



Mandeb Pty Ltd trading as
TIDAL FLUID POWER
P.O.BOX 3180 CLONTARF D.C.
QUEENSLAND AUSTRALIA 4019
4/15 Redcliffe Gardens Drive, Clontarf
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**APPLICATION
FOR
CREDIT FACILITIES**

**PLEASE POST
THIS ORIGINAL
FORM**

Date: _____

Business Structure: a) Sole Trader b) Partnership c) Private Limited Company

Applicant trading name _____

Company name if a Pty Ltd Company _____

Date of Incorporation _____

Postal Address _____

_____ Post code _____

Delivery Address _____

Website: _____

A.B.N. Number _____ email address _____

Telephone number _____ Facsimile Number _____

Proprietors/Directors (attach additional pages if insufficient space)

1. Name _____ Address _____

2. Name _____ Address _____

Trade References **Minimum 2 Hydraulic companies** (Please insert trade accounts with a similar credit limit to that requested).
We the applicant's agree that the below listed companies may be contacted, in order to assist in the processing of this application.

1. Business Name _____ Phone: _____ Email: _____

2. Business Name _____ Phone: _____ Email: _____

3. Business name _____ Phone: _____ Email: _____

Bank _____ Branch _____ Account Number _____

Credit Limit Applied for (monthly purchases \$) _____

The above information is furnished for the purposes of obtaining credit and is warranted to be true and correct as at the date of this application. We further acknowledge that certain personal information covered in section 18E(1) of the Privacy act may be given to a credit reporting agency and we authorise you to give this information to these agencies.

We agree to be bound by Tidal Fluid Power's Terms and Conditions of Sale as printed overleaf and attached.

We further acknowledge that the person signing below is fully authorised by us to act on our behalf as the applicant.

Signature of the Proprietor/Director _____

Name in full _____ Date: _____

Bank account details for Direct Payments:

BSB: 084 484
ACCOUNT NAME: Tidal Fluid Power

ACCOUNT: 893539088
BRANCH: Caloundra

TIDAL FLUID POWER TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

- 1.1 The Vendor/ Tidal Fluid Power, where used shall mean ABN: 67112429286 Mandeb Pty Ltd. Trading as Tidal Fluid Power, its agents, servants and employees and any of its subsidiaries.
- 1.2 The Purchaser shall mean and include any person to whom any quotation is made and shall include any person offering to contract with Tidal Fluid Power on these terms and conditions.
- 1.3 These conditions apply to all transactions between the Vendor and the Purchaser, including all quotations, offers, acknowledgements, orders or sales.
- 1.4 These conditions will prevail over all other conditions of the transaction to the extent of any inconsistency.
- 1.5 Acceptance of the Vendors product shall constitute acceptance of these terms and conditions.
- 1.6 Headings are for reference purposes only and do not affect their interpretation.

2. PRICE

- 2.1 All prices stated are for delivery ex works, subject to prior sale, from any Australian branch F.O.T. (free on transport) and do not include G.S.T.
- 2.2 No discounts are allowable unless otherwise stated.
- 2.3 Written quotation's are valid for a period of thirty (30) days, all other prices are subject to change without notice.
- 2.4 All export items are priced as F.O.B. (free on board) Brisbane.

3. DELIVERY

- 3.1 Tidal Fluid Power will endeavour to keep delivery dates, however, any delay of delivery, for any reason whatsoever, will not entitle the Purchaser to claim for any consequential loss or damage or to cancel, rescind or terminate the agreement.
- 3.2 Deliveries by instalments must be requested by the Purchaser within the times stipulated in the contract.
- 3.3 Where the Purchaser fails to request or accept instalment deliveries in accordance with the terms of the contract:
 - a/ the Vendor may store the goods at the risk and cost of the Purchaser
 - b/ The Purchaser will be deemed to be in default of payment for the delivery
 - c/ Where goods are ordered for delivery by instalments, each instalment delivery is deemed to be a separate order and a separate contract.
- 3.4 Any quotation containing a provision to supply goods "ex- stock" is subject to fulfillment of prior orders at the date of receipt of the Purchaser's order

4. CANCELLATION

- 4.1 Subject to Section 75A of the Trade Practices Act 1974 and without limiting the entitlement of a consumer to rescind a contract as provided in that Section, any order may only be cancelled, varied or suspended with the written consent of Tidal Fluid Power and in the event of such cancellation, variation or suspension, the Purchaser undertakes to reimburse and indemnify Tidal Fluid Power for any costs, expenses or charges incurred by Tidal Fluid Power in preparation for and in the execution of such order.

5. CLAIM FOR CREDIT

- 5.1 No returns will be accepted for credit unless goods are defective or supplied in error.
- 5.2 Goods are not otherwise returnable except by negotiation. We are not responsible for loss or damage in transit.
- 5.3 Goods must be returned only by prepaid transport. Parts specially procured or procured on intent or manufactured are not returnable under any circumstances.
- 5.4 All goods returned must be accompanied by an official Tidal "return for credit" form available from our Head Office.

6. INSURANCE

- 6.1 Insurance against loss or damage on transport will be effected only on and in accordance with the instructions of the Purchaser on goods in transit to the nominated point of delivery. Goods in transit are at the risk of the Purchaser.

7. WARRANTY

- 7.1 Tidal Fluid Power warrants to the original purchaser that products supplied are free from defects in workmanship or materials used, when operated under normal conditions and in accordance with accepted industry practice's recommendations and standards.
- 7.2 All products are covered in terms of this warranty for a period of one hundred and eighty days from the date the goods are delivered to the purchaser.
- 7.3 To be eligible for warranty consideration, all product items must be covered by acceptable documentation, detailing the reasons for the claim and received at Tidal Fluid Power stores, within a 30 day period from the date of the claim.
- 7.4 Subject to the provision of section 74 of the Trade Practices Act and to the warranties therein implied, Tidal Fluid Power shall not be liable to any Purchaser or other party for any direct, or indirect, or consequential injury, contingent liabilities including but not limited to, loss of life, personal injury, loss of crops, loss due to fire or water damage, loss of business or business income, down time costs and trade or other commercial loss, or damage's whatsoever, or occasioned by reason of failure of the product or delay in delivery, deterioration, deficiency, or other fault in the goods manufactured, work executed, or services provided by, or on behalf of, or in any arrangement with Tidal Fluid Power, or occasioned to the Purchaser, or any third party, or to his or their property, or interest whether or not due to the negligence of Tidal Fluid Power, its servants or agents.
- 7.5 Tidal Fluid Power's liability shall be limited in all circumstances, at the option of Tidal Fluid Power, to the repair or replacement or monetary refund of an amount equal to the original purchase price, of the products determined to be defective, upon examination and received within the warranty period. . Tidal Fluid Power will in no event be liable for any sum in excess of the price received by it for the product for which liability is claimed or asserted.
- 7.6 As soon as any of the facts or matters which form any part of any claim or complaint become known to the Purchaser, the Purchaser shall within fourteen (14) days notify Tidal Fluid Power in writing of the same.
- 7.7 This warranty shall not apply to products, which in the sole judgment of Tidal Fluid Power, have been inadequately maintained, subjected to contamination, negligent handling, improper installation, unauthorized disassembly, fair wear and tear or the use of unsuitable lubricants.
- 7.8 Repaired or replacement product items, will be covered by the terms of this warranty on a pro rata time basis, which reduces the warranty period by the amount of time the original product was in service.
- 7.9 When Tidal Fluid Power supplies goods to the Purchaser that are manufactured by a third party, Tidal Fluid Power's liability shall be limited to the extent of the warranty granted to Tidal Fluid Power by the third party.

8. PAYMENT

- 8.1 Payment terms are nett cash 30 Days, for open account customers (30 days measured from the end of the month the goods are delivered to the Purchaser, or the Purchaser's carrier or agent's).
- 8.2 Interest may be charged at a rate 4% per annum above the overdraft interest rate charged to Tidal Fluid Power by its bankers on all monies outstanding beyond the terms above, but without prejudice to Tidal Fluid Power's other rights under law in respect or non-payment.
- 8.3 The Vendor may recover the price of the goods together with all interest forthwith from the buyer as a liquidated debt in a court of tribunal of competent jurisdiction irrespective of any claim that the buyer may have against the Vendor for any matter related to the goods delivered under this contract.
- 8.4 All applicable taxes, duties or levies (including GST) on the sale of the goods will be to the Buyers account.
- 8.5 The Vendor may, at its option and without prejudice to any of its rights, either suspend further deliveries, require payment in advance or terminate any contract by written notice if the Purchaser:
 - (a) defaults on any payment due under the agreement
 - (b) enters into bankruptcy and/or has a receiver, receiver and manager and/or an administrator appointed
- 8.6 Export orders are to be pre-paid by way of telegraphic transfer.

9. COSTS

- 9.1 The Purchaser shall be liable to Tidal Fluid Power for all legal costs incurred by Tidal Fluid Power on a solicitor and client basis, mercantile agent's fees, and other expense incurred by Tidal Fluid Power in the event of the Purchaser being in breach of any term or condition of sale, including the Purchaser failing to comply with Tidal Fluid Power's payment terms.
- 9.2 The Purchaser hereby acknowledges that all costs referred to above shall constitute a liquidated debt recoverable by Tidal Fluid Power in any court proceedings against the Purchaser.

10. JURISDICTION

- 10.1 Tidal Fluid Power and the Purchaser submit themselves to the jurisdiction of the courts at Brisbane in the State of Queensland in respect of any action or dispute arising under the terms and conditions of sale.
- 10.2 No actions arising out of the sale of the goods or this document may be brought by either party more than three (3) years after the cause of action accrues.

11. ACCEPTANCE OF GOODS

- 11.1 The Purchaser will inspect the goods immediately upon delivery to the Purchaser or upon collection of that order by the Purchaser's agent or courier.
 - 11.2 All claims against the Vendor regarding the quality, nature, fitness, suitability, conformance with description or defects of the goods must be made in writing to the Vendor within 14 days of delivery. The Vendor does not accept liability for any such claim not made in accordance with these terms.
 - 11.3 In the event of justified objection notified by the Purchaser to the Vendor in accordance with these terms, the Vendor may at its discretion
 - (1) reduce the purchase price by agreement with the Purchaser
 - (2) accept the return of the goods and, subject to the goods being returned in the same condition as they were delivered, refund the full purchase price; or
 - (3) replace the goods
- and no additional claims of any nature whatsoever may be made against the Vendor.
- 11.4 Claims for shortages must be made in writing, within 48 hours of receipt of goods.

12. OWNERSHIP

- 12.1 The goods shall remain the property of Tidal Fluid Power as legal and equitable owner until such time as the Purchaser shall have paid to Tidal Fluid Power the contract price for the goods. The Purchaser shall become legal and equitable owner of the goods upon receipt by Tidal Fluid Power of the contract price for those goods provided that payment shall not be deemed to have been made until any cheque tendered in payment has been duly honored.
- 12.2 The Purchaser acknowledges that until such time as it becomes legal and beneficial owner of the goods, it shall as a fiduciary of Tidal Fluid Power be in possession of the goods as Ballee for Tidal Fluid Power. The Purchaser acknowledges that it shall store goods which are the property of Tidal Fluid Power separately from goods which are not the property of Tidal Fluid Power.
- 12.3 Tidal Fluid Power and Purchaser acknowledge that the Purchaser may in the ordinary course of the Purchaser's business sell goods of Tidal Fluid Power to Third Parties whereupon subject to clause 12 Tidal Fluid Power's title in the goods shall pass to such Third Parties.
- 12.4 The Purchaser acknowledges that upon the receipt by it of notice in writing from Tidal Fluid Power, it shall pay as and from the day on which such notice is received all proceeds from the sale of the goods of Tidal Fluid Power to Third Parties into a separate bank account (the "Account") and shall hold same for the benefit of both Tidal Fluid Power and Purchaser. Tidal Fluid Power's interest in the Account shall comprise the contract price owing to Tidal Fluid Power in respect of the goods of Tidal Fluid Power sold to Third Parties, the proceeds from the sale of which have pursuant to this Clause been paid into the Account. The Purchaser in circumstances in which the Purchaser is a company (hereinafter referred to as "Corporate Purchaser") acknowledges and consents to the registration of a charge by Tidal Fluid Power over the monies contained in such Account.
- 12.5 The Corporate Purchaser acknowledges that its right to possession of the goods shall cease if it does anything or fails to do anything which would entitle a receiver to take possession of any assets of the Corporate Purchaser or which would entitle any person to present a Petition for the winding up of the Corporate Purchaser. Tidal Fluid Power may for the purpose of the recovery of its goods pursuant to this Clause enter forcibly if necessary upon any premises where they are stored or where they are reasonably thought to be stored and may repossess and remove same.

12. RISK

- 13.1 Unless otherwise stated, risk in the goods shall pass to the Purchaser, at the time when the goods have been placed on the vehicle which is to effect delivery.
- 13.2 Any property of the Purchasers under the Vendors custody or control will be entirely at the Purchasers risk as regards loss or damage caused to the property or by it.

14. REPRESENTATION

- 14.1 Goods manufactured by Tidal Fluid Power or for which Tidal Fluid Power is party to an agreement with a foreign supplier giving Tidal Fluid Power sole right to Australian distribution, shall not be exhibited by any person, firm or company at any show, exhibition or trade talk without prior written consent from Tidal Fluid Power.
- 14.2 The Purchaser warrants that such goods will not be misrepresented in any way to the detriment of Tidal Fluid Power as to their origin or source of import.

15. WAIVER

- 15.1 Failure by Tidal Fluid Power to enforce any of the contract terms and conditions of sale shall not be construed as a waiver of any of Tidal Fluid Power's rights hereunder, or a waiver of a continuing breach.

16. MISREPRESENTATION

- 16.1 Tidal Fluid Power, excludes to the full extent permitted by law any liability to the Purchaser by reason of any misrepresentation arising from printing, clerical errors and oral statements, unless confirmed in writing.

17. ADVICE AND INFORMATION

- 17.1 Any advice, recommendation, information, assistance or service given by the Seller in relation to goods sold or manufactured by the Vendor or their use or application is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty of accuracy, appropriateness or reliability and the Vendor does not accept any liability or responsibility for any loss suffered from the Purchaser's reliance on such advice, recommendation, information, assistance or service.