

APPLICATION FOR CREDIT ACCOUNT

DATE: day of 2022

PART 1: CREDIT APPLICATION

Buyer Name:		A.B.N.:
Trading Name:		A.C.N.
Registered Office Address:		Email:
Trading Address:		Fax No: N/A
Phone No:		Mobile No:
Address for Invoices/Statements:		
Amount of Credit Sought: \$		
Are you: (please tick) Public Company <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Trader/Individual <input type="checkbox"/>		
Private Company <input type="checkbox"/> Trust <input type="checkbox"/> Other (please specify) <input type="checkbox"/>		
Are you a Subsidiary/Division of a Parent Company? If YES please fill in the following details:		
Name & Address:		
Phone No:	Fax No:	A.B.N.:
If the business is operated by a Trust, please provide the NAME of the Trust and the TRUSTEE'S DETAILS:		

List all Directors/Partners/Business Owners (as applicable)

Full Name	Address	Phone No.	D.O.B.	Licence No.

Person Responsible for Payment of Account

Name:	Phone No:
Email Address:	Fax No:

Principal Activities of Business:	
Annual Turnover (last financial year):	
Date Business Commenced Operations:	
Has the Buyer or any associated entity, body or person traded with the Seller in the past? If YES, under what name?	
Has the Buyer or any associated entity, body or person entered a Part X, bankruptcy, administration, deed of company arrangement, liquidation or receivership in the past? If YES please provide details:	
BANK Name, Address & BSB:	Account Name: Account Number:

Trade References: **Minimum of three (3) to be supplied to the dollar value of the credit limit requested**

Company Name:	Contact Name and Phone Number	Email **This field must be completed**

Guarantor(s)

Guarantor's Full Name	Address	Phone No.	Email

The Buyer declares that the information provided in this form is true and correct and the Buyer understands that should credit facilities be offered to the Buyer by Total Stormwater Pty Ltd ATF Total Stormwater Unit Trust T/a SPEL Stormwater (the Seller), the Terms of Credit which accompany this Commercial Credit Agreement and any Conditions of Sale of the Seller shall apply in all cases unless agreed in writing and executed by an authorised representative of the Seller. The Buyer acknowledge that the Goods and Services it will acquire from the Seller are being purchased in accordance with SPEL Stormwater's Conditions of Sale. The Buyer agrees to be bound by SPEL Stormwater's Conditions of Sale and acknowledges that the Conditions of Sale may be changed by SPEL Stormwater from time to time.

PART 2: TERMS OF CREDIT (PLEASE READ CAREFULLY BEFORE EXECUTING)

The Buyer applies to establish a credit account with the Seller on the following terms:

Definitions:

1. In these Terms of Credit, the following terms shall have the following meaning:
 - 1.1. Commercial Credit Agreement means this document, comprising of:
 - Part 1: Credit Application;
 - Part 2: Terms of Credit;
 - Part 3: Outcome of Credit Application;
 - 1.2. Conditions of Sale means the Seller's standard Conditions of Sale for the supply of Goods and Services as amended from time to time, which are expressly incorporated into the Terms of Credit;
 - 1.3. Credit Application means the Buyer's application for credit as made by the Buyer completing Part 1 of this Commercial Credit Agreement;
 - 1.4. Buyer means the applicant applying to establish a credit account whose details appear in Part 1 of this Commercial Credit Agreement;
 - 1.5. Goods means goods specified in a sales order issued by the Seller or ordered by the Buyer in accordance with any other order process imposed by the Seller, as advised to the Buyer from time to time;
 - 1.6. Information means information about the Buyer, including information regarding the Buyer's credit arrangement with the Seller, the Buyer's credit worthiness, credit history and credit capacity;
 - 1.7. Interested Person, Personal Property, Security Agreement, Security Interest and Verification Statement have the meanings prescribed to them in the PPSA;
 - 1.8. PPSA means the Personal Property Securities Act 2009 (Cth);
 - 1.9. Referee means any trade reference listed in the Credit Application and any referee who may in future be submitted to the Seller as a referee;
 - 1.10. Register means the Personal Property Securities Register established under the Personal Property Securities Act 2009 (Cth);
 - 1.11. Seller means Total Stormwater Pty Ltd ATF Total Stormwater Unit Trust T/a SPEL Stormwater ACN 633 965 714 and affiliated entities and companies;
 - 1.12. Services means any services provided by SPEL Stormwater as requested by the Buyer; and
 - 1.13. Terms of Credit means the terms contained in, or imposed pursuant to, Part 2 of this Commercial Credit Agreement and the Conditions of Sale of the Seller.

Acknowledgement:

2. The Buyer acknowledges that:
 - 1.14. the information provided by the Buyer in relation to the Credit Application is correct and is for the use by the Seller in determining the amount and conditions of credit to be extended to the Buyer;
 - 1.15. the person/s signing the credit application is duly authorised by the Buyer to apply for credit and execute this application on the Buyer's behalf;
 - 1.16. the Seller has relied on the Information provided by the Buyer in the Credit Application;
 - 1.17. they will advise the Seller in writing of any proposed changes to the trading address, legal entity, structure or management or control of the Buyer or any judgment made against the Buyer within 7 days of the occurrence of the same and any failure to do so shall be deemed to be a breach of the obligations set out herein;
 - 1.18. no Goods or Services will be ordered unless the Buyer has the capacity to pay the invoiced price;
 - 1.19. the Credit Application will not be valid unless all details requested in Part 1 are provided and the Buyer duly executes the Credit Application, accepting the Terms of Credit and Conditions of Sale; and
 - 1.20. it is not entitled to any credit facility until the Buyer receives notice in writing from the Seller stating that credit facilities have been given and confirming the Conditions of Sale upon which such credit facilities are given. Until the Buyer receives such notice, any product or services that are supplied by the Seller to the Buyer will be on the basis of payment up front.

Credit Account:

3. The Seller may, at its sole discretion, offer the Buyer a credit account subject to these Terms of Credit and the Buyer will provide such Information as the Seller may request to enable it to assess the Credit Application.
4. Without limiting clause 3, the Seller may, at its sole discretion, require the directors, partners or owners of the Buyer and/or another third party to enter into a deed of guarantee in the form annexed to this agreement.
5. Without limiting clauses 3 or 4, the Seller may, at its sole discretion, require the Buyer to provide a Bank Guarantee to the Seller which guarantees the payment to the Seller of all monies due to the Seller by the Buyer in accordance with the Terms of Credit.
6. The Seller may revoke or vary the terms on which the credit account is provided to the Buyer at any time and will provide the Buyer with two weeks' notice of such variation. Where the Seller agrees to provide a credit account it will be subject to a credit limit. It is the obligation of the Buyer to ensure the account trades within the Buyer's approved credit limit and any amount in excess of the approved credit limit shall be repayable immediately by the Buyer.
7. Where the Buyer obtains authority from the Seller allowing a third party to conduct transactions upon the Buyer's account, such authority can only be cancelled by notice in writing from the Buyer. The Buyer acknowledges that third party authority to operate a credit account is given solely for the convenience of the Buyer and under no circumstance will the Seller be liable for any unauthorised transaction on the credit account by a third party and the Buyer will remain liable to the Seller for any Goods and Services purchased by the third party on the Buyer's credit account.
8. Where the Buyer makes the Credit Application as trustee of a trust, the Buyer agrees to be liable to the Seller for the obligations of the trust. The Buyer warrants that it is the only Trustee of the trust and will remain Trustee of the trust, it is not aware of any action having been taken to remove it as Trustee of the trust and it has the power under the Trust Deed to enter and observe its obligations under these Terms of Credit and the assets of the trust shall be available to meet payment of any payments due and owing to the Seller.

Payment terms:

9. The Buyer will pay the purchase price of Goods and Services to which credit is provided within 30 days from the end of the month of purchase of those Goods and Services. All accounts are to be settled in full within the agreed trading terms. Credit facilities may only continue if payment is maintained in accordance with those agreed trading terms.
10. Where the Buyer does not make payment as required under these Terms of Credit as varied from time to time the Buyer will pay:
 - 1.21. interest on overdue amounts at the rate of 18% compounded daily from the date of due payment until the date of payment in full of the overdue amount, plus interest; and
 - 1.22. all costs and expenses incurred by the Seller as a result of the delay in payment.
11. The Seller may withhold some or all Goods and Services ordered by the Buyer until all or any overdue payments have been made. The Seller may, in its absolute discretion, decline to reinstate a credit account which has fallen outside its then current trading terms.
12. It is expressly understood and agreed that these credit terms may be terminated at any time by the Seller. In such an event, all monies owing to the Seller will be immediately due and payable.
13. The Seller may at any stage during the continuance of the credit agreement impose a condition precedent to the grant of further credit that the Buyer is to give security or additional information (as the Seller shall in its discretion think fit) in a form acceptable to the Seller. The Seller shall be entitled to withhold supply of Goods and Services or further credit until such security is obtained.
14. Ownership in and title to any Goods supplied by the Seller to the Buyer on credit remains with the Seller until the Buyer has paid the Seller both the purchase price for the Goods and any other money that the Buyer may owe to the Seller at any time on any account.

Charging Clause:

15. To secure its obligations under the Terms of Credit granted to the Buyer in the event of the approval of the Credit Application, the Buyer hereby charges with payment of any monies owed to the Seller all the right, title, estate and interest which it now has or may in the future acquire in any freehold or leasehold property.
16. Without limiting clause 1, the Buyer hereby consents to the registration at any time by the Seller of a caveat over any land in which the Buyer has an interest.

Personal Property Securities Act 2009 (Cth):

17. This Commercial Credit Agreement constitutes a Security Agreement for the purposes of the PPSA.
18. The Buyer acknowledges and agrees that the Seller may register on the Register any Security Interest it obtains in Personal Property of the Buyer and the Buyer agrees to do all things necessary to facilitate that registration.
19. To the extent permitted by law, the Buyer irrevocably waives any rights it may have to receive notices under sections 95, 118, 121, 123(2), 130, 132(3)(d), 132(4) and 135 of the PPSA, or to reinstate this Security Agreement under section 143 of the PPSA.
20. The Buyer waives its rights under section 157 of the PPSA to receive a notice of Verification Statement.
21. Pursuant to section 275(6) of the PPSA, the Buyer agrees the Seller is not required to disclose to an interested person information pertaining to the Seller's Security Interest unless required to do so pursuant to the PPSA or at law generally. Nothing in this clause prevents the Seller from disclosing to an Interested Person such information and the Buyer expressly consents to the Seller doing so.
22. Upon request by the Seller, the Buyer will reimburse the Seller for any costs incurred by the Seller in registering, preserving and or enforcing its rights under the PPSA.

Conditions of Sale and Terms of Credit:

23. By executing this Commercial Credit Agreement at Part 2 the Buyer:
 - 1.23. agrees to comply with the Conditions of Sale, which are expressly incorporated into the Terms of Credit, and acknowledges having been provided with a copy of the Conditions of Sale current as at the date of making the Credit Application;
 - 1.24. acknowledges and agrees that in the event that the Credit Application is successful, the Terms of Credit will apply as the binding terms and conditions upon which a credit account is opened in the Buyer's name and credit is provided to the Buyer; and
 - 1.25. agrees that the Terms of Credit will be applicable for all future supplies of Goods and Services to be made to the Buyer by the Seller.

Processing of Credit Application:

24. The Seller will process the Credit Application within a reasonable time of its lodgement by the Buyer and record its decision in writing to the Buyer.
25. After notifying the Buyer of the approval of the credit application, the Seller agrees to establish a Credit Account in favour of the Buyer pursuant to the Terms of Credit.
26. The Seller will be under no obligation to provide credit to the Buyer if the Seller refuses to approve the Credit Application.

Credit reporting and the Privacy Act:

27. **The Buyer agrees that for the purposes of the Privacy Act 1988 (Cth) and generally the Seller may give to a credit reporting agency personal information about the Buyer or otherwise concerning this credit application including:**
 - 1.26. the Buyer's name, address, date of birth and driver's licence number;
 - 1.27. other personal information concerning any person named in this application;
 - 1.28. the fact that this credit application has been made and the amount of credit applied for;
 - 1.29. the fact that the Seller is a current credit provider to the Buyer;
 - 1.30. details of payments overdue more than 60 days and for which collection has commenced;
 - 1.31. details of payments no longer overdue;
 - 1.32. details of cheques drawn by the Buyer for amounts more than \$100.00 which have been dishonoured more than once;
 - 1.33. in the circumstances specified under the Privacy Act 1988 (Cth), advice that in the opinion of the Seller the Buyer has committed a serious credit infringement;
 - 1.34. advice that credit provided to the Buyer by the Seller or other obligation by the Buyer to the Seller has been paid or discharged.

28. The **Buyer authorises** the Seller to give, or seek from, any credit providers that may be named in:
- 1.35. a credit report;
 - 1.36. the Register; or
 - 1.37. a credit reporting agency report,
- information that credit providers are permitted to give or receive from each other under the Privacy Act 1988 (Cth).
29. **The Buyer acknowledges that the Seller may utilise other sources which it considers necessary in determining whether or not to** provide any credit account, including obtaining a report from a credit reporting agency or the Register which report may include personal credit information about the Buyer in relation to commercial credit proposed to be provided by the Seller.
30. **To assist the Seller in determining whether to establish or continue the Buyer's credit account with the Seller, the Buyer authorises** the Seller to obtain Information from Referees.
31. This Commercial Credit Agreement shall constitute authority by the Buyer to the Referees to release the Information to the Seller and a copy of the Commercial Credit Agreement may be used by the Seller as proof of the Buyer's consent to the use of the application for this purpose.

The parties agree that these Terms of Credit shall be governed and construed with the laws of the State of Victoria and the parties agree to submit to the jurisdiction of the Courts of that State

PART 3: CONDITIONS OF SALE (PLEASE READ CAREFULLY BEFORE EXECUTING)

(If the Buyer is a company)

EXECUTED by [_____]
Pty Ltd

If the company has a seal

By affixing the common seal in the presence of
the authorised persons:

or

If the company does not have a seal

By being signed by the authorised persons, the company not
having a common seal:



Signature of Director of Buyer

Print Name of Director

Signature of Director/Secretary of Buyer *

**Delete if sole director*

Print Name of Director *

**Delete if sole director*

Dated:

(If the Buyer is applicant is not a company)

SIGNED SEALED AND DELIVERED by the said
[_____] in the presence of:

Signature of Individual Buyer

Print Name of Buyer

Signature of Witness

Print Name of Witness

GUARANTEE & INDEMNITY

This is an important document and you should obtain independent legal and accounting advice prior to executing it. As part of Your application for credit this personal guarantee and indemnity must be completed and signed by all directors, sole traders and business partners.

TO: TOTAL STORMWATER PTY LTD ATF TOTAL STORMWATER UNIT TRUST T/a SPEL Stormwater

191 Station Street
Corio, Victoria 3214

In consideration of the above firm supplying

(BUSINESS NAME) of

(BUSINESS ADDRESS)

with goods and/or services from time to time upon credit at my/our request.

(PRINT NAME OF GUARANTOR 1)

(PRINT NAME OF GUARANTOR 2)

(PRINT ADDRESS OF GUARANTOR 1)

(PRINT ADDRESS OF GUARANTOR 2)

I/WE the above described person/s (**Guarantor**) agree with SPEL Stormwater as follows:

1. The Guarantor guarantees the due and punctual:
 - a. Payment by the Buyer to SPEL Stormwater of all moneys (**Moneys**) which the Buyer may now or in the future be liable to pay to SPEL Stormwater actually or contingently on any account; and
 - b. Observance and performance by the Buyer of the Buyer's obligations (**Obligations**) under the Commercial Credit Agreement for supply of the Goods by SPEL Stormwater to the Buyer on credit;

and indemnifies SPEL Stormwater against all loss (including unpaid Moneys) and damage suffered or incurred by SPEL Stormwater by reason of the failure by the Buyer to pay the Moneys or to observe the Obligations. I/we acknowledge that this obligation on my/our behalf shall extend also to any legal and other costs and expenses incurred by SPEL Stormwater in seeking payment from the Buyer or in enforcing this Guarantee and indemnity.

2. If there is more than one guarantor, "Guarantor" means all of them collectively and each of them individually and the Guarantor's covenants are joint and several. "Co-surety" includes any other person named as Guarantor or who otherwise guarantees payment of the Moneys.
3. This deed binds the Guarantor's successors and assigns and is a continuing and irrevocable guarantee and indemnity until the Guarantor is expressly released by SPEL Stormwater and it is not discharged by any intermediate payment or settlement of accounts.
4. The Guarantor's obligations under this deed are unconditional and not affected by anything which might otherwise affect them under the law relating to sureties including:
 - a. Any change in the legal capacity, rights or obligations of the Guarantor, the Buyer, a Co-surety or any other person; or
 - b. The fact that, in relation to any of the Moneys or any security, guarantee or indemnity for them, SPEL Stormwater;
 - i. Obtains a judgment against the Buyer, a Co-surety or any other person; or
 - ii. Gives up, releases, varies or exchanges or fails to obtain, perfect, register or realise, or deal in any other way with any security, guarantee or indemnity; or
 - iii. Grants time or any other concession to, or compounds or compromises with, or does or omits to do anything which affects the obligations of the Buyer, a Co-surety or any other person to SPEL Stormwater or to the Guarantor; or
 - iv. Receives any dividends out of the estate or assets of the Buyer, a Co-surety or any other person for any reason; or
 - c. The fact that any security, guarantee or indemnity held or taken by SPEL Stormwater is void, defective or informal or ranks after any other security or obligation for any reason; or
 - d. The death, mental or physical disability or insolvency of the Buyer, a Co-surety or any other person; or
 - e. A variation or extension to, or a stopping, replacement or refusal of any credit or other arrangement (including an increase in any credit or a variation in the terms of supply of Products) given to the Buyer whether with or without the Guarantor's consent or knowledge; or
 - f. The fact that any Moneys may not be recoverable from the Buyer, a Co-surety or any other person for any reason; or
 - g. The cessation of business by any firm or partnership which the Buyer or the Guarantor comprises or any change in its members.

5. The obligations of the Guarantor under this deed are principal obligations and SPEL Stormwater is not required to take any action first against the Buyer or make a demand first against the Buyer.
6. The Guarantor must not prove or claim in the assets of the Buyer in competition with SPEL Stormwater if the Buyer is made bankrupt, wound up or makes a deed of arrangement, composition or compromise in satisfaction of its debts or (being a natural person) dies. If directed by SPEL Stormwater the Guarantor shall lodge a proof of debt and must hold any distribution or payment received on trust for SPEL Stormwater.
7. The Guarantor charges as beneficial owner and as trustee of every trust all the Guarantor's land (including land acquired in the future) in favour of SPEL Stormwater to secure the payment of the Moneys and the performance and observance of the Guarantors covenants under this deed. In this clause "trust" means each trust for which the Guarantor holds land as trustee.
8. This deed is binding on the Guarantor and the Guarantor's executors, administrators and successors.
9. The Guarantor shall pay all SPEL Stormwater's costs, fees and expenses associated with this deed and the enforcement of this deed.
10. A signed certificate from SPEL Stormwater stating the amount of the Moneys payable or any other matter or fact is proof of that amount or other matter or a fact as at the date stated unless the Guarantor proves to the contrary.
11. The Guarantor fully understands the risks associated with this deed and freely elects to execute this deed. This Guarantee and Indemnity binds each of the signatories hereto as Guarantors. Each Guarantor hereby acknowledges that it had read the terms of this Guarantee and Indemnity and has been:
 - a. advised to; and
 - b. given the opportunity to,
seek independent legal advice prior to execution.
12. Each of the Guarantors:
 - a. consents to SPEL Stormwater obtaining from a credit reporting agency a credit report containing personal credit information for the purpose of assessing whether to accept each Guarantor for the obligations of the Customer, and acknowledges that if SPEL Stormwater agrees to extend credit to the Customer, this consent remains in force so long as the Guarantee remains in force;
 - b. acknowledges that SPEL Stormwater may provide to a credit reporting agency certain personal information relating to each of the Guarantors as allowed by the Privacy Act 1988 (Commonwealth); and

- c. consents to SPEL Stormwater obtaining credit information from Trade References supplied for the purpose of assessing whether to accept each Guarantor as a guarantor for the obligations of the Customer.

This deed is governed by the laws of Victoria and the applicable laws of the Commonwealth of Australia. The Guarantor submits to the non-exclusive jurisdiction of the courts of that state of the Commonwealth of Australia elected by SPEL Stormwater.

Executed as a deed this _____

SIGNED by:

Guarantor 1 (Print Name)

(Signature)

In the
presence of:

Witness (Signature)

(Print Name)

SIGNED by:

Guarantor 2 (Print Name)

(Signature)

In the
presence of:

Witness (Signature)

(Print Name)

PLEASE EMAIL COMPLETED FORMS TO accounts.receivable@spel.com.au