**FORM: APPLICATION FOR CREDIT**

### PLEASE RETURN COMPLETED APPLICATION (WITH EACH PAGE OF THE TERMS AND CONDITIONS SIGNED)

**TO EMAIL:** [**accountsrec@daracon.com.au**](mailto:accountsrec@daracon.com.au)

IN RELATION TO:  EQUIPMENT HIRE  SUPPLY OF GOODS  QUARRY SALES  HAULAGE

 OTHER \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (specify)

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| --- | --- | --- | --- |
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| **PART A – DETAILS** | | | |
|  | | | |
| **1. APPLICANT** | | | |
| *Trading Name***:** | | | |
| *ACN / ABN:* | | | |
| *Address:* | | | |
| *Tel:* | | *Fax:* | |
| *Contact Person:* | | | |
| **2. TYPE OF ENTITY** (tick appropriate box) | | | |
| * Sole Trader | * Partnership | | * Corporation |
| * Corporate Trustee | * Trading Trust | | * Other |
| **3. BUSINESS PREMISES** (tick appropriate box) | | | |
| * Owned | * Buying | | * Leased |
| Previous address details (If less than 2 years): | | | |
| **4. CREDIT LIMIT** | | | |
| Requested: $ | | Approved: $ | |
| **5. PROPOSED USUAL METHOD OF PAYMENT** | | | |
| * Cheque | * Credit Card | | * Electronic Funds Transfer |
| **6. ACCOUNTS AND BANKING DETAILS** | | | |
| Contact Person for Accounts: | | Name: | |
| Phone: | |
| Email for Invoices: | |
| Name and Branch of Bank: | |  | |
| Bank Account Number (including BSB): | |  | |
| Solicitors Name and Address: | |  | |
| Accountants Name and Address: | |  | |

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| **PART B – TRADING DETAILS** | | |
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| **1. IF A COMPANY** | | |
| Company name: | |  |
| Address of registered office: | | Postcode: |
| Principal place of business: | | Postcode: |
| Date and state of incorporation: | |  |
| Number of directors appointed: | |  |
| Paid up Share Capital: | |  |
| **2. IF A TRUST** | | |
| Trust name: | |  |
| Trustee name: | |  |
| Address of registered office: | | Postcode: |
| **3. IF A PARTNERSHIP** | | |
| Name of Partner #1: | |  |
| Address of Partner #1: | | Postcode: |
| Contact Number Partner #1: | |  |
| Name of Partner #2: | |  |
| Address of Partner #2: | | Postcode: |
| Contact Number Partner: #2 | |  |
| **4. IF A SOLE TRADER** | | |
| Name: |  | |
| Address: | Postcode: | |
| Contact Number: |  | |

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| **PART C – FURTHER PARTICULARS** | | | | | |
| **1. Trade References (excluding credit card providers, fuel suppliers, landlord and utility service providers)** | | | | | |
| **Referee #1** | Trading Name: | |  | | |
| Contact Person: | |  | | |
| Contact Phone Number: | |  | Email: |  |
| **Referee #2** | Trading Name: | |  | | |
| Contact Person: | |  | | |
| Contact Phone Number: | |  | Email: |  |
| **Referee #3** | Trading Name: | |  | | |
| Contact Person: | |  | | |
| Contact Phone Number: | |  | Email: |  |
| **Referee #4** | Trading Name | |  | | |
| Contact Person | |  | | |
| Contact Phone Number: | |  | Email: |  |
|  | | | | | |
| **PART D – CERTIFICATION AND EXECUTION** | | | | | |
|  | | | | | |
| I certify that the above information is true and correct and that I am authorised to make this application for credit on behalf of the applicant. I have read and understand the TERMS AND CONDITIONS at Part E which form part of, and are intended to be read in conjunction with this Credit Application and agree to be bound by those terms and conditions.  Note: Where there is more than one director, partner or proprietor, ensure two signatories sign. | | | | | |
| Print Name: | |  | | | |
| Capacity: (director/partner/proprietor) | |  | | | |
| Signature: | |  | | | |
| Date: | |  | | | |
| Print Name: | |  | | | |
| Capacity: (director/partner/proprietor) | |  | | | |
| Signature: | |  | | | |
| Date: | |  | | | |

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|  | | | |
| **OFFICE USE ONLY** | | | |
|  | | | |
| Approved: | | Yes / No | |
| Date of approval / Rejection: | |  | |
| Credit Limit approved: | | $ | |
| Customer code: | |  | |
| * Daracon | * Paramount | | * Daromin |
| * Buttai | * Other – Specify Details: | | |

**PART E – Terms and Conditions**

##### Definitions

**Applicant** means the party specified in Part A.

**Application** means this application including Parts A, B, C, D and E in this document.

**Associates** has the same meaning given to it in section 9 of the

*Corporations Act 2001 (Cth).*

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether direct or indirect, consequential, present or future, fixed or ascertained, actual or contingent and whether at law, in equity, under statute or otherwise.

**Contract** means the acceptance by Daracon of the Applicant’s Application on these Terms.

**Control** has the meaning set out in section 50AA of the

*Corporations Act 2001* (Cth).

**Credit Limit** means the amount specified in Item 4 of Part A.

**Daracon** means Daromin Engineering Pty Limited (ACN 001 236 255) and any of its Subsidiaries from time to time.

**Debt(s)** means the total amount of all unpaid Invoices and any other amounts owing by the Applicant to Daracon.

**Event of Default** means any one of the events listed in clause 10.1.

**Event of Insolvency** means any event where:

1. if a party is a company,
   1. that party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
   2. that party enters into an arrangement with creditors;
   3. that party becomes subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001* (Cth) including having a receiver or administrator appointed over all or any part of its assets; or
   4. anything analogous or having a substantially similar effect to the events specified in (1) and (3) above occurs in relation to a party in a jurisdiction; and
2. if a party is a person, a judgment is entered against him or her in any court in any jurisdiction, he or she becomes the subject of any bankruptcy petition, commits an act of bankruptcy or is made bankrupt.

**Goods** means any materials, goods, chattels, products, plant, items or component parts of equipment supplied by Daracon to the Applicant or any of its Associates.

**Invoice** means any invoice issued by Daracon to the Applicant (or any of its Associates) for the provision of Goods or Services.

**Invoice Price** means the price charged by Daracon to the Applicant for any Goods or Services to be provided under a Quote.

**Law** means:

1. any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
2. any approval of a government authority, including any condition or requirement under it; and
3. any fees and charges payable in connection with the things referred to in paragraphs (a) and (b).

**Purchase Order** means any request by the Applicant (or any of its Associates) for the provision of Goods or Services.

**Payment Period** means the period defined in clause 7.1 (f).

**Quote** means a Quote provided by Daracon to the Applicant detailing the terms and conditions on which it agrees to supply Goods or Services and the Invoice Price.

**Services** means any labour and services of a professional, project or operational nature supplied by Daracon to the Applicant or any of its Associates.

**Subsidiaries** has the same meaning given to it in section 9 of the

*Corporations Act 2001 (Cth).*

**Terms** means these terms and conditions.

##### Interpretation

In these Terms, unless the context indicates a contrary intention:

(**documents**) a reference to these Terms or another document includes any document which varies, supplements, replaces, assigns or novates these Terms or that other document.

(**headings**) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of these Terms.

(**person**) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity.

(**corporation**) a reference to a corporation includes its successors and permitted assigns.

(**including**) **including** and **includes** are not words of limitation.

(**corresponding meanings**) a word that is derived from a defined word has a corresponding meaning.

(**singular**) the singular includes the plural and vice-versa.

(**rules of construction**) neither these Terms nor any part of them is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

(**legislation**) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

(**time and date**) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Newcastle, Australia even if the obligation is to be performed elsewhere.

(**writing**) a reference to a notice, consent, request, approval or other communication under these Terms or an agreement between the parties means a written notice, request, consent, approval or agreement.

(**replacement bodies**) a reference to a body (including an institute, association or government authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

(**Australian currency**) a reference to **dollars** or **$** is to Australian currency.

(**month**) a reference to a month is a reference to a calendar month.

(**year**) a reference to a year is a reference to twelve consecutive calendar months.

##### Acknowledgment

The Applicant acknowledges:

1. it has read these Terms (and the Contract generally) and fully understands and comprehends the Terms, conditions and provisions;
2. it has had opportunity to obtain independent legal advice on these Terms (and the Contract generally); and
3. it has full power and authority to enter into this Contract.

##### Applicant Information

* 1. For so long as Daracon offers to extend credit to the Applicant, the Applicant warrants to Daracon and agrees:

1. the information provided in this Application is true and correct;
2. Daracon may make such further enquires and receive such information as it considers appropriate about the Applicant (including obtaining information from the Applicant’s bankers and business referees mentioned in the Application) in making its determination whether or not to approve this Application;
3. Daracon has informed the Applicant, in accordance with the *Privacy Act 1988 (Cth)* (**Privacy Act**), that information regarding the Applicant will be kept on file by Daracon and may be disclosed to credit reporting agencies from time to time and the Applicant consents to Daracon doing so; and
4. Daracon may request and obtain information regarding the affairs of the Applicant (and its Associates) from a third party service provider experienced in providing such services.

#### Where the Applicant’s details change or are varied or circumstances arise which would be of interest to an ordinary creditor, the Applicant must notify Daracon in writing within 7 days of that change or variation or the nature of those circumstances.

* 1. The Applicant acknowledges that the information provided in this Application will be relied on by Daracon for the purpose of assessing the financial standing and creditworthiness of the Applicant and agrees to indemnify Daracon in accordance with clause 12.1 (b) for any breach of the warranties contained in clause 4.1 or clause 4.2.

##### Precedence

* 1. Except where Daracon expressly agrees in writing, the Applicant agrees that the terms contained in this Application prevail over any terms or conditions provided by the Applicant whether they are provided before the date of this Application or subsequent to it.
  2. The parties agree this Application is to be read in conjunction with any Quote.

##### General Terms

* 1. Irrespective of whether Daracon agrees to grant credit to the Applicant under this Application:

1. this Application does not constitute a contract or agreement by Daracon to supply Goods or Services to the Applicant; and
2. Daracon may accept or refuse any Purchase Order in its absolute discretion.
   1. Any Quote accepted by the Applicant is irrevocable and may not be varied without Daracon’s prior written consent.

##### Account Terms

* 1. Where Daracon agrees to grant credit to the Applicant (which it may do so at its sole discretion), the following will terms apply:
     1. the Applicant will submit a Purchase Order to Daracon for Goods or Services (or both) for each and every order;
     2. on receipt of a Purchase Order, Daracon will either accept or reject the Purchase Order;
     3. if Daracon accepts the Purchase Order, Daracon will issue a Quote to the Applicant setting out the terms on which it agrees to supply the Goods or Services (which terms will be in addition to these Terms) including the Invoice Price;
     4. except where the Applicant agrees to pay in advance, the Invoice Price (when taken together with any other unpaid Invoices) must not be for an amount greater than the Credit Limit;
     5. on acceptance of the Quote by the Applicant, Daracon will raise an Invoice on the terms of that Quote; and
     6. the Applicant must pay the Invoice in full without set- off no later than 30 days from the date of the Invoice (**Payment Period**).
  2. Where the Applicant pays an Invoice by credit card, Daracon may charge a credit card handling fee at its discretion and at rates advised by Daracon from time to time.
  3. Where an Invoice remains unpaid for more than the Payment Period, Daracon will be entitled to charge the Applicant interest on the outstanding amount at a rate of 10% per annum (compounding daily) from the date of the Invoice until the date the Invoice is paid in full.
  4. Where an Invoice remains unpaid for more than 75 days, Daracon will be entitled to refer any outstanding amounts to an external debt collection agency at the Applicant’s expense.
  5. In addition to any other rights granted to Daracon under this clause 7 where a payment is made by cheque and that cheque is declined, the Applicant agrees it must pay Daracon an amount equal to the dishonour fee charged to Daracon by its financier.
  6. The Applicant agrees the rights granted to Daracon to recover expenses where an Invoice is not paid in full on or before expiry of the Payment Period and charge the administration fees under clause 7.5 that are fair and equitable and are a genuine pre-estimate of the loss suffered by Daracon.

##### Variation of Terms

* 1. Daracon may vary these Terms by giving 14 days notice in writing to the Applicant of any such variation (**Variation Notice**).
  2. If the Applicant does not provide notice in writing to Daracon within 14 days from the date of the Variation Notice disputing the variation, the Applicant agrees it will be deemed to have accepted the variation on the terms set out in the Variation Notice.
  3. Daracon may withdraw the Applicant's credit facilities at any time or vary the Applicant's credit limit, in its absolute

discretion without notice to the Applicant or any guarantor of the Applicant.

##### Title

* 1. Title to any Goods and Services remains with Daracon and does not pass to the Applicant until all Debts are paid in full.
  2. In addition to the rights granted by the Applicant to Daracon under the Quote, until such time as all Debts are paid in full, the Applicant agrees it must:
     1. store the Goods separately and in a manner enabling those Goods to be identified as Goods of Daracon and, where the Goods or Services are incorporated by the Applicant (or any third party) to form part of a new product, the Applicant grants title in the entirety of the new product to Daracon;
     2. immediately, on sale of the Goods by the Applicant in the ordinary course of its business, remit any money received in connection with the Goods or Services (whether the Goods are sold individually or comprising part of a new product) to Daracon even where that period is less than the Payment Period.

##### Default

* 1. Any one of the following is an Event of Default by the Applicant:

1. any breach by the Applicant of:
   1. a material obligation under these Terms or the terms of a Quote; or
   2. any obligation owed to Daracon which is not capable of remedy;
2. any breach by the Applicant of a obligation (which is not a material obligation) under these Terms or the terms of a Quote where that breach is notified to the Applicant by Daracon and is not remedied within 7 days; or
3. the default or failure by the Applicant to make payment of any Debt to Daracon in accordance with these Terms.

##### Termination

* 1. Termination for Insolvency

1. The parties agree, an Event of Insolvency by the Applicant is deemed to be a repudiation of this Contract by the Applicant.
2. Where the Applicant is subject to an Event of Insolvency, Daracon may immediately terminate the Contract, by written notice to the Applicant.
3. Any termination under clause 11.1 (b) will not prejudice any Claim Daracon may have had against the Applicant:
   1. .. prior to termination; or
   2. .. as a result of the Applicant’s repudiation of this Contract.
   3. Termination by Daracon

In addition to its rights under clause 11.1, Daracon may terminate this Contract (and any Quote) if the Applicant commits an Event of Default.

* 1. Consequence of Termination

#### On termination of this Contract in accordance with clause 11.2, the Applicant must immediately pay all Debts in full and the Applicant agrees Daracon may take any

action it considers necessary, including the appointment of third party agents, to give effect to its rights under this clause 11.3 (a) at the Applicant’s expense.

1. In addition to the rights granted by the Applicant to Daracon under clause 11.3 (a), where Daracon terminates this Contract in accordance with clause 11.2 and any Debts continue to be unpaid, the Applicant further grants Daracon an irrevocable authority to enter any premises owned or occupied by the Applicant (whether wholly or in part) without notice to inspect or repossess any Goods (or other items containing Goods or which were the subject of the Services) of any value.

##### Indemnity

* 1. The Applicant indemnifies Daracon to the fullest extent permitted by Law from and against all Claims suffered or incurred by Daracon (including third party Claims) arising directly or indirectly from any damage, injury or loss caused by or resulting from any:

1. breach of its obligations under this Contract;
2. breach of any warranty set out in these Terms; or
3. any failure by the Applicant to comply with any applicable Law.

##### Trust Warranties

* 1. Where the Applicant enters this Contract as trustee for a trust (**Trustee**), the Applicant makes the following warranties:

1. **(Trust Power)** The Trustee is empowered by its respective trust deed (the **Trust Deed**) to enter into and perform the transactions contemplated by this Contract, in their capacity as the trustee of the relevant trust. There is no restriction on or condition of its doing so.
2. **(Trust Authorisations)** All necessary consents, approvals and other procedural matters have been duly passed or obtained or attended to as required by the Trust Deed for the Trustee to enter into and perform this Contract.
3. **(Sole Trustee)** The Trustee is the sole trustee of their relevant trust.
4. **(No resettlement)** No property of any of the trusts has been resettled or set aside or transferred to any other trust.
5. **(No Termination)** The trust has not been terminated, nor has any event for the vesting of the assets of the trusts occurred.
6. **(Compliance with law)** The Trust Deed complies with all applicable laws.
7. **(Compliance with Trust Deed)** The Trustee has complied with its obligations and duties under the Trust Deeds and at law. No-one has alleged that it has not complied.

#### The Applicant agrees it must produce a stamped copy of the Trust Deed (with all amendments) and accounts if requested to do so by Daracon.

##### General

* 1. Notices

1. Any notice, demand, consent or other communication given or made under this Contract must be:
   1. clearly readable;
   2. signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
   3. left at the address or sent by pre-paid security post (air mail if outside Australia) to the address or to the fax number of the recipient.
2. Any communication will be taken to be received by the recipient:
   1. ..... in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;
   2. ..... in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the fax number of the recipient; and
   3. ..... if the time of dispatch of a facsimile is not on a Business Day, or is after 5.00 pm (local time) on a Business Day, it will be taken to have been received at the commencement of business on the next Business Day.
   4. Relationship between parties
      1. Nothing in this Contract:

#### constitutes a partnership between the parties; or

* + - 1. except as expressly provided, makes a party an agent of another party for any purpose.

#### A party cannot in any way or for any purpose:

* + - 1. bind another party; or
      2. contract in the name of another party.

#### If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

* 1. Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Contract.

* 1. Variation

Except where expressly provided in clause 8, a provision of this Contract can only be varied by a later written document executed by or on behalf of all parties.

* 1. No assignment

#### The Applicant must not sub-contract or assign any part of its obligations under this Contract without the prior approval of Daracon which Daracon may withhold in its absolute discretion.

* + 1. The Applicant must not permit a change in Control to occur without the prior consent of Daracon which Daracon may withhold in its absolute discretion.
    2. Daracon may at any time assign or otherwise transfer its rights under this Contract.
  1. Counterparts

This Contract may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

* 1. Entire agreement

Except where expressly provided otherwise in this Contract, this Contract constitutes the entire agreement between the parties and supersedes any prior negotiations, representations,

understandings or arrangements made between the parties regarding the subject matter of these Terms, whether orally or in writing.

* 1. Invalidity

1. A word or provision must be read down if:
   1. these Terms are void, voidable, or unenforceable if it is not read down;
   2. these Terms will not be void, voidable or unenforceable if it is read down; and
   3. the provision is capable of being read down.
2. A word or provision must be severed if:
   1. despite the operation of clause 14.8 (a), the provision is void, voidable or unenforceable if it is not severed; and
   2. these Terms will be void, voidable or unenforceable if it is not severed.
3. The remainder of this Contract has full effect even if clause
   1. (b) (1) or clause 14.8 (b) (2) applies.
   2. Waiver

A right or remedy created by these Terms cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

* 1. Survival after termination

Clauses 7, 9, 10, 11, 12 and any other clause which by its nature is intended to survive termination, continue to apply after expiration or termination of these Terms.

* 1. Governing law and jurisdiction

#### The laws applicable in New South Wales govern this Contract.

* + 1. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.