



TYRES WHEELS AXLES

OTR TYRES COMMERCIAL CREDIT AGREEMENT



COMMERCIAL CREDIT AGREEMENT



ABN 40 615 115 565

This document is an application for commercial credit between TKPH Pty Ltd t/as OTR Tyres - 40 615 115 565 (the supplier) &

The Applicant (the customer)

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BACKGROUND

- A. The customer desires to establish a thirty (30) days from end of month commercial credit account with the supplier.
- B. The supplier has agreed to consider the customer's application and to advise the customer as to whether or not credit will be extended to the customer.
- C. The parties to this agreement agree that if the supplier grants to the customer credit facilities, then those credit facilities will be on the Terms & Conditions as set out in Schedule 2 & 3 to this agreement.

PRIVACY STATEMENT

The supplier collects the personal information requested in this form for the purpose of determining whether or not to extend commercial credit. The supplier may also collect personal information from external service providers for the purpose of determining whether or not to extend commercial credit. This information may from time to time be disclosed to credit agencies and supplier advisors from whom the supplier receives external services. You may access your personal information retained by the supplier on request. If we do not obtain your personal information, we may be unable to consider or approve your application for commercial credit.

DECLARATION

I/We have read and understand and accept the Terms & Conditions of credit as set out in the Second & Third Schedule to this agreement and acknowledge that the customer and each proprietor or partner or company director of the customer will be jointly and severally responsible for payment of all monies owed to the supplier. (All business proprietors and in the case of a company all company directors are to sign this application form)

Requested Credit Limited Amount

\$

Name of Authorised Person 1	Position Held	Signature	Date
Name of Authorised Person 2	Position Held	Signature	Date

OFFICE USE ONLY

Sales Representative	Segment Code	Customer Disc Group
Customer Number	Processed by	Date Processed
Credit Application Approved?	Amount	Date
☐ Yes ☐ No	\$	

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FIRST SCHEDULE

APPLICANT

Type of Business (please tick one)

☐ Private Company

☐ Public Company

☐ Partnership

☐ Sole Trader

☐ Trust

Trading Name

Company Name

--	--

ABN

ACN

--	--

Nature of Business

Business Commenced

--	--

Registered Office Address

Business Street Address

--	--

Postal Address

Phone Number

--	--

Fax Number

Mobile Number

--	--

Purchasing Contact

Email Address (for quotes & reports)

--	--

Accounts Contact

Accounts Email Address

--	--

Accounts Phone Number

Accounts Fax Number

--	--

TRADE REFERENCES

Company Name

Accounts Phone Number

Accounts Fax Number

Accounts Email

1.			
2.			
3.			

DIRECTORS, PARTNERS & PROPRIETORS DETAILS

Full Name

Date of Birth

Home Address

Mobile Number

Driver Licence Number

1.				
2.				
3.				

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SECOND SCHEDULE

GUARANTEE FOR COMMERCIAL CREDIT ACCOUNT APPLICATION

In consideration of TKPH Pty Ltd trading as OTR Tyres - ABN 40 615 115 565, and related entities under the same ABN having agreed at my/our request to supply goods to and perform services for:

Company Name _____

(Hereinafter called "the customer")

I/We, _____ of (Residential Address) _____

_____ & _____

of (Residential Address) _____

In the said state HEREBY GUARANTEE due and punctual payment of the price of all such goods as OTR Tyres may supply to the customer and the price of all such services as OTR Tyres may perform for the customer and I/we on my/our own behalf and on behalf of the customer do hereby mortgage and charge all real property standing in my/our name with the payment of the purchase price of all goods and services whether that real property is now presently owned by me/us or subsequently acquired and whether such real property was owned by me/us at the time the goods were sold and delivered or subsequently.

I/We further agree, if requested by OTR Tyres, to execute a registrable mortgage in usual terms required by OTR Tyres over the aforementioned real property and also agree, permit & authorise OTR Tyres to register a caveat/warrant over any land which is part of the aforementioned real property if or when a default occurs under the terms of commercial credit agreement between the customer & OTR Tyres.

I/We further guarantee any expenses that OTR Tyres may suffer or incur in recovering outstanding monies owed by the customer (including but not limited to solicitors' cost and expenses, debt collectors fees and disbursements, court costs and any bank fees charged on a dishonoured cheque, will be due and owing by the customer to OTR Tyres).

AND I/WE DECLARE that this shall be a continuing guarantee binding also on my/our heirs, executors, administrators and personal representatives and shall not be prejudiced or affected by any concessions made or granted by OTR Tyres, its liquidators, administrators, successors or assigns to the customer whether by way of extension of time for payment or otherwise.

I/We agree that OTR Tyres may seek from a credit reporting body, a credit report containing personal information about me/us to assess whether to accept me/us as a guarantor for credit applied for, or provided to, the customer.

I/We agree that if OTR Tyres approves the customer's application for credit this agreement remains in force until all amounts owing to us by the customer have been paid in full and the credit facility covered by the customer's application ceases.

ITEM 1

Print Full Company Name of the Supplier

TKPH Pty Ltd trading as OTR Tyres

ITEM 2

Print Full Company Name of the Customer

ITEM 3 (GUARANTORS)

Full Name	Phone Number	Signature	Date
1.			
2.			
3.			

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TKPH PTY LTD STANDARD TERMS AND CONDITIONS

1. In this agreement unless the context otherwise requires:

1.1 **DEFINITIONS**

Accession has the meaning given to that term in the PPSA.

Commingled has the meaning given to that term in the PPSA.

Customer means the Customer & in the case of a partnership each partner and his/her heirs successors and personal representatives and in the case of a corporation, means and includes each director/guarantor and its and their successors, personal representatives and heirs as the case may be.

Financing Statement has the meaning given to that term in the PPSA.

Goods means all tyres and other goods or chattels of any kind whatever supplied by the Supplier to the Customer including all present & after-acquired Accessions, additions, modifications, changes or improvements to those Goods, the Proceeds of the Goods and any processed or Commingled goods including the Goods.

PPSA means the Personal Property Securities Act 2009 (Cth).

PPSR means the Personal Property Securities Register.

Proceeds has the meaning given to that term in the PPSA.

Purchase Money Security Interest has the meaning given to that term in the PPSA.

Security Interest means:

- (i) In relation to any personal property (as defined in the PPSA) has the same meaning as in the PPSA; and
- (ii) In relation to other property to which the PPSA does not apply, means any security for payment of money or the performance of obligation including a mortgage, charge, lien, pledge, trust or power.

Services includes all services of any kind whatever provided by the Supplier to the Customer inclusive of all materials, costs, charges, expenses, repairs or other matters whatever.

1.2 **INTERPRETATION**

Words in this agreement importing the singular include the plural and vice versa; words importing a gender include any gender; reference to a person includes reference to a natural person, a corporation and any entity capable of being the subject of legal proceedings.

An obligation on the part of two or more persons pursuant to this agreement binds them jointly and severally.

This agreement will be construed with and governed by the laws of the laws of Western Australia.

- 2. The terms and conditions of this agreement constitute the contractual basis for the granting of credit by the Supplier to the Customer.
- 3. The signatories to this agreement warrant that:

- (i) They are duly authorised as partners/directors/agents of the Customer (as the case may be) to apply for credit on its behalf and to execute this agreement for and on behalf of the Customer; and
 - (ii) That all information supplied in the First Schedule for the purpose of obtaining credit for the Customer from the Supplier is true and correct in every detail.
- 4. Upon notification to the Customer by the Supplier of its acceptance of this agreement then, but not otherwise, there will be a binding agreement between the parties for the provision of credit facilities for Goods and Services supplied by the Supplier to the Customer.
 - 5. Unless waived by the Supplier at the time of its acceptance of this agreement, the Customer will be required to provide security for the granting of credit and the Supplier will have the right at any later time to require further or other security for the continuation of credit without becoming liable for the non-supply of Goods and Services pending receipt of that security.
 - 6. The following terms will apply to any commercial credit that may be granted by the Supplier to the Customer:
 - (a) (i) Title to the Goods the subject of any invoice issued by the Supplier to the Customer does not pass to the Customer until payment in full of all monies owing by the Customer to the Supplier under, or in connection with, this agreement is received by the Supplier and in the event of non payment within the trade terms, the Supplier and its employees, agents and representatives will have the right (and is hereby authorised) by the Customer to enter into and upon any premises where the Goods may be stored from time to time and re-take possession, remove and re-sell the same and the Customer now indemnifies the Supplier against any claim, action, loss or damages arising out of any such action and against any costs incurred by the Supplier in recovering and re- selling the Goods; and
 - (ii) Despite the preceding sub-clause 6(a)(i) the Customer may dispose of, by way of normal trading, any of the Goods but in that case will be deemed to have sold and collected the proceeds for the Goods for and on behalf of the Supplier, which shall be applied by the Customer in the manner provided in clause 6(h)(iii).
 - (b) Unless otherwise stated the terms of payment will be 30 days from the end of the month of invoice date;
 - (c) Until payment is made, the Customer and each of the Customer's proprietors, partners and/or company directors named in the First Schedule (as the case may be), will and now mortgage all interest in land owned respectively by it or any of them from time to time with the said payment or the payment of any sum due under this agreement and if required by the Supplier each of them will enter into and execute any registrable mortgage in usual terms as may be required and no aforesaid

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proprietor, partner or company director will object to the Supplier registering a caveat over any property owned by any of them as security for monies owed by them to the Supplier;

- (d) If the Customer defaults in payment of any monies due to the Supplier or its obligations under this agreement from time to time then all monies owing to the Supplier will be immediately due and payable and;
 - (i) The debt will carry interest at the rate of fifteen per cent (15%) per annum calculated and chargeable monthly from the date of default until actual payment is received by the Supplier;
 - (ii) All expenses incurred by the Supplier in recovering the monies due inclusive of solicitors' charges, debt collectors' fees and disbursements, any costs or charges in relation to security documents and any fees on dishonour will be a debt due and owing by the Customer; and
 - (iii) The Supplier will have the unconditional right to withdraw and cease to provide the credit facilities at any time and without notice and without in any way affecting the enforceability of any guarantee of any monies owing to the Supplier hereunder executed by any directors (or other parties) of the Customer.
- (e) Where the Customer trades as trustee of a trust, the existence of which is not disclosed to the Supplier, there will be deemed to have been a full disclosure with the assets of the trust from time to time pledged as security for payment of any monies owing hereunder to the Supplier;
- (f) All details of any proposed changes to shareholding, directors, registered particulars of ownership in the Customer (inclusive of its financial structure) will be notified in writing to the Supplier at least 14 days prior to taking effect. Unless within seven (7) days thereafter the Supplier notifies the Customer in writing that it does not object, the credit facilities provided under this agreement will cease to be provided by the Supplier upon taking effect of the changes and all monies due and payable by the Customer to the Supplier will be immediately due and payable.
- (g) If any cheque issued by the customer or any third party in payment of the Customer's invoice is dishonoured:
 - (i) The Supplier may refuse to supply any further Goods until satisfactory payment is received in full; and
 - (ii) The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of and default under this agreement and to elect between terminating this agreement or affirming this agreement, and in each case, claiming and recovering compensation for loss or damage suffered from the Customer.
- (h) Until title to the Goods passes to the Customer pursuant to this agreement, the Customer must
 - (i) Store the Goods which have not been paid for separately in the Customer's possession and control;
 - (ii) Not move the Goods outside Australia unless with the

prior written consent of the Supplier;

- (iii) Keep separate records in relation to the proceeds of the sale of any Goods which have not been paid for, bank the proceeds of any such sale into a separate account and immediately remit such funds to the credit of the Supplier; and
 - (iv) If any of the Goods are used in a manufacturing process or mixed with other materials, the customer must record the value of Goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product, immediately remit that amount from the proceeds of sale to the Supplier.
7. The Customer acknowledges that by virtue of clause 6, the Supplier has a Security Interest in the Goods the subject of any invoice issued by the Supplier to the Customer which has not been paid in full by the Customer as security for:
 - (i) The payment of all monies owing by the Customer to the Supplier under, or in connection with, this agreement; and
 - (ii) The performance by the Customer of all its obligations under, or in connection with, this agreement.
8. The Customer must promptly notify the Supplier of any change in the name or ACN, ARSN or ABN of other identifying characteristics of:
 - (i) The Customer; and
 - (ii) The Goods which have not been paid in full by the Customer.
9. The Customer now authorises the Supplier to carry out credit checks and to obtain credit reports in respect of the Customer's credit worthiness in accordance with any law with respect thereto in force for the time being.
10. Risk in the Goods the subject of this invoice passes to the Customer upon the earlier of:
 - (i) Actual or constructive delivery of the Goods to the Customer; or
 - (ii) Collection of the Goods from the Supplier or any bailee or agent of the Supplier by the Customer's agent, carrier or courier.
11. Notwithstanding any other provision of this agreement, all warranties and other terms in connection with the Goods implied by law are to the fullest extent permitted by law, excluded.
12. Unless otherwise agreed by the Supplier, the Customer may only reject Goods delivered to the Customer if they breach a warranty applicable to them. If the Customer fails to notify the Supplier within 10 days of delivery of the Goods to the Customer that the Customer has rejected the Goods, the Customer shall be deemed to have irrevocably accepted the Goods and shall be liable to pay the Supplier for the invoice the Supplier issues to the Customer in respect of the delivered Goods.
13. The Supplier will not in any way be liable to the Customer, including by way of indemnity, for any indirect, consequential, special, contingent or punitive loss or damage, whatsoever

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caused or any loss of profits, loss of revenue, loss of reputation, loss of opportunity or loss of anticipated savings suffered or incurred by the Customer arising out of, or in connection with, this agreement.

14. The failure of any party to enforce the provisions of this agreement or to exercise any rights expressed in this agreement is not deemed to be a waiver of such provisions or rights and does not affect the enforcement of this agreement.
15. The Customer must do anything that the Supplier may reasonably require to:
 - (i) Give full effect to this agreement;
 - (ii) Better secure the Security Interest in the Goods contemplated by, or purported to be reserved or created by, this agreement, including, if applicable, as a Purchase Money Security Interest; and
 - (iii) Assist in the execution or exercise of any right or power under, or in connection with, this agreement.
16. Without limiting clause 15, the Customer agrees to make such amendments to this agreement, and to do such other things, as the Supplier may require from time to time to:
 - (i) Ensure that this agreement is a perfected Security Interest, and if applicable, a perfected Purchase Money Security Interest registered on the PPSR over all Goods which have not been paid in full by the Customer;
 - (ii) Ensure that this agreement is perfected by control to the extent possible under the PPSA; and
 - (iii) Otherwise protect the Supplier's position under this agreement in the context of the PPSA.
17. The Supplier may, at the Customer's cost, do anything which the Customer should have done under this agreement if the Customer does not do so promptly or, if in the Supplier's opinion, the Customer does not do so properly.
18. The Customer and Supplier agree that to the maximum extent permitted by the PPSA, all provisions of the PPSA listed in sections 115(1) and 115(7) of the Act except sections 116, 117 and 134(1) together with any other provisions specified by the Supplier from time to time are excluded in full and will not apply to this agreement or the Security Interest it creates.
19. The Customer and the Supplier agree that to the maximum extent permitted by the PPSA, the information of the kind mentioned in section 275(1) of the PPSA is confidential and is therefore not to be disclosed by either of them in response to a request made under section 275(1) of the PPSA, except to the extent determined by the Supplier or required by section 275(7) of the PPSA.
20. The Supplier is not required to give any notice required under the provisions of the PPSA (referred to in section 144 of the PPSA or a notice of verification statement referred to in section 157(1) of the PPSA) unless the notice is required by the PPSA and cannot be excluded.
21. Without limiting clause 6(d), the Customer must pay or reimburse the Supplier on demand for all costs and expenses the Supplier reasonably incurs in relation to:
 - (i) The negotiation, preparation, execution and registration

of this agreement;

- (ii) any variation, amendment, discharge or release of this agreement or the Security Interest created by this agreement on the PPSR; and
 - (iii) all taxes, fees (including registration fees), fines and penalties which may be paid or payable in connection with this agreement including the costs of preparing, registering, amending and maintaining any Financing Statement with respect to this agreement.
22. The Supplier will, at the request and cost of the Customer, release its Security Interest over Goods when the Supplier is satisfied that all money owing, or payable to, the Supplier under, or connection with, this agreement has been paid in full. Any release required under the PPSA will be prepared by the Supplier at the Customer's request and expense.
 23. Prior to returning goods, the customer must liaise with OTR Tyres and have written approval on the terms of the return. A re-stocking fee will apply where OTR is not at-fault and the value of this fee will be agreed as part of the terms of the approved return. The value of the fee will be dependent on several factors, the goods must be new and unused and any return freight will be the responsibility of the customer. OTR Tyres has a strict 30 days return policy from date of invoice.
 24. Specialised manufactured or Buy-In Goods are non-returnable and must be paid in full by the Customer.

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