



Dear Applicant,

Thank you for applying for credit terms with Outboard Marine Technologies Ltd. Attached is a credit application and terms of agreement. Please read these terms as well as the below information.

As a service to our customers we offer credit terms, 20<sup>th</sup> of the month following purchase, making your day to day purchasing much easier.

These accounts are intended for businesses who meet the following requirements:

- Your business is operated from appropriate trade premises.
- You are G.S.T. registered.
- You are open to the public during normal business hours and your core business is to serve the public in areas of marine sales, service and/or parts and accessories.
- Minimum purchase requirement of \$3,000 per year.

If you fit the above criteria, please complete our credit application form and email to [office@outboardmarine.co.nz](mailto:office@outboardmarine.co.nz) or send via mail to Outboard Marine Technologies Ltd, Att: Marie Flavell.

Thank you again for your business. We look forward to a mutually advantageous and successful relationship.

We will review your application promptly.

Kind regards,

*Marie Flavell*

Marie Flavell  
Accounts Receivable

DESCRIPTION OF GOODS—OTHER: Inventory / Consumer Goods / Equipment  
 Namely: Marine parts and accessories, lubricants and cleaning products, tools, and all such present and after acquired property supplied by the secured party including proceeds of whatever nature or kind from this personal property and as further defined and described by the Terms of Trade (Purchase Security Agreement) of the secured party.

## APPLICATION TO OPEN CREDIT ACCOUNT

Please print clearly

CUST #	CR LIMIT
PPSR FINANCING STATEMENT REGISTRATION #	

\*AGREEMENT FOR THE SUPPLY OF GOODS BETWEEN THE CUSTOMER NAMED HEREIN AND OUTBOARD MARINE TECHNOLOGIES LTD

NAME		TRADING AS	
POSTAL		DELIVERY	
SALES CONTACT		PH	FAX
ADMIN CONTACT		PH	FAX
BANK AND BRANCH		TYPE OF BUSINESS	
SOLICITOR		ACCOUNTANT	

### FOR PARTNERSHIPS / SOLE TRADERS / INDIVIDUALS

NAME	ADDRESS	DOB
NAME	ADDRESS	DOB

### FOR LIMITED LIABILITY COMPANIES ONLY—DIRECTOR / SHAREHOLDER DETAILS

NAME	ADDRESS	SHARES	DOB
NAME	ADDRESS	SHARES	DOB
NAME	ADDRESS	SHARES	DOB

INC #	YEAR OF REG	SHARE CAPITAL
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SECURED PARTY	OUTBOARD MARINE TECHNOLOGIES LTD		
ADDRESS	CNR KERRS & DRUCES ROAD, WIRI, AUCKLAND 2104 PO BOX 276082, MANUKAU CITY, AUCKLAND 2241		
PH +64 (9) 263 6000	FAX +64 (9) 262 1999	EMAIL	<a href="mailto:office@outboardmarine.co.nz">office@outboardmarine.co.nz</a>
AUTHORISED REPRESENTATIVE	LUKE SHARP	EMAIL	<a href="mailto:luke@outboardmarine.co.nz">luke@outboardmarine.co.nz</a>

GUARANTOR			
ADDRESS			SIGNED
			DATE
PH	FAX	EMAIL	

### TRADING REFERENCES

COMPANY	CONTACT	PH	FAX
COMPANY	CONTACT	PH	FAX
COMPANY	CONTACT	PH	FAX
TYPE OF GOODS REQUIRED:			

### DECLARATION

#### The Privacy Act 1993 - Authorisation:-

I/We irrevocably authorise any person or company to provide you with such information as you may require in response to your credit assessment and/or enquiries

I/We also authorise you to provide any third party to whom I have given my prior consent details of the attached and any subsequent dealings that I/we have with you as a result of this application being approved.

#### Terms of Trade - Authorisation:-

- I have read the attached Terms of Trade and agree that those terms form the contract between Outboard Marine Technologies (the seller) and the Buyer. In particular I note that payment is due on the 20th day of the month following the purchase, and accept Outboard Marine Technologies right to charge interest on overdue accounts.
- I, (full name) \_\_\_\_\_ warrant to Outboard Marine Technologies that, as agent of the Buyer, I am authorised to enter into this contract on the Buyer's behalf.
- I warrant to \_\_\_\_\_ Outboard Marine Technologies that the information given in this application is, to the best of my knowledge, information and belief, correct.

SIGNED FOR AND ON BEHALF OF THE BUYER

DATE / /

OUTBOARD MARINE TECHNOLOGIES

DATE / /

### PERSONAL GUARANTEE (To be completed by Limited Liability Companies)

In consideration of the Provision of Credit to

(Name of Company) \_\_\_\_\_ Limited

I, of \_\_\_\_\_ (Residential Address)  
me/ (Full name)

I, of \_\_\_\_\_ (Residential Address)  
(Full name)

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

I/we being Director(s) / Shareholder(s) of that Company hereby unconditionally personally guarantee payment to Outboard Marine for any goods supplied to that Company in that if the Company fails to make payment then I/we will be personally liable for payment of those goods interest and all enforcement costs and charges as principal debtor and my/our liability as such shall continue to be in full force and effect notwithstanding that any changes are made to the Terms of Trade with the Buyer without my/our prior approval or notice to me/us, both of which I/we hereby waive.

This personal guarantee will remain in force until revoked by \_\_\_\_\_ in writing.

Outboard Marine \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Terms of Trade (Purchase Security Agreement)**

1. It is agreed and acknowledged that by these terms of trade:
- A Purchase Money Security Interest (PMSI) is granted in priority to all other creditors by the buyer in favour of the seller in the goods and in all other additional or different goods from time to time supplied, and that such PMSI and the priority thereof shall extend into and over the items referred to in clauses 2 and 3 (d) (i) (ii) (iii), and
  - The seller at the costs of the buyer may register the PMSI interest under the PPSA by registering a financing statement and if at some later date additional or different property is collateral, to provide if necessary for registration a new collateral description by registering a financing change statement; this will not affect the registration of a financing statement, and to register if necessary a financing change statement in respect of any other amendment, and
  - The buyer agrees to provide the seller with such information as it may need to enable registration of the PMSI under the PPSA and shall promptly execute any documents to ensure that the security interest under this agreement is a first ranking perfected security interest over the goods and waives the right to receive a copy of the verification statement issued upon registration of it or of any financing change statement.
  - That the buyer has received valuable consideration from the seller and agrees that it is sufficient, and
  - The buyer shall not under any circumstances initiate any change to the registered financing statement.
2. In this document the word "goods" shall refer to and mean:
- Marine parts and accessories, lubricants and cleaning products, tools and all other goods of similar kind and description supplied by the seller, **whether paid for or not**, and
  - All future supplied goods and all additional or different property as may in the future from time to time be supplied, and
  - The goods as contained and described in invoices, packing slips, statements, catalogues and other documents issued by the seller, and
  - "Goods", "inventory", "other goods" and "personal property" as those terms are defined by the PPSA, and
  - All present and after acquired personal property and collateral including proceeds of whatever nature or kind that may arise including without limitation that which is described in clause 3 (d) (i) (ii) (iii).
3. Risk in the goods supplied are at the buyer's risk once they are delivered to the buyer or its agent or to the address supplied by the buyer or upon loading where the buyer arranges own transport when the seller first makes an attempt to deliver if the buyer fails to accept the goods or on the date of the request by the buyer to delay delivery but title in ownership of the goods shall remain in the seller until such time as the full purchase price has been paid to the seller (for the goods) and for all and any other goods supplied by the seller to the buyer and until all default interest, other costs recoverable hereunder and all enforcement costs incurred by the seller in the enforcement of any of these provisions (for which the buyer agrees to pay) are paid in full. Until such payment is made in full the buyer:
- Shall not under any circumstances mix the goods supplied in any manner whatsoever with other goods not so supplied.
  - Shall enable the goods whether or not they are mixed with or constituent parts of other product manufactured or constructed to be readily identifiable as the property of the seller, and
  - Shall be deemed to hold the goods in a fiduciary capacity as bailee of the seller and shall insure the goods and maintain the goods safely and in good order and condition and to return or deliver the goods immediately if called upon to do so.
  - Shall not re-sell the goods without the authorisation of the seller and shall not dispose of them outside the ordinary course of business but in any event the seller's security interest and all the rights thereof shall still continue in the goods. Further and without prejudice to the above if they goods or any part thereof are re-sold or otherwise disposed of by the buyer or any representative agent assignee or liquidator, or if they shall be destroyed or damaged prior to full payment, or if they shall become constituents of attached or affixed to, or processed, commingled, mixed or manufactured with other goods then in addition to the rights given by the PPSA the following shall also be the sole and absolute property of the seller, namely:
    - All proceeds as defined by the PPSA, cash and monies, and pending payment to the seller the buyer and any agent, representative, assignee or liquidator shall hold such proceeds, monies or other consideration in a separate account on trust for the seller and deliver up same upon demand, and
    - All accounts receivable, book debts and trade-ins in respect of the goods, and
    - The benefit of any other contract in pursuance to which the goods or any property comprising the goods or part thereof is or is to be disposed of and the buyer, agent, assignee, receiver or liquidator shall hold in trust for the seller any benefit, contract or property comprising the goods or any part hereof and all rights in respect of same.
4. If the buyer fails to make payment of the purchase price and all other sums owing or is in default (in respects time being strictly of the essence) or makes or is likely to make an arrangement with its creditors or commits an act of bankruptcy or adjudicated bankrupt or is unable to pay its debts as they fall due or a liquidator or receiver is appointed or is placed under statutory or official management or compounds or arranges with all or any number of creditors then the seller or its agent may enter the address where they are situated including branches and franchise premises (and the buyer gives the seller irrevocable authority and licence to do so) and remove the goods without notice or judicial process and may sever them from anything to which they may be attached or affixed notwithstanding that the goods have become a fixture to land or other personal property and without liability for any damage caused or any consequential damage and to dispose of them for the seller's own benefit and to take all other steps and remedies in respect of the items referred to in clauses 2 and 3 (d) (i) (ii) (iii) for the seller's own benefit and the buyer waives any right that may arise as a result of the removal and other steps and remedies taken. Such action shall not release the buyer from payment

of the full purchase price and any interest and all other costs incurred all of which the buyer agrees to pay. The seller can withhold its services and goods until payment is received.

5. **General**  
The seller accepts the buyer's order on these conditions which (together with the acceptance) constitutes the entire agreement between the seller and the buyer and it is expressly agreed that there are no other understandings, representations or warranties of any kind (express or implied) forming part of this contract.  
In particular:
  - Any condition contained in the buyer's order which is inconsistent with, qualifies, or is contrary to these conditions shall be of no effect unless that condition is expressly accepted in writing by the seller.
  - Any variation, waiver or cancellation of the buyer's order shall be of no effect unless accepted in writing by the seller. Where the seller accepts cancellation the seller may levy a handling charge of up to 10% of the price.
  - Where the buyer and the seller agree to a variation in the quantity of the goods, the goods shall be priced either at the rate applicable to the original quantity or the revised quantity at the absolute discretion of the seller.
  - The buyer/purchaser agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to this agreement.
6. **Price and Terms of Payment**
  - The seller's prices are subject to alteration without notice and the price payable by the buyer for the goods ordered shall be the price ruling at the date the goods are dispatched for delivery to the buyer.
  - The seller's prices are exclusive of taxes, duties and other imposts which, if chargeable, are payable by the buyer whether they are imposed or bought into force before or after acceptance of the buyer's order.
  - If the goods are exported the price and other moneys due by the buyer shall be paid in New Zealand currency.
  - All prices are strictly net and unless otherwise stated in writing by the seller on acknowledging the order are due for payment on the 20<sup>th</sup> day of the month following the month in which the goods (or any instalment of the goods) are delivered.
  - Without prejudice to its rights to sue for payment or exercise any other remedy where any payment is not made on the due date, the seller may:
    - Charge the buyer interest on the amount outstanding at a rate of interest determined by the seller from time to time, from the due date of payment until payment is received by the seller but charging interest does not extend the time for payment nor imply any forbearance to sue or otherwise recover overdue moneys.
    - Demand payment of the arrears as well as payment in advance for any undelivered goods before proceeding with manufacture or making any further delivery of goods under this or any other contract between the seller and the buyer.
    - Rescind this contract or any other contract between the seller and the buyer and the buyer shall not be entitled to demand or enforce delivery of any goods or any instalment of goods under this or any other contract.
    - Notwithstanding the above, the right to restrict or withhold the sale of further goods on credit is reserved where the seller has reason to doubt the buyer's ability to pay for such purchases.
  - The buyer/purchaser agrees that its rights as debtor in sections 116, 120(2), 121, 125, 126, 129, 131, 132 and 148 of the PPSA shall not apply to this agreement.
7. **Delivery**
  - The seller may withhold delivery in terms of clause 6 above.
  - The seller reserves the right to despatch the buyers order in one delivery or by instalments. Where the seller acknowledges an order which provides for delivery by instalments the seller shall be entitled to payment for each instalment delivered (as if it were a separate contract) but failure to deliver any instalment shall not entitle the buyer to repudiate the contract as to any remaining instalments.
  - Any quotations of delivery times by the seller are made in good faith but as estimates and not commitments, the seller shall not be bound by such estimate.
  - Where the buyer requests a particular method of delivery and the seller agrees in writing then the buyer shall cover the cost of delivery by that method from the point of despatch of the goods by the seller. Otherwise the seller will select the method of delivery.  
The buyer/purchaser will not allow a security interest to be created or registered over the goods in priority to the secured interests of the company.
8. **Shortages**  
Liability for shortages in the quantity of the goods supplied is limited to making up the shortages. No claim for shortages in quantity will be allowed unless the customer gives written notification of the shortage in writing within 7 days of delivery and provides a reasonable opportunity to take all necessary steps to investigate the claim.
9. **Damage or Loss in Transit**  
Goods leaving the seller's premises are adequately packed. Claims made for damage or loss in transit must be made against the carrier in the prescribed manner:
  - Prior to acknowledging delivery to the carrier the buyer must ensure that the complete consignment as per the carrier's note has been received.
  - Should there be a shortage or visible damage to outer packaging the carrier's note must be endorsed accordingly.
  - Within 7 days of receipt of consignment the buyer must ensure that all product received is in good order and condition.  
No claims will be considered after 7 days of receipt of goods. While no liability for goods damaged or lost in transit will be accepted by the seller details of any claim should be advised to the seller.
10. **Return of Goods for Credit**  
Goods supplied ex stock in accordance with the buyers order can only be returned with the express approval of the seller.
  - Requests to return goods must be submitted in writing within 10 days from date of supply.
  - Where goods are accepted for credit they must be delivered, at the buyer's expense, into the sellers store from where they were purchased, in original condition and packaging.  
The original invoice number must be quoted.
  - The seller reserves the right to levy a restocking fee against any returns they may agree to accept. Such fees may be up to 15% and levied at the sellers absolute discretion.

Goods specially imported or procured on behalf of the buyer cannot be returned except by prior written approval from the seller and then only on such terms and conditions as seller may agree.

11. **Disputes**  
In the event that any part of an invoice is disputed, the amount not under question shall be paid promptly according to applicable payment terms. Any claim or dispute arising hereunder shall be subject to arbitration in accordance with the Arbitration Act (1996) of New Zealand.
12. **Seller's Liability and Maintenance Guarantee**
  - The buyer shall ensure that the goods ordered are fit and suitable for the purpose for which they are required and the seller is under no liability if they are not.
  - In the case of goods not of our own manufacture the buyer is entitled to only such benefits as the seller may receive under any guarantee given to the seller by the manufacturers in respect thereof. The seller shall not be liable for consequential or special damages under any circumstances whatsoever.
  - In lieu of any warranty, condition, or liability, implied by law, the seller's liability in respect of any defect in or failure of the goods supplied, or for any loss, injury or damage attributable thereto, is limited to making good the replacement or repair of defects arising under normal proper use and maintenance arising solely from faulty design, materials, or workmanship within the guarantee period, if stated, or otherwise within 12 months of the date of supply, provided always that such defective parts are promptly returned to the seller, unless otherwise arranged. At the termination of the appropriate period all liability on the seller's part ceases.
13. **Errors or Omissions**  
Clerical errors or omissions, whether in computation or otherwise in any quotation, acknowledgements or invoice, shall be subject to correction.
14. **Force Majeure**  
The seller shall not be liable to the buyer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods or failure to perform any term of this contract where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of, or delay in transportation or any other cause beyond the seller's control.
15. **Compliances with Regulations**  
The buyer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the goods.
16. **Proper Law**  
The contract and these conditions of sale shall be governed by New Zealand law and the New Zealand Courts shall have exclusive jurisdiction in connection herewith.
17. **Guarantees**
  - Where the Consumer Guarantees Act 1993 applies to this contract:  
If the goods are acquired by the Buyer for business purposes, the Buyer agrees that the Consumer Guarantees Act 1993 does not apply; and  
If the goods are not acquired for the Buyer for business purposes, the Seller reserves the right to replace any goods which fail to comply with any guarantee contained in the Consumer Guarantees Act 1993.
  - Where the Buyer supplies the goods in trade to a person acquiring them for business purposes, it must be a term of the Buyer's contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the goods.
  - The Buyer acknowledges that the Seller does not provide any express guarantees (as defined in the Consumer Guarantees Act 1993) other than those expressly confirmed by the Seller in writing.
  - Where the Buyer supplies the goods to any other person in the course of trading, the Buyer must not give or make any undertaking, assertion or representation in relation to the goods without the Seller's prior approval in writing.
  - The Buyer agrees to indemnify the Seller against any liability or cost incurred by the Seller under the Consumer Guarantees Act 1993 as a result of any breach by the Buyer of the obligations contained in this contract.
18. **Claims**  
The liability of Outboard Marine Technologies in respect of any contract will be limited to specific defects in materials or workmanship and Outboard Marine Technologies will not be liable in any way whatsoever to the Purchaser or any third party, whether in tort or contract, for any indirect, special or consequential loss or damage or claim arising from the use to which the goods are put and any liability arising from the suitability or otherwise of the goods for any particular purpose or process or manufacturing or conversion is hereby expressly negated.  
In the event of any claim being recognised and accepted by Outboard Marine Technologies it may at its complete discretion, replace or give credit for all goods supplied and established to be defective but only if the following conditions are met:
  - All claims must be received by Outboard Marine Technologies within 30 days of delivery of the goods. Where applicable, the despatch number and/or invoice number must be quoted by the Purchaser, and
  - If all claims are not received as aforesaid, the Purchaser will be conclusively deemed to have accepted the goods and Outboard Marine Technologies will not incur any subsequent liability whatsoever in relation to such goods.
19. **Unsolicited Electronic Messages Act 2007**  
I/We acknowledge that Outboard Marine Technologies will from time to time electronically transmit newsletters and/or product information relating to Outboard Marine Technologies products and services. I/We confirm I/we wish to receive these notifications.  
I/We also acknowledge that Outboard Marine Technologies will not distribute their email database to any other entity.