

Custom Fluidpower Pty Limited trading as

# Hydraulic Cartridges Australia

ABN 61 090 926 659 (Incorporated in New South Wales)

Custom Fluidpower P/L trading as  
**HYDRAULIC CARTRIDGES AUSTRALIA**  
ABN 61 090 926 659



## 30 Day Credit Account Application Form

Please note: All incorporated applicants should also complete Directors Guarantee

Company:	ACN:
Trading As:	ABN:
Postal Address:	Delivery Address:
Account's Contact's Name:	Phone: ( )
Account's Contact Email:	
Type of Business:	Length of Time in Business: Years Months
Phone: ( )	Fax: ( )
General Email:	Website:
Affiliated Companies:	
Estimated Monthly Spend with Hydraulic Cartridges Australia:	

### Proprietors/Directors (please attach additional pages if insufficient space)

1. Name:	Home Address:
2. Name:	Home Address:
3. Name:	Home Address:

### Trade References (three required)

1. Business Name:	Phone: ( )
Contact Name:	Email:
2. Business Name:	Phone: ( )
Contact Name:	Email:
3. Business Name:	Phone: ( )
Contact Name:	Email:

### Bank Details

Bank:	Phone: ( )	
Account Name:	BSB:	Account #:

### Declaration

The above information is furnished for the purpose of obtaining a 30 day credit account with Hydraulic Cartridges Australia, and is warranted to be true and correct. I/We acknowledge receipt of Hydraulic Cartridges Australia Credit Application Terms & Conditions of Sale. My signature below also authorises Hydraulic Cartridges Australia to carry out the necessary credit inquiries for verifying this application.

Signed:	Dated:
Name in Full:	Position in Company:

### Director's Guarantee

I	of
(full name)	(address)
and	of
(full name)	(address)

being directors of

(company name and address)

HEREBY GUARANTEE payment of all or any monies due to Hydraulic Cartridges Australia.

Signature:	Signature:
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## TERMS and CONDITIONS

These Terms and Conditions will prevail and take precedence over any terms and conditions provided by the Customer, and such terms and conditions will have no legal effect and will not constitute part of these Terms and Conditions (even if HCA accepts or fulfils the Customer's Order).

### 1. Definitions and Interpretation

(a) In these Terms and Conditions:

**Customer** means the party to whom a Quotation is provided by HCA or by whom an Order is placed with HCA for Goods.

**Goods** mean the materials, equipment and/or goods supplied by HCA, and includes Hired Goods as applicable.

**GST** means the tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* and related tax imposition Acts of the Commonwealth of Australia.

**HCA** means Custom Fluidpower Pty Ltd (ACN 090 926 659) trading as Hydraulic Cartridges Australia.

**Hire Date** means the hire date agreed between HCA and the Customer.

**Hire Term** means the hire term agreed between HCA and the Customer.

**Hired Goods** means the materials, equipment and/or goods hired by the Customer.

**Order** means any order placed by the Customer for the Goods to be supplied by HCA, whether in writing or orally.

**Price** means the cost of the Goods as agreed between HCA and the Customer.

**Quotation** means any quotation issued by HCA for Goods.

**Rental Bond** means the rental bond specified by HCA in a Quotation.

**Rental Fee** means the rental fee specified by HCA in a Quotation.

**Site** means the location where the Goods are to be delivered, as nominated by the Customer.

**Specifications** mean the drawings, scope of work and/or description of the Goods as stated in writing by the Customer to HCA.

(b) In these Terms and Conditions, unless the context requires otherwise:

- (i) any reference to a party includes its successors and permitted assigns;
- (ii) headings are for convenience only and have no legal effect;
- (iii) the singular includes the plural and vice versa; and
- (iv) "including" and similar words do not imply any limitation.

### 2. Quotation and Order

(a) Quotations are valid for a period of 30 days.

(b) Quotations may be amended or withdrawn at any time by HCA before acceptance by the Customer.

(c) Any Quotation containing a provision to supply Goods ex-stock is subject to fulfilment of prior contracts at the date of the Order.

(d) The placement of an Order resulting from a Quotation (or otherwise) is deemed to be an Order incorporating these Terms and Conditions notwithstanding any inconsistencies which may appear in the Customer's Order or documentation.

### 3. Price

(a) Prices do not include delivery of the Goods to the Site or GST, unless otherwise stated in the Quotation.

(b) If HCA is required to attend the Site, the Customer will be liable for payment of:

- (i) travel time at the agreed rate or as notified by HCA;
- (ii) travel costs (including air fares, car hire, accommodation and meals) at cost plus 15%; and
- (iii) any costs incurred by HCA arising from a requirement to be inducted prior to entering the Site (including medical tests and accreditations).

### 4. Deposit

If the Customer has an approved open account with HCA, where HCA places an Order for:

- (a) non-stocked/capital Goods on behalf of a Customer; or
- (b) Goods to be shipped from an overseas supplier, the Customer will pay a minimum security deposit of 25% of the Price of the ordered Goods. The security deposit will be deducted from the total Price of the Goods as the case may be.

### 5. Rental Bond and Rental Fee

(a) Where the Customer places an Order in respect of Hired Goods, HCA may require the Customer to deposit with HCA the Rental Bond.

(b) HCA has the right to draw down against the Rental Bond in satisfaction of:

- (i) monies owed to HCA pursuant to these Terms and Conditions;
- (ii) costs for damage, replacements parts and repair to the Hired Goods, cleaning of the Hired Goods, insurance policy excesses for claims by HCA as a result of an act or omission by the Customer, or any other costs resulting from a breach of these Terms and Conditions by the Customer.

(c) Within 14 days of the termination or expiration of the Hire Term, HCA will return the Rental Bond to the Customer (less any deductions made under clause 5(b)).

(d) The Customer will pay to HCA the Rental Fee, starting on the Hire Date.

(e) If the Customer returns the Hired Goods to HCA prior to the end of the Hire Term, the Customer will remain liable for all charges payable to HCA in respect of the Rental Fee for the Hire Term.

### 6. Use of Hired Goods

(a) The Customer agrees that it will use the Hired Goods for its business purposes and not for any other purpose.

(b) The Customer will at all times use and operate the Hired Goods in a skillful and proper manner with due diligence and will use all endeavours to prevent the loss or destruction of or damage to the Hired Goods.

(c) The Customer will at all times, at its own expense, comply with all legal

requirements in any way affecting or relating to the Hired Goods or otherwise arising out of or by virtue of the possession, use or operation of the Hired Goods by the Customer.

(d) The Customer will not remove or change any name plate, identification or other mark on the Hired Goods except to indicate any replacement alteration or addition thereto.

(e) The Customer will not, without prior written consent of HCA, make any modification improvement addition or alteration to the Hired Goods.

### 7. Payment

(a) If the Customer does not have an approved open account with HCA:

(i) the Customer will pay a minimum security deposit of 100% of the Price of the ordered Goods where HCA places an order for:

- (A) non-stocked/capital Goods on behalf of a Customer; or
- (B) Goods to be shipped from an overseas supplier; and

(ii) all sums due in relation to Goods are payable on delivery of the Goods. Payment will constitute acceptance of all Goods, and HCA will not be liable for any claim by the Customer for any cost, loss, damage, expense or short delivery unless HCA is notified in writing within 48 hours of receipt of the Goods by the Customer.

(b) Subject to clause 4, if the Customer has an approved open account with HCA, invoices are payable by the Customer 30 days after the end of the month of the date of the invoice, unless otherwise agreed.

(c) If payment is not made on a timely basis, interest on the unpaid balance from time to time outstanding will accrue from the due date until paid in full at a rate of 12% per annum, without prejudice to HCA's other rights in respect of late or non-payment.

(d) The Customer will pay all cost and expenses (including legal costs on an indemnity basis) incurred by HCA and/or its agents in respect of the Customer, whether relating to any debt, possession of Goods or otherwise.

### 8. GST

If GST is imposed on any supply made under or in accordance with these Terms and Conditions, the recipient of the taxable supply must pay to HCA an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made:

(a) at the same time as payment for the taxable supply is required to be made in accordance with these Terms and Conditions; or

(b) within 30 days after the date of any invoice or notice from HCA requesting such payment.

### 9. Cancellations and Restocking Fees

(a) Orders cannot be cancelled by the Customer under any circumstances without HCA's prior written consent and except upon terms which will indemnify HCA against all loss.

(b) Excluding any defective items, neither all nor any part of an Order may be returned to HCA without prior written agreement of HCA.

(c) HCA reserves the right to charge a minimum restocking fee of 10% or \$50 (whichever is the greater) of the full invoiced amount in respect of Goods returned by the Customer provided the returned Goods are in the same condition as they were upon delivery to the Customer by HCA.

(d) HCA reserves the right to recover the delivery fee if charged.

### 10. Title & Risk of Loss

(a) Title to the Goods will pass to the Customer upon receipt of payment for the Goods.

(b) Title to the Hired Goods will remain with HCA at all times.

(c) Subject to clause 11(c), the risk of loss or damage to the Goods and the Hired Goods passes to the Customer on the date and at the time that:

- (i) the Goods and/or Hired Goods are collected from HCA; or
- (ii) where HCA is responsible for the delivery, the Goods and/or Hired Goods are delivered to the Site.

(d) The Customer:

(i) must store, mark and keep appropriate records for the Hired Goods so that the Hired Goods can at all times be identified as the property of HCA;

(ii) must not sell, part with possession, nor encumber, the Hired Goods;

(iii) must not mix the Hired Goods with other equipment owned by the Customer;

(iv) grants HCA the irrevocable right at any time to enter the Site, and any other premises where the Hired Goods may be located to:

(A) repossess and use the Hired Goods, without prejudice to any other rights of HCA; and

(B) terminate the Customer's right to use the Hired Goods.

### 11. Delivery

(a) Unless otherwise agreed, HCA accepts no responsibility or duty to deliver but may agree to deliver at its discretion, without liability and at the Customer's cost.

(b) HCA reserves the rights to deliver the Goods by instalments. Any delivery times notified to the Customer are estimates only. If the Customer requests HCA to postpone delivery of the Goods beyond the delivery date or dates specified in the Order, HCA may agree to do so if the Customer agrees to pay an additional fee for such postponement.

(c) If HCA does not receive delivery instructions sufficient to enable HCA to dispatch the Goods within 14 days of the Customer being notified that the Goods are ready for delivery, the Customer will from the 15<sup>th</sup> day after notification:

(i) be deemed to have taken delivery of the Goods;

(ii) be liable for storage charges, payable monthly on demand; and

(iii) assume risk in the Goods.

### 12. Warranties

(a) For Goods sold and manufactured by HCA:

(i) HCA warrants that the Goods will be of an acceptable quality; and

(ii) if any defect appears within 12 months from the date the Goods are delivered to, or collected by, the Customer then:

(C) the Customer must promptly notify HCA of the defect in writing and HCA will, at HCA's discretion, repair, replace or refund the Price of the Goods; and

- (D) the cost associated with delivering the Goods to and from HCA will be the responsibility of the Customer.
- (b) The warranties in clause 12(a) will not apply to, and HCA is not liable in respect of loss and damage arising from:
- (i) defects or damage resulting from normal wear and tear, negligence, willful misconduct, improper use, abuse, neglect, improper installation repair or alteration (other than by HCA), abnormal conditions of temperature dirt or corrosive matter, operation above rated capacities, electrical or other overload, unsuitable lubricants, dismantling or accident, or damage caused by unforeseen events;
  - (ii) use of the Goods beyond the parameters set in the Specifications; and
  - (iii) Goods which are modified, maintained or repaired by any person not authorised to do so by HCA.
- (c) The Customer acknowledges that it has satisfied itself that the Hired Goods are suitable for the Customer's purpose and acknowledges that it has not relied upon any warranty or representation from HCA in this regard.
- (d) These warranties are in addition to other rights and remedies that are available to the Customer at law. HCA's goods 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 Customer 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.
- (e) All other warranties are excluded to the extent permitted at law.

### 13. Representation

- (a) The Customer agrees that the Goods manufactured by HCA or for which HCA is the sole Australian distributor, will not be exhibited by any person, firm or company at any show, exhibition or trade fair without prior written consent from HCA. The Customer warrants that such Goods will not be misrepresented in any way to the detriment of HCA as to their origin or source of import.
- (b) The Customer is responsible for ensuring that the Goods comply with any requirements of law or as required by any statutory authority and will not rely on HCA's skill or judgement in relation to any particular purpose for which the Goods are supplied other than as specified by the Customer to HCA.

### 14. Personal Property Securities Act 2009 ("PPSA")

- (a) For the purposes of this clause 14, the terms 'financing statement', 'financing change statement', 'security agreement' and 'security interest' have the meanings set out in the PPSA.
- (b) The Customer acknowledges and agrees that:
- (i) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (ii) a security interest is taken in all Goods previously supplied by HCA to the Customer (if any) and all Goods that will be supplied in the future by HCA to the Customer during the continuance of the parties' relationship.
- (c) The Customer agrees to do anything (including obtaining consents, signing or producing any further documents, and/or providing any further information) which HCA asks and considers necessary for the purposes of:
- (i) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
  - (ii) enabling HCA to apply for any registration, complete any financing statement, financing change statement or give any notification, in connection with the security interest; and/or
  - (iii) HCA exercising its rights in connection with the security interest.
- (d) Everything that HCA is required to do under this clause 14 is at the Customer's expense.
- (e) The Customer waives any rights it may have:
- (i) to receive notices under sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4), 134(1) and 135 of the PSSA; and
  - (ii) under sections 142 and 143 of the PPSA.
- (f) The Customer agrees to keep separate those Goods for which payment has been made from Goods for which payment has not been made.
- (g) The parties agree that sections 96 and 117 of the PPSA do not apply to these terms and conditions.

### 15. Assignment and Subcontracting

- (a) The Customer may not assign its rights, duties and obligations under these Terms and Conditions without HCA's prior written consent.
- (b) HCA may sub-contract the performance of any part of its obligations under these Terms and Conditions to any third party or assign any of its rights or obligations under these Terms and Conditions.

### 16. Liability and Indemnity

- (a) To the extent permitted by law, in the case of all Goods supplied by HCA, HCA is not liable:
- (i) for any transport, installation, removal, labour or other costs; or any loss or damage to the Goods in transit; or
  - (ii) to the Customer or any other party for any direct, indirect, consequential or inconsequential injury loss or damage whatsoever by reason of any delay in delivery, deterioration, deficiency or other fault or harm in the Goods supplied by or on behalf of or in any arrangement with HCA and whether or not due to the negligence of HCA its servants or agents.
- (b) To the extent permitted by law, HCA's total liability in connection with these Terms and Conditions:
- (i) is limited at HCA's option to:
    - (1) replacement, repair or resupply of the Goods; or
    - (2) the cost of replacing, repairing or resupplying the Goods;
  - (ii) but will not exceed the Price paid by the Customer under these Terms and Conditions.
- (c) The Customer indemnifies, defends and holds HCA harmless against any and all losses, damages, claims, costs and expenses (including legal expenses) suffered or incurred by HCA arising out of:
- (i) the Customer's possession, operation or use of the Hired Goods,

- including any loss or damage to the Hired Goods however caused;
- (ii) any negligent or illegal act, breach or non-performance of any of the obligations or warranties of the Customer or its personnel under these Terms and Conditions, whether express or implied;
- (iii) any personal injury or death to any person or damage to property caused or contributed to by the Customer or its personnel.

### 17. Termination

- (a) HCA may terminate an Order immediately if the Customer:
- (i) breaches any of its obligations under these Terms and Conditions and it does not remedy such breach within a reasonable time as requested by HCA in writing; or
  - (ii) becomes insolvent, is wound up or a receiver or creditor is appointed over any part of the Customer's business.
- (b) Upon termination, the Customer will pay HCA for all costs incurred with the termination up to the date of termination.
- (c) Upon termination, the Customer must return the Hired Goods (including any remaining spare parts that have been delivered to the Customer) to HCA at the Customer's sole cost, in as good a condition as turned over to the Customer, fair wear and tear excepted.

### 18. Force Majeure

HCA is not liable for failing to comply with these Terms and Conditions as a result of events beyond HCA's control (including earthquakes, cyclones, floods, fires, lightning, storms or other acts of God, blowouts, strikes or industrial disputes, riots, terrorist acts, civil disturbances, breakages of machinery or industrial conditions or arising out of any other unexpected or exceptional cause, delays in transportation and dispositions or orders of governmental authority, but shall not include lack of funds nor economic hardship). If such events cause a delay in the supply of the Goods, the Customer agrees to:

- (a) extend any timeframes specified in the Order to accommodate the delay;
- (b) pay HCA any additional fees incurred by HCA, as agreed between the parties; and
- (c) pay HCA standby rates (at the published hourly rates) if HCA personnel are retained on Site.

### 19. Confidentiality

The Customer will treat as confidential all information, data, drawings, specifications, samples and documentation supplied by HCA relating to the Goods, and will not disclose them to any third party without the prior written consent of HCA unless such information is:

- (a) a matter of public knowledge;
- (b) lawfully available from another source;
- (c) disclosed as may be necessary in accordance with the PPSA for the security interest to be perfected; or
- (d) disclosed as may be required by law.

### 20. Ownership of Intellectual Property

- (a) All intellectual property created by HCA relating to the Goods is from the time of creation, owned by HCA.
- (b) HCA grants to the Customer a non-exclusive, royalty-free licence to use HCA's intellectual property to the extent such materials form part of, or are integral to, the Goods.
- (c) The Customer must not remove any branding, patent, copyright or other proprietary notices incorporated on or in the Goods by HCA.
- (d) The Customer will obtain the prior written consent of HCA before placing any other trade mark, company name, brand name or private label on the Goods.
- (e) The Customer will not use the trade mark, company name or brand name relating to any product of which HCA is a distributor for sales or marketing purposes, unless with the prior written consent of HCA.
- (f) The Customer at all times indemnifies HCA, its officers, employees and agents, from and against all loss, damage, costs and expenses (including legal costs) arising out of the infringement or alleged infringement of any intellectual property, because of the purchase, possession or use of the Goods.

### 21. Governing Law

These Terms and Conditions are governed by, and construed in accordance with the laws of New South Wales. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from these Terms and Conditions.

### 22. Notices

All notices and consents relating to these Terms and Conditions must be in writing.

### 23. General

- (a) These Terms and Conditions contain the entire understanding between the parties concerning the Goods and supersedes all prior communications.
- (b) These Terms and Conditions may not be amended or varied except in writing and signed by the parties.
- (c) The failure of either party to enforce any provisions under these Terms and Conditions will not waive the right of such party thereafter to enforce any such provisions.

If any term or provision of these Terms and Conditions is held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from these Terms and Conditions and the remaining terms and conditions will be unaffected.