money arising from the sale, retain the charges so payable and all charges and expenses of the detention and sale and shall render the surplus, if any, of the moneys arising from the sale and such of the goods as remain unsold to the person entitled thereto.
9. Insurance of goods will not be effected for the benefit of the consignor unless the full value of the consignment and type of insurance required is entered in the space marked "INSURANCE" on the face hereof and the current insurance charges are paid. Any such insurance shall be on the terms of the current printed insurance particulars supplied to the Consignor.
10. A charge will be made by the Carrier in respect of any delay in excess of thirty minutes in loading or unloading occurring other than through the default of the Carrier, such permissible delay period commencing upon the Carrier reporting for loading or unloading, labour for which purpose being the responsibility and at the expense of Consignor or Consignee.
11. Freight shall be considered earned whether the goods are delivered to the Consignee or not and whether damaged or otherwise. Under no circumstances will any payment for freight be refunded.
12. The Carrier's charges for carriage shall be payable by the Consignor without prejudice to the Carrier's rights against the Consignee or any other person, provided that when it is stated on the consignment note or docket that charges are payable by the Consignee or the goods are consigned "C.O.D." or "Freight Collect". The Consignor shall not be required to pay such charges unless the Consignee fails to pay after a reasonable demand has been made by the Carrier for payment thereof.
13. These conditions shall be governed and construed by the law of Victoria wheresoever the contract was made and any proceedings in respect of any matter or thing against the Carrier shall be instituted or carried on in the State of Victoria only.

**ACKNOWLEDGEMENT OF AGREEMENT TO TERMS BY THE APPLICANT**

The Applicant hereby signs this Application as an agreement, warranty and representation as to all the matters set out in this document as being: binding on the applicant; not misleading in any respect whether by omission or otherwise.

By signing this Application, the Applicant/s also acknowledges receipt of this document, and that the Applicant/s have read the document in full and accept all terms and conditions as laid out in the document.

SIGNATURE OF APPLICANT/S OR AUTHORISED REPRESENTATIVES

\_\_\_\_\_

\_\_\_\_\_

NAMES AND TITLES

\_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

WITNESS' NAME

SIGNATURE

ADDRESS

DATE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_/\_\_\_\_/\_\_\_\_

## SECTION 2 - COVENANT OF PRINCIPAL LIABILITY AND GUARANTEE & INDEMNITY FOR ACCOUNTS IN EXCESS OF \$5,000 PER MONTH

**THIS COVENANT IS AN IMPORTANT AGREEMENT THAT WILL MAKE YOU PERSONALLY LIABLE TO PAY FOR SERVICES OR GOODS SUPPLIED BY M&S TRANSPORT SERVICE PTY. LTD. IN RESPONSE TO THIS APPLICATION. YOU SHOULD READ IT CAREFULLY TO MAKE SURE YOU UNDERSTAND IT AND OBTAIN ADVICE AS TO WHAT IT MEANS.**

### 1.1 WHO IS BOUND BY THIS COVENANT

This covenant is:

1.1.1 Given by the party or parties who have signed on Page 4 of this document where indicated "Directors/Guarantors Sign Here" ("You");

1.1.2 In favour of M&S Transport Service Pty. Ltd. ABN 86 235 864 133.

### 1.2 WHY YOU ARE BOUND

By signing this covenant, you are requesting M&S Transport Service Pty. Ltd. (herein referred to as M&S Transport) to supply services and/or goods to the party that has applied for credit in this application. If M&S Transport supplies goods and services in response to your request, then it will be doing so relying on your assurance, warranty and agreement that:

1.2.1 You have received value for M&S Transport supplying the said goods and/or services;

1.2.2 Information that has been provided in this Application is accurate, complete and not misleading in any material respect (whether by omission or otherwise); and

1.2.3 That you pay M&S Transport receivables.

You will therefore be bound by this document.

### 1.3 WHAT THIS DOCUMENT RELATES TO

This covenant relates to:

1.3.1 "M&S Transport receivables", being the greater of:

1.3.1.1 Any amount of money that is not received by M&S Transport but is, according to the usual trade terms and records of M&S Transport receivable by M&S Transport in exchange for goods and/or services that have been or are hereafter supplied by M&S Transport to the Applicant; and

1.3.1.2 The Amount of money owing by the Applicant to M&S Transport on any account whatsoever from time to time hereafter whether that amount is owing before or after you sign this Covenant and in either event shall be free of any set off, deduction, counterclaim or reduction of any type and shall include any amount M&S Transport receives but has to or chooses to refund or disgorge (including but not limited to alleged preferential payments).

1.3.2 M&S Transport's Terms and Conditions of Cartage and Trade as amended from time to time and printed on the reverse side of invoices ("the terms")

#### 1.4 HOW YOU ARE AFFECTED

You hereby agree:

- 1.4.1 To pay M&S Transport receivables hereafter as a principal debtor, that is, as the party with the primary obligation to do so and not merely as a surety.
- 1.4.2 As an additional and independent obligation, to guarantee the due and punctual payment to M&S Transport of M&S Transport receivables and the performance and observance by the Applicant of the Terms.
- 1.4.3 To indemnify and keep indemnified M&S Transport with respect to M&S Transport receivables and/or non-compliance with the Terms and all losses, damages, costs and legal, collection and repossession expenses which may be incurred by M&S Transport with respect to M&S Transport receivables and/or non-compliance with the Terms.
- 1.4.4 You are bound on a continuing basis but if M&S Transport head office receives written notice that you revoke the Guarantee then you will not be liable with respect to M&S Transport receivables that became receivable or in progress after the expiration of 21 clear days after M&S Transport receives that notice.
- 1.4.5 M&S Transport does not have to make any demand or give you or anyone else (including the Applicant) any other form of notice or information with respect to anything whatsoever.
- 1.4.6 You are bound whether or not any other party has signed this document.
- 1.4.7 Your obligations hereunder are not affected by anything including (without limitation) any of the following:
  - (a) the granting to the Applicant, a Co-Surety or any other person of any time waiver or other indulgence or the discharge or release of the Applicant, a Co-Surety or any other person;
  - (b) any transaction or arrangement that may take place between M&S Transport and the Applicant, a Co-Surety or any other person;
  - (c) the liquidation or bankruptcy or any other form of insolvency administration (whether formal or informal) of the Applicant, a Co-Surety, any Guarantor or any other person;
  - (d) M&S Transport exercising or refraining from exercising its rights under any rights, powers or remedies against the Applicant, a Co-Surety, any Guarantor or any other person;
  - (e) the amendment, variation, replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part (and either with or without consideration) of any agreement with the Applicant;
  - (f) the failure or omission by the Applicant, a Co-Surety or any other person for the payment of any of the M&S Transport receivables;
  - (g) M&S Transport obtaining a judgment against the Applicant, a Co-Surety or any other person for the payment of any of the M&S Transport receivables;
  - (h) any legal limitation, disability, incapacity or other circumstances related to the Applicant, a Co-Surety, any Guarantor or any other person, whether with or without the consent of any person.
- 1.4.8 To indemnify and keep indemnified M&S Transport with respect to all losses, damages, costs and legal collection and repossession expenses which may be incurred by M&S Transport with your non-compliance with this Covenant.
- 1.4.9 That M&S Transport has notified you that personal information about this guarantee may be given to any credit reporting agency and you agree that M&S Transport may obtain credit information about you or any of you from any credit reporting agency or other credit provider in order to assess you as guarantor or assess your credit worthiness throughout the duration of this Covenant.



## DIRECTORS / GUARANTORS ACCEPTANCE

DIRECTORS / GUARANTORS SIGN HERE:

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Signed : \_\_\_\_\_ Full Name (print) \_\_\_\_\_

Address: \_\_\_\_\_

Witness' Signature : \_\_\_\_\_ Full Name (print) \_\_\_\_\_

Address: \_\_\_\_\_

(If Applicable)

Signed : \_\_\_\_\_ Full Name (print) \_\_\_\_\_

Address: \_\_\_\_\_

Witness' Signature : \_\_\_\_\_ Full Name (print) \_\_\_\_\_

Address: \_\_\_\_\_

INTERNAL USE ONLY:

Sales person responsible: \_\_\_\_\_

Account creation date : \_\_\_\_\_