

WESTLINK PETROLEUM CREDIT APPLICATION



APPLICANT DETAILS

Business' Legal Name:			
Contact Name:			
ABN/ ACN:			
Business Type:	Sole Trader <input type="checkbox"/>	Partnership <input type="checkbox"/>	Trust <input type="checkbox"/> Proprietary Company <input type="checkbox"/>
Business Address:			
Business Phone:		Email:	

CREDIT APPLICATION DETAILS

Goods and/ or Services Required:	Boom Hire <input type="checkbox"/>	Fuel Delivery <input type="checkbox"/>	Fuel Supply and Delivery <input type="checkbox"/>
Anticipated Monthly Limit Required:	\$	Years Trading:	
Have you ever been?	Bankrupt/ Insolvent? Y / N	Convicted for breach of legislation? Y / N	

TRADE REFERENCES (Must supply 3)

Major Supplier Name & ABN / ACN	Phone	Fax

AGREEMENT

1. This credit application (**Credit Application**) is submitted to Westlink Petroleum Pty Ltd ACN 143 514 274 (**Westlink**) for the purpose of the above stated applicant (**Applicant**) opening a trading account with Westlink on the terms and conditions detailed in the Credit Terms and Conditions set out overleaf.
2. The Applicant acknowledges and agrees that it has read and understood the Credit Terms and Conditions.
3. The Applicant represents and warrants to Westlink that it has the corporate power to enter into and perform its obligations contained in the Contract, that it has taken all necessary corporate action to authorise the entry into and the performance of the Contract and that the Contract is valid and binding upon it.
4. The Applicant acknowledges that this Credit Application is a deed poll in favour of Westlink and may be relied on and enforced by it in accordance with its terms, notwithstanding that Westlink is not a party to this deed.
5. This Credit Application and the Credit Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Queensland and the Applicant irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of that State and of all Courts competent to hear appeals from them.

Executed as a Deed Poll in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of Director / Sole Director: Dated:

Name: Position:

Signature of Director/ Company Secretary/ Witness: Dated:

Name: Position:

CREDIT TERMS AND CONDITIONS

1. The Applicant hereby applies for a trading account with Westlink on the terms and conditions set out in this Contract.
2. The Applicant acknowledges and agrees that Westlink may:
 - (a) in its sole and absolute discretion, choose to accept or decline this Credit Application or accept and agree to provide goods to the Applicant (**Goods**) and/or services to the Applicant (**Services**) (as defined in the relevant Service Terms and Conditions) subject to such conditions as it may see fit, including, but not limited to, the Applicant procuring that one or more third parties provide Westlink with a deed of guarantee and indemnity in the form contained in Annexure A to this Credit Application (**Deed of Indemnity**); and
 - (b) by written notice to the Applicant, withdraw the provision of credit and/or the Goods and/or Services to the Applicant at any time, effective immediately from the date of that notice.
3. For the purposes of the *Privacy Act 1988* (Cth), the Applicant, acknowledges and agrees to:
 - (a) any personal information contained in, or accompanying, this Credit Application or obtained from other credit providers or its agents being used by Westlink and any of its associated entities, employees, directors, officers or agents (**Associates**), for the purposes of (i) assessing the Credit Application and/or the Applicant's credit worthiness; (ii) notifying other credit providers of the Applicant's default (should such a default occur); (iii) assessing the Applicant's capacity to meet its credit obligations and/or (iv) assessing the Applicant's position if it fails to make payments;
 - (b) Westlink disclosing to any credit-reporting agency information concerning the Applicant, including, but not limited to, details identifying the Applicant, the amount of credit applied for, the fact that Westlink is a current credit provider to the Applicant, payments which are or have been more than 60 days overdue, advice that payments are no longer overdue, notice of any infringement the Applicant has committed and/or notice of the discharge of the Applicant's trading account; or
 - (c) Westlink seeking from any credit-reporting agency a credit report containing personal credit information about the Applicant, including in the event that the Applicant subsequently requests an increased credit limit, and providing or obtaining information from any credit providers named in any such credit reports about the Applicant's personal or commercial credit arrangements including, but not limited to, the Applicant's credit worthiness, credit standing, credit history or credit capacity.
4. Where the Applicant provides personal information concerning one or more third parties, the Applicant represents and warrants that it has disclosed to those persons the fact that it has provided that information to Westlink and the matters outlined above in clause 3.
5. The Applicant acknowledges and agrees that in the event that Westlink accepts the Credit Application and/or agrees to provide Goods and/or Services to the Applicant on credit, that those Goods and/or Services will be provided on the terms and conditions contained in (i) these Credit Terms and Conditions and (ii) the terms and conditions governing the provision of the Goods and/or Services by Westlink to the Applicant (as amended from time to time) (**Service Terms and Conditions**) (together, these comprise the **Contract**).
6. The Applicant acknowledges and agrees:
 - (a) that it has provided Westlink with its email address in the Credit Application for the purpose of notifying the Applicant by email of the introduction of any amendment to the Contract after the date of executing the Credit Application; and
 - (b) that it will be deemed to have received notice of, and to have seen, read and understood, the details of any amendment to the Credit Terms and Conditions introduced after the date of this Credit Application on the earlier of (i) the date that Westlink provides a copy of the amended Credit Terms and Conditions to the Applicant, (ii) the Applicant has received notice of such amendments by email as contemplated by clause 6(a) or (iii) where the Applicant has not provided its email or any changes to its email address, when such amendments are uploaded onto the website at www.westlinkpetroleum.com.au.
 - (c) The Applicant may terminate this Contract, without penalty, by written notice to Westlink within seven (7) days of the date that Westlink provides notice in accordance with clause 7(b).
7. The Applicant acknowledges and agrees that, notwithstanding any other clause, Westlink may at any time cease to provide credit and/or Goods and/or Services on credit to the Applicant, and/or require that the Applicant submit a new credit application, including, but not limited to:
 - (a) where the Applicant's nominated payment method is invalid, has expired or where there are insufficient funds to satisfy an amount due and owing for more than 15 days after a Debit Date has arisen;
 - (b) where the Applicant does not place a request for Goods and/or Services with Westlink for 3 months or more; or
 - (c) where, in the reasonable opinion of Westlink, there is any change in the ownership, control or management of the Applicant.
8. The Applicant must notify Westlink in writing as soon as practicable and, in any event, within 7 days of a change described in clause 7(c) occurring.
9. Each calendar month shall represent a separate "**Billing Period**". Westlink must provide (if applicable) after the end of each Billing Period a statement of all transactions pursuant to any Service Terms and Conditions and which the Applicant has paid on credit.
10. The Applicant agrees that it will pay any funds which have been made on credit in a Billing Period by the seventh (7th) calendar day after Westlink has issued an invoice (**Debit Date**), unless Westlink agrees to such other date.
11. The Applicant acknowledges and agrees that, in the event of any overdue account, Westlink shall be entitled to apply an overdue fee. This fee shall be calculated at a rate equivalent to the National Australia bank overdraft interest rate, at the time, plus 2% per calendar month, or part thereof, from the due date until the date full payment is received. The Applicant expressly undertakes to pay all such fees as they become due. This fee represents a genuine pre-estimate of the loss and administrative costs incurred by Westlink in managing and recovering overdue amounts and is not a penalty.
12. Westlink is not obliged to create a trading account for the Applicant unless the Applicant nominates a payment method (which may be by direct debit, credit card, or other method of payment accepted by Westlink) and provides all information or documentation required to allow Westlink to debit funds on behalf of the Applicant in satisfaction of the amounts owed pursuant to the Credit Application. The Applicant may change its nominated payment method at any time by giving written notice to Westlink, and the change will take effect from the next

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Debit Date provided the notice has been given more than 5 days in advance of the Debit Date.

13. By applying for a trading account with Westlink, the Applicant:

- (a) irrevocably authorises Westlink or one of its agents to deduct funds in satisfaction of the terms of this Contract from the Applicant's nominated payment method; and
- (b) represents and warrants to Westlink, in favour of Westlink and each of its agents, that the Applicant has all necessary authorities to make or authorise payment,

from an account nominated by the Applicant pursuant to clause 12.

14. The Applicant represents and warrants to Westlink, for the benefit of Westlink and each of its Associates, that the information contained in the Credit Application, together with any other information provided by, or on behalf of, the Applicant in support of its Credit Application is true and correct and not misleading in any way,

15. The Applicant acknowledges and agrees that the above warranties will be deemed to be repeated each time a request for Goods and/or Services is provided to Westlink by, or on behalf of, the Applicant, and on each such occasion Westlink will be relying upon the representations and warranties contained in this Contract in determining whether to continue to provide Goods and/or Services to the Applicant.

16. The Applicant agrees to indemnify, and keep indemnified, and hold harmless Westlink and its employees, officers, contractors, subcontractors and agents (**Personnel**) against (and must pay Westlink (and its Personnel) on demand) the amount of any claims, damages, expenses (including legal costs on a full indemnity basis), losses or liabilities which Westlink (or its Personnel) suffers or incurs arising out of any breach by the Applicant of the Contract, including, but not limited to, any costs or expenses incurred by Westlink (or its Personnel) as a result of any failure by the Applicant to pay any fees as and when they fall due, including any debt collection costs or expenses, except to the extent that the claims, damages, expenses, losses or liabilities were directly caused by:

- (a) a negligent act or omission of Westlink or its Personnel; or
- (b) a material breach by Westlink or its Personnel of a material term of this Contract.

17. The Applicant acknowledges and agrees that until such time as the Applicant has paid to Westlink in full all amounts owing or payable by the Applicant to Westlink on any account whatsoever:

- (a) title in all the Goods supplied by Westlink to the Applicant shall remain vested in Westlink and shall not pass to the Applicant;
- (b) the Applicant must keep and store the Goods in such a manner that they can be clearly identified as the property of Westlink until title has passed to the Applicant and will not mix the Goods with other goods;
- (c) if the Goods become part of a product or mass through manufacturing, process, assembly or becoming commingled, Westlink's security interest in the Goods continues in that product or mass to the extent permitted by law;
- (d) the Applicant may sell and dispose of Goods to bona fide customers and unrelated third parties on arm's length terms and use the Goods for their stated or ordinary commercial purpose provided it does so in the ordinary course of its ordinary business;
- (e) if the Applicant sells or disposes of Goods, it does so as agent and trustee of Westlink and the Applicant must hold the

proceeds of sale on trust for Westlink and the Applicant grants a security interest in favour of Westlink over all present and after-acquired accounts obtained by the Applicant upon disposal of the Goods; and

- (f) the Applicant must pay all monetary proceeds into a separate account until they are paid to Westlink, and must not mix them with any other amount or use them to pay a debt.

18. In the event that the Applicant defaults in the payment of any monies owing to Westlink, Westlink has the right to enter without notice upon any premises occupied by the Applicant or any premises where the Goods are known to be stored to repossess the Goods and for this purpose the Applicant shall grant reasonable access rights and the Applicant, its employees or agents shall be entitled to do all things required to secure repossession.

19. The Applicant will be responsible for Westlink's reasonable costs and expenses in exercising its rights under clause 18. Where Westlink exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against Westlink, its employees, servants or agents.

20. The Applicant agrees that where the Goods have been repossessed, Westlink has an absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Applicant on those Goods, and the Applicant grants an irrevocable licence to Westlink to do all things necessary to sell the Goods bearing the name or trademark of the Applicant.

21. In clauses 22 to 26, words and phrases that have defined meanings in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the same meaning as in the PPSA unless the context indicates otherwise and a reference to a section shall be a reference to a section in the PPSA.

22. As security for the performance of its obligations under the Contract, including the payment of the amount of its indebtedness to Westlink from time to time, the Applicant grants to Westlink a security interest in all of its present and after-acquired personal property (as defined in the PPSA), including anything in respect of which the Applicant has at any time a sufficient right, interest or power to grant a security interest.

23. The Applicant consents to Westlink making registrations on the Personal Property Securities Register (in any manner Westlink deems appropriate) in relation to any security interest arising under or in connection with or contemplated by the Contract.

24. Westlink may apply to register a security interest in any Goods at any time if the Applicant has not paid for those Goods in full, including before or after delivery. The Applicant waives its right under section 157 of the PPSA to receive notice of any notice of the registration. The Applicant agrees that it will, if requested by Westlink, sign any documents, provide any information or do anything else Westlink requests, to ensure that any security interest granted to Westlink pursuant to the Contract is, to the fullest extent possible under the PPSA, perfected in accordance with the PPSA.

25. The Applicant agrees to reimburse, upon demand, Westlink for all costs and/or expenses incurred or payable by Westlink in relation to registering or releasing the registration of any security interest granted to Westlink pursuant to the Contract. Unless the Applicant has obtained Westlink's prior written consent, the Applicant undertakes not to create or purport to create any security interest in the Goods, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party.

26. The parties agree that, to the extent permitted by section 115(1) of

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the PPSA, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA are excluded. Each party agrees that it will not disclose information of the kind referred to section 275(1) of the PPSA and that this clause constitutes a confidentiality agreement for the purposes of section 275(6)(a) of the PPSA and other provisions of the PPSA.

27. The Applicant must notify Westlink at least 14 days before it does any (a) changes its name; (b) changes its place of registration or incorporation or (c) changes or applies for an ACN, ABN, ARBN or ARSN under which an interest in any of the collateral is or will be held.

ANNEXURE A – DEED OF GUARANTEE AND INDEMNITY

Deed Poll by:.....**of**.....**(Guarantor)**
in favour of Westlink Petroleum Pty Ltd ACN 143 514 274 **(Westlink)**

Introduction

- A. This deed poll is provided in relation to the credit application form lodged by.....**(Applicant)**
with Westlink **(Credit Application)**.
- B. In consideration for Westlink agreeing to provide the Applicant with goods and/or services on credit at the request of the Applicant, the Guarantor has agreed to guarantee the performance of all of the Applicant's obligations contained in, or arising from, the Contract.

Operative clauses

1. Capitalised terms used but not defined in this deed have the meaning given to them in the Credit Application and/ or the Introduction section of this deed (and vice versa).
2. The Guarantor acknowledges that this deed is a deed poll in favour of Westlink and may be relied on and enforced by it in accordance with its terms, notwithstanding that it is not a party to this deed.
3. The Guarantor confirms that it has been supplied with a copy of the Credit Application, the Credit Terms and Conditions and the Service Terms and Conditions as at the date of this deed, and that it is aware that the Contract (which comprises the Credit Application, the Service Terms and Conditions and the Credit Terms and Conditions) may be amended from time to time in accordance with their terms, and covenants in favour of, and irrevocably guarantees to, Westlink the:
 - (a) payment when due of any money payable to Westlink in accordance with the Contract (including for breach of warranty and under any indemnity); and
 - (b) performance of all of the Applicant's obligations, including payment, contained in, arising from or implied by, the Contract.
4. As a separate obligation, the Guarantor indemnifies Westlink, and agrees to always keep Westlink indemnified, and hold Westlink harmless against any and all damage, loss, cost, liability or expense that Westlink suffers or incurs arising out of any breach or failure by the Applicant to adhere to the terms of the Contract, including, but not limited to, failing to pay when due, all the money payable to Westlink under the Contract (including for breach of warranty and under any indemnity).
5. The Guarantor's liability is not discharged or reduced by:
 - (a) a consent, concession, release, agreement not to sue, waiver of default, or extension of time by Westlink to the Applicant, the Guarantor or other person, or any an arrangement, composition or compromise between Westlink and the Applicant, the Guarantor or other person;
 - (a) a failure or delay by Westlink in making demand on the Applicant, or in enforcing the Contract against the Applicant or the Guarantor;
 - (b) a merger, amalgamation, reconstruction or alteration in the nature or composition of Westlink or the Applicant;
 - (c) the occurrence of any bankruptcy or insolvency event in relation to the Applicant, the Guarantor or any other person (whether or not Westlink assents to it or receives a benefit from it); or
 - (d) the Applicant's lack of capacity or authority to enter into or perform the Contract, even if Westlink knew or ought to have known about that lack of capacity, or any disclaimer of the Credit Application or the Contract.
6. Clause 5 of this deed applies even if it imposes additional obligations on the Guarantor and the Guarantor agrees that Westlink does not have to take any action or steps to enforce the Contract before enforcing the terms of this deed.
7. The Guarantor represents and warrants that it is able to pay its or the Applicant's debts as and when they fall due and that it has the corporate power to enter into and perform the obligations under this deed, that this deed constitutes valid and binding obligations on it, and it has taken all necessary corporate action to authorise the entry into this deed.
8. The Guarantor acknowledges that it will not directly or indirectly prove in or receive the benefit of any distribution, dividend or payment because of the bankruptcy or insolvency of the Applicant, without Westlink's prior written consent.
9. The Guarantor acknowledges and agrees that this deed is irrevocable and that its obligations will remain in full force and effect until Westlink provides express written notice to the Guarantor releasing it of its obligations contained herein.
10. This deed shall be governed by and construed in accordance with the laws of the State of Queensland and the Guarantor irrevocably submits unconditionally to the non-exclusive jurisdiction of the Courts of that State and of all Courts competent to hear appeals from them, in relation to any legal action, suit or proceeding arising out of or with respect to this deed.

Executed as a Deed Poll in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of Director/ Sole Director: Dated:

Name:Position:

Signature of Director/ Company Secretary/ Witness: Dated:

Name:Position: