

# CGL FUEL PTY LTD.

ABN 60 106 244 473

P O Box 238 KUNUNURRA W A 6743

Phone 61 (0)8 9168 2900 Fax 61 (0)8 9168 2899

## TRADE CREDIT ACCOUNT APPLICATION FORM (Company/Trust)

### Applicant's details

*If sole trader/individual/partnership:*

Full Names : .....

Address : .....

Full Names : .....

Address : .....

Full Names : .....

Address : .....

*If Company*

Company Name : .....Pty Ltd (ACN .....

ABN : .....

Registered Office: .....

Principal Business Address :

.....

Is the Company the Trustee of a Trust ? Yes  No

If yes: Name of Trust .....

Date of Trust Deed ..... (Provide a photocopy of the Trust Deed)

**Business Trading Name** (if any) : .....

**Postal Address** .....

**Delivery Address** .....

**Telephone Number** ..... **Facsimile Number** .....

**Email Address** .....

**Date Business Commenced** .....

**Manager's Full Name** (if applicable) .....

**Accounts Payable Contact** .....

Ph Number .....

**Business' Bank, Branch**

.....

**Estimated monthly purchases \$**.....

**Credit requested \$**.....

**Trade References**

Name .....

Address

.....Phone.....

Name .....

Address

.....Phone.....

Name .....

Address

.....Phone.....

The Applicant supplies the above information for the purpose of obtaining a trade credit account with CGL Fuel Pty Ltd (**CGL Fuel**) and obtaining goods and services from CGL Fuel.

The Applicant agrees to adhere to CGL Fuel's trading terms and conditions attached hereto and the Applicant agrees and acknowledges that it has read and understood these terms and conditions and discussed any issues with CGL Fuel.

As a condition of acceptance of this Application, CGL Fuel may in its absolute discretion require one or more of the directors and/or shareholders of the Applicant (if applicable) to personally guarantee the Applicant's obligations to CGL Fuel from time to time by signing a Trade Credit Account Guarantee and Indemnity.

Signed for and on behalf of the Applicant (and where the Applicant is a company, by its authorised representative) :

Signature ..... Print Full Name .....

Details of Signatories' Authority : Managing Director  Director  Sole Director/Secretary  : Sole Trader/partner of partnership

**OFFICE USE ONLY:**

Credit Approval \$..... Signed ..... Date ...../...../20...

Acceptance of Application : CGL Fuel hereby confirms acceptance of the Applicant as a credit account holder with CGL Fuel.

Signed ..... Date ...../...../20....

For and on behalf of CGL Fuel Pty Ltd

# CGL FUEL PTY LTD.

ABN 60 106 244 473

## TERMS AND CONDITIONS OF TRADE CREDIT ACCOUNT HOLDER (Company/Trust)

These are the terms and conditions upon which CGL Fuel Pty Ltd agrees to provide Goods and Services to the Applicant and accepts the Applicant as a trade credit account holder for the purposes of trading on a credit account with CGL Fuel. These Conditions replace any previous terms and conditions of sale or credit extension. These Conditions create a security interest in favour of CGL Fuel for the purposes of the PPSA.

### 1. DEFINITIONS:

- (a) **"Applicant"** means the applicant for a credit trading account with CGL Fuel described in the Application Form.
- (b) **"Application Form"** means the Trade Credit Application Form attached and annexed to these Conditions.
- (c) **"Conditions"** means these Terms and Conditions of Trade (Credit Account Holder).
- (d) **"CGL Fuel"** means CGL Fuel Pty Limited (ABN 60 106 244 473) together with its successors in business and transferees and assigns.
- (e) **"Goods"** means any fuel or other goods supplied presently and in the future by CGL Fuel to the Applicant (including any goods supplied to a third party at the request and direction of the Applicant).
- (f) **"PMSI"** means a purchase monies securities interest and has the meaning given in section 14 of the PPSA as amended from time to time.
- (g) **"PPSA"** means the *Personal Property Securities Act 2009*.
- (h) **"Services"** means any services provided by CGL Fuel to the Applicant or to any third party at the request and direction of the Applicant in respect of which these Conditions shall be deemed to apply.
- (i) **"Tax Invoice"** means a sales invoice issued by CGL Fuel to the Applicant in the form of a Tax Invoice within the meaning of *A New Tax Systems (Goods and Services Tax) Act 1999 as amended*.

### 2. PROVISION OF CREDIT

- 2.1 CGL Fuel agrees to provide to the Applicant the Goods and Services on the terms and conditions set out in these Conditions.
- 2.2 CGL Fuel agrees to extend credit to the Applicant as detailed in the Application Form or otherwise agreed from time to time in its discretion. Credit extended to the Applicant for all Goods and Services will be made in accordance with these Conditions or otherwise on terms of credit as agreed by CGL Fuel and the Applicant at the time that the credit is extended. For the avoidance of doubt, where the terms of credit agreed conflict with these Conditions, those terms of credit shall prevail.

- 2.3 CGL Fuel and the Applicant agree and acknowledge that the provision of credit is not for personal, domestic or household purposes.
- 2.4 Unless otherwise specifically agreed in writing by CGL Fuel, where any terms and conditions of the Applicant's order are inconsistent with these Conditions, then these Conditions will prevail. Any variations or additions to these Conditions not expressly agreed to in writing by CGL Fuel are expressly rejected by CGL Fuel.

### 3. APPLICANT'S CONSENT FOR CGL FUEL TO SEEK CONSUMER CREDIT INFORMATION (SECTION 18K(1)(B) PRIVACY ACT 1988)

If CGL Fuel considers it relevant in assessing the Applicant's application for commercial credit as a trade credit account holder with CGL Fuel, the Applicant (or if more than one, each of the Applicants) agrees to CGL Fuel obtaining from a credit reporting agency a credit report containing personal credit information about the Applicant in relation to commercial credit to be provided by CGL Fuel. In the event of the Applicant being accepted by CGL Fuel as a trade credit account holder, the Applicant agrees that CGL Fuel may obtain from a credit reporting agency ongoing credit reports and personal credit information about the Applicant so long as the Applicant remains a credit account holder with CGL Fuel.

### 4. AGREEMENT TO CGL FUEL SEEKING FROM OR GIVING OTHER CREDIT PROVIDERS DETAILS ABOUT APPLICANT'S CREDIT WORTHINESS (SECTION 18N(1)(B) PRIVACY ACT 1988)

The Applicant agrees that CGL Fuel may give to or seek from any credit provider named in this Application or any credit provider that may be named in a credit report issued by a credit reporting agency, information about the Applicant's credit arrangements. The Applicant further understands that the information provided can include any information about the Applicant's 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.

### 5. EFFECT OF CONSENT

The Applicant acknowledges that CGL Fuel may obtain or give any of the above information from or to a credit reporting agency which acknowledgment and consent will remain in force and effect as long as the Applicant remains a trade credit account holder with CGL Fuel.

### 6. PAYMENT FOR GOODS AND SERVICES :

- (a) Payment for all amounts with respect to Goods and Services provided by CGL Fuel at the request of the Applicant (or the nett

amount due in respect thereof to CGL Fuel in the event of CGL Fuel electing to exercise its right of set-off) is payable in full within fourteen (14) days following the Invoice date on which the Goods or Services are supplied.

- (b) CGL Fuel reserves the right at any time to require payment on a COD basis in respect of any orders received if the Applicant has not complied at all times with these Conditions in the conduct of its credit account with CGL Fuel.
- (c) Where CGL Fuel requires payment for an order on a COD basis, the Applicant will thereafter be deemed to remain as a COD Applicant until otherwise agreed by CGL Fuel in writing.
- (d) Notwithstanding the conditions contained herein, the parties may agree in writing to vary the terms for payment in respect of a specific order for Goods and/or Services, or for a specific period, but any such specific agreement will not otherwise vary, amend or change these Conditions in respect of any other order.

## 7. SET-OFF

The Applicant acknowledges that CGL Fuel reserves the right in its absolute discretion to set-off any amounts due to it by the Applicant against any amounts due by CGL Fuel to the Applicant howsoever arising under the trading relationship between the parties.

## 8. INTEREST

If the Applicant fails to make payment to CGL Fuel pursuant to these Conditions, CGL Fuel reserves the right to charge interest on all monies unpaid at a rate of interest set by CGL Fuel from time to time up to but not exceeding five percent (5%) above the business overdraft rate charged from time to time by CGL Fuel's principal bankers, calculated on a daily basis from the date on which payment was due until payment is received by CGL Fuel, but without prejudice to CGL Fuel's right to forthwith recover any unpaid monies from the Applicant.

## 9. TERMINATION

- 9.1 In the event that the Applicant is in breach of these Conditions, CGL Fuel reserves the right to suspend or discontinue the supply of Goods and Services to the Applicant without being obliged to give any reasons. CGL Fuel shall not be liable to the Applicant for any loss or damage the Applicant may sustain as a result of such refusal to supply.
- 9.2 Notwithstanding clause 9.1, CGL Fuel may terminate these Conditions immediately and without notice where:
  - (a) the Applicant fails to pay any amount due and payable by the due date for payment in accordance with these Conditions;
  - (b) where the Applicant is a company, the

Applicant becomes subject to any winding up petition or order, appointment or receiver, official management, assignment, arrangement, or compromise for the benefit of creditors;

- (c) where the Applicant is a person, the Applicant goes into bankruptcy or is wound up;
- (d) the Applicant breaches any other provision of these Conditions (other than any provision for payment) and fails to rectify such breach within 5 days of the date that the breach is notified to the Applicant by CGL Fuel.

## 10. TAX INVOICES

On receipt of an order for Goods or Services, CGL Fuel will issue a Tax Invoice to the Applicant for any such order.

## 11. COSTS FOR RECOVERY

- (a) Notwithstanding any other provisions or rights of CGL Fuel under these Conditions, the Applicant acknowledges and agrees that in the event of the Applicant failing to pay any amount payable to CGL Fuel in accordance with these Conditions, CGL Fuel may forthwith institute recovery proceedings without notice for the full balance outstanding on the Applicant's account as at the date of commencement of recovery proceedings.
- (b) The Applicant further acknowledges and agrees that the Applicant will be liable to reimburse CGL Fuel on a full indemnity basis for all debt collection and/or legal expenses incurred by CGL Fuel in recovering amounts not paid by the Applicant in accordance with these Conditions.

## 12. RISK AND PASSING OF PROPERTY :

Goods supplied by CGL Fuel to the Applicant shall be at the Applicant's sole risk immediately upon delivery of those Goods to the Applicant or on delivery of those Goods to any third party at the Applicant's request and direction (including delivery to a Applicant's transport agent or contractor).

## 13. RETENTION OF TITLE

- 13.1 Property in and title to all Goods supplied by CGL Fuel to the Applicant will not pass to the Applicant until full payment for those Goods and all other amounts owing has been received and cleared in full by CGL Fuel.
- 13.2 Until full payment is received in accordance with clause 13.1:
  - (i) The Applicant will hold the Goods as fiduciary and bailee for CGL Fuel;
  - (ii) CGL Fuel may enter the Applicant's premises (or such other premises on which the Applicant may have located Goods supplied by CGL Fuel) without

liability for trespass or any resulting damage to retake possession of such Goods or inspect the Goods if CGL Fuel elects to do so in its absolute discretion; and

- (iii) to keep and resell any Goods removed or repossessed pursuant to this provision, but without imposing any liability on CGL Fuel to re-take possession of any such Goods or CGL Fuel's right to pursue any action against the Applicant for the balance payable in respect of any such Goods, or for the balance of the Applicant's running account with CGL Fuel notwithstanding that risk but not Title in any Goods may have passed to the Applicant on delivery to the Applicant.

#### 14. PPSA

- 14.1 The Applicant agrees that these Conditions create a PMSI in the Goods (and their proceeds) supplied presently and in the future by CGL Fuel to the Applicant.
- 14.2 The Applicant agrees to do all things necessary and execute all documents reasonably required to register the PMSI granted by the Applicant under these Conditions and to ensure that the Applicant acquires a perfected security interest in the Goods under the PPSA.
- 14.3 The Applicant will, on demand, pay all of CGL Fuel's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of CGL Fuel's security interest and all other costs associated with protection and enforcement of CGL Fuel's security interest created by these Conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the Goods the subject of these Conditions or the exercise, enforcement or preservation of any right or interest under these Conditions or any contract that CGL Fuel has with the Applicant.
- 14.4 The PMSI created under clause 14.1 does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these Conditions and any purchase money obligations.
- 14.5 Until ownership of the Goods passes to the Applicant, the Applicant waives its rights under the following provisions of the PPSA, to the extent that it is permitted by law to:
- (a) receive a notice of intention of removal of an accession (s.95);
  - (b) receive a notice that CGL Fuel has determined to enforce its security interest in accordance with land law (s.118);
  - (c) receive a notice of enforcement action against liquid assets (s.<>);
  - (d) receive a notice of disposal of goods by CGL Fuel purchasing the Goods (s.129);
  - (e) receive a notice to dispose of the Goods (s.130);
  - (f) receive a statement of account following disposal of the Goods (s.132(2));
  - (g) receive a statement of account if no disposal of the Goods, six monthly (s.152(4));
  - (h) receive notice if any proposal by CGL Fuel to retain the Goods (s.135(2));
  - (i) object to any proposal by CGL Fuel to either retain and dispose of the Goods (s.137(3));
  - (j) redeem the Goods (s.142);
  - (k) reinstate the security agreement (s.143) and
  - (l) receive a notice of any verification statement (s.157(1) and 157(3)).
- 14.6 To the extent permitted by the PPSA, these Conditions exclude any provisions of the PPSA which may be excluded in CGL Fuel's discretion and which would otherwise confer rights on the Applicant.
- 14.7 The Applicant further agrees that where CGL Fuel has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- 14.8 The Applicant's right to possession of the Goods still owned by CGL Fuel under these Conditions shall cease if:
- (a) the Applicant being an individual, commits an act of bankruptcy;
  - (b) the Applicant being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Applicant entering into a Deed of Company Arrangement;
  - (c) the Applicant ceasing or threatening to cease conducting business in the normal manner or applying for deregistration or receives a deregistration notice;
  - (d) any cheque the Applicant provides to CGL Fuel is dishonoured for payment;
  - (e) the Applicant failing to comply with any demand for payment issued by CGL Fuel; or
  - (f) the Applicant breaching any of these Conditions are/or are in default of any other agreement between CGL Fuel and the Applicant.
- 14.9 The Applicant expressly and irrevocably agrees that CGL Fuel is entitled to enter any premises where the Goods supplied by CGL Fuel are located to repossess, remove and sell such Goods. The Applicant (its successor and assigns, including any external manager or

administrator) shall not object to CGL Fuel, or its agents. Entering any premises for the purpose of this clause and agrees to indemnify and keep CGL Fuel indemnified in respect of any claims, actions and costs that may arise against CGL Fuel in relation to the removal, repossession and sale of the Goods pursuant to these Conditions including any claims brought by third parties.

14.10 The Applicant agrees that repossession and retention of the Goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to CGL Fuel by the Applicant, as is equivalent to CGL Fuel's estimation of the market value of the Goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest CGL Fuel has on the value of the Goods recovered.

14.11 Until ownership of the Goods passes, the Applicant must not give CGL Fuel a written demand or allow any other person to give CGL Fuel a written demand requiring CGL Fuel to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.

14.12 The Applicant agrees not to change the Applicant name or undertake any changes to any documents that CGL Fuel has registered, requires to be registered or are capable of being registered without CGL Fuel's prior written consent. For avoidance of doubt, these terms regarding the PPSA apply even where the Applicant is a consumer (as that term is defined in the Australian Consumer Law).

## 15. CHARGE

For the better securing of the payment of all amounts payable by the Applicant to CGL Fuel pursuant to these Conditions and interest aforesaid, the Applicant hereby charges their interest in any real property in its name with the due payment of the all amounts payable under these Conditions and interest owing, and consents to CGL Fuel registering a caveat against the Applicant's interest in such properties to further secure the repayment of all amounts payable and interest.

## 16. AUTHORITY

The Applicant must pay all accounts to CGL Fuel in accordance with these Conditions notwithstanding that any item debited to the Applicant's account may result or arise out of any unauthorised use of the Applicant's account by any person who may have actual or ostensible authority of the Applicant to utilise that Applicant's account.

## 17. GST

17.1 Any expression used in this clause and which is defined in the "A New Tax System, (Goods and Services Tax) Act 1999" has the same meaning in this clause 16.

17.2 Unless otherwise expressly stated, all amounts stated to be payable by the Applicant under these Conditions are exclusive of GST.

17.3 If GST is imposed on any supply made under or in accordance with these Conditions, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

## 18. TRUST AND TRUSTEES

Where the Applicant is a trustee:

- (a) the Applicant agrees to produce a stamped copy of the trust (with all amendments) if and when requested by CGL Fuel;
- (b) the Applicant warrants that it has full power and authority to enter into these Conditions.

## 19. GUARANTEE AND INDEMNITY

The Applicant agrees and acknowledges that CGL Fuel may, in its absolute discretion, require one or more of the directors and/or shareholders of the Applicant (where applicable) to personally guarantee performance of the Applicant's obligations under these Conditions to CGL Fuel from time to time in a form provided by CGL Fuel from time to time.

## 20. GOVERNING LAW

These Conditions are governed by the laws of the State of Western Australia.

## 21. FITNESS FOR PURPOSE

To the maximum extent permitted by law, the Applicant agrees that it does not rely on the skill or judgement of CGL Fuel in relation to the suitability of any Goods or Services for a particular purpose. Any advice, recommendation, information or assistance provided by CGL Fuel is provided without any liability by CGL Fuel whatsoever.

## 22. SEVERABILITY

If any provision in these Conditions is unenforceable, illegal or void or makes these Conditions or any part of it unenforceable, illegal or void, then that provision is severed and the rest of these Conditions remains in force.

## 23. WAIVER

A waiver of a provision of, or a right or remedy arising under these Conditions must be in writing and signed by the party granting the waiver.