



Kiwi Cylinder Heads Ltd

0800 549 429

[www.cylinderheads.co.nz](http://www.cylinderheads.co.nz)

[info@kch.co.nz](mailto:info@kch.co.nz)

18 Olive Road, Penrose

Auckland, 1061

# Credit Account Application Form

## Customer Account Details

Legal Entity Name			
Trading Name			
Business Re-registration no.			
GST Number			
Postal Address			
Physical Address			
Phone Number General	Contact:		
Phone Number Accounts	Contact:		
Email Address - General			
Email Address - Accounts			
Estimated Monthly Spend			

## Director Information

Full Name			D.O.B.	
Residential Address				
Phone	Email		Mobile	
Driver License No.				

## Trade References (Please provide 3)

Company 1				
Contact Name				
Phone		Email		
Company 2				
Contact Name				
Phone		Email		

Company 3		
Contact Name		
Phone	Email	

### Signature

By signing below you confirm that you are authorised by your company to apply for credit and agree to our terms and conditions of trade (available on request).

### Applicant

Signature	
Name	
Position	
Date (DD/MM/YYYY)	

### Director

Signature	
Name	
Position	
Date (DD/MM/YYYY)	

### Deed of Guarantee & Indemnity

Between Kiwi Cylinder Heads Ltd

And

Full name of Guarantor

Address

Email

Phone

### Guarantor

The Guarantor acknowledges that we are relying upon this Guarantee when extending credit and supplying Goods and Services to:

Applicant Company Name

Business Registration No.

The supply of Goods and Services (including Goods and Services already supplied or to be supplied from time-to-time hereafter) is made pursuant to the Customer's Credit Account Application and our Terms and Conditions of Trade.

The Guarantor jointly and severally states:

### **1. Guarantee**

1.1. The Guarantor hereby guarantees to Kiwi Cylinder Heads Ltd by way of continuing obligation, the performance, observance and fulfilment of any and all of the Customer's obligations under the Agreement, including but not limited to the making of all payments for Goods and Services already supplied or to be supplied to the Customer.

1.2. In the event of any default in payment by the Customer, the Guarantor will immediately pay on demand the whole of the Customer's indebtedness or liability to Kiwi Cylinder Heads Ltd without us first having to proceed against the Customer and without set-off or deduction.

1.3. This guarantee is by way of deed and is a continuing guarantee to us for the whole of the Customer's present or future indebtedness or liability in respect of Goods and Services supplied by us to the Customer.

### **2. Indemnity**

2.1. The Guarantor hereby indemnifies and keeps indemnified Kiwi Cylinder Heads Ltd for all damages, costs, losses and expenses that Kiwi Cylinder Heads Ltd may suffer or incur as a result:

- i. any breach or non-observance by the Customer of its obligations under the Terms and Conditions;
- ii. any breach of this Deed by the Guarantor.

2.2. This guarantee and indemnity extends to the whole of the Customer's present and future indebtedness or liability to Kiwi Cylinder Heads Ltd and includes all interest, debt collection agency fees and commission, legal costs for breach of the terms of the Agreement (on an indemnity basis) and service charges on overdue amounts.

### **3. Joint and Several Liability**

3.1. Where there is more than one Guarantor, each will be bound to this guarantee and indemnity jointly and severally.

3.2. Kiwi Cylinder Heads Ltd may enforce this guarantee and indemnity against each of the Guarantors for the full amount of the debt without prejudice to Kiwi Cylinder Heads Ltd's rights against the other Guarantor or the Customer.

### **4. Release**

4.1. This guarantee and indemnity will continue until Kiwi Cylinder Heads Ltd releases the Guarantor in writing, even if the Guarantor is no longer a director, shareholder, employee or owner of the Customer, as the case may be.

4.2. The Guarantor accepts that the release will be at Kiwi Cylinder Heads Ltd's discretion and will not occur while the Customer remains indebted to Kiwi Cylinder Heads Ltd or until a suitable replacement Guarantor has executed their own guarantee and indemnity.

### **5. Charge**

5.1. As security for the due performance of its obligations under this Deed, the Guarantor hereby charges in favour of Kiwi Cylinder Heads Ltd all of its rights, title and interest in all real and personal property owned or held by the Guarantor now or in the future with payment of all moneys which are or may become due under this Deed.

5.2. The Guarantor hereby consents to Kiwi Cylinder Heads Ltd lodging a caveat or other security interest over its, his or her real or personal property to give effect to its charge and the Guarantor will reimburse the Kiwi Cylinder Heads Ltd for all costs and expenses incurred in lodging such Caveat or other security interest.

## **6. Legal action**

6.1. The Kiwi Cylinder Heads Ltd has the right to proceed against the Guarantor under this guarantee and indemnity upon the default, refusal or inability of the Customer to make payment to the Kiwi Cylinder Heads Ltd or fulfill any obligation or condition under the Agreement.

6.2. The Kiwi Cylinder Heads Ltd's right to proceed is not prejudiced by the fact that the Guarantor was not given notice of any neglect or omission on the Customer's part to make payment to Kiwi Cylinder Heads Ltd or fulfill any obligation or condition under the Agreement.

## **7. Insolvency**

7.1. This guarantee and indemnity continues to apply and the Guarantor remains liable to Kiwi Cylinder Heads Ltd even if the Customer becomes insolvent, bankrupt, a petition is presented for an order winding up the Customer, or a liquidator, receiver or voluntary administrator or insolvency practitioner is appointed to the Customer or any part of its business or assets.

7.2. Any payment made by or on behalf of the Customer which is later repaid by Kiwi Cylinder Heads Ltd to a bankruptcy trustee or liquidator as a preference payment shall be deemed not to discharge the Customer's liabilities to Kiwi Cylinder Heads Ltd and Kiwi Cylinder Heads Ltd's rights under this guarantee and indemnity are restored as if the Customer's payment had not been made.

7.3. A preference payment referred to above may be made as a result of a Court Order, Judgment, demand or by way of settlement of a claim or potential claim for a preference payment by an insolvency practitioner.

## **8. Severability**

If any provision of this guarantee and indemnity is unenforceable, such provision is severable and its unenforceability will not impact any other part or provision of this guarantee and indemnity.

## **9. Jurisdiction**

9.1. The parties agree to submit to the jurisdiction of the courts in which this Guarantee is signed.

9.2. Notwithstanding clause 9.1, Kiwi Cylinder Heads Ltd shall have the exclusive right to nominate another jurisdiction in which any legal action is to be commenced and conducted.

## **10. Entire agreement**

This guarantee and indemnity, the Credit Account Application and our Terms and Conditions of Trade constitute the entire agreement between Kiwi Cylinder Heads Ltd and the Guarantor, and no other document or representation, oral or in writing, may be relied upon.

## **11. General**

11.1. The Guarantor acknowledges and warrants that:

- a. It, he or she has obtained their own independent legal advice or has specifically declined the opportunity to obtain such advice in relation to this guarantee and indemnity.
- b. It, he or she enters into this guarantee and indemnity fully and voluntarily on its, his or her own information investigations and enquiries, including independent enquiries made with the Customer.
- c. It, he or she has not relied on any representation, warranty or undertaking of any kind made by or on behalf of Kiwi Cylinder Heads Ltd.

d. He or she is fluent in English.

**12. Interpretation**

In this guarantee and indemnity, unless the context requires otherwise:

- a. words importing the singular include the plural and vice versa;
- b. references to any documents (including this guarantee and indemnity) include references to that document as amended, consolidated, supplemented, novated or replaced;
- c. references to paragraphs, clauses, recitals and schedules are references to paragraphs and clauses of, and recitals to this Deed;
- d. headings are for convenience only and must be ignored in construing this guarantee and indemnity; and
- e. references to any person or any party include references to its respective successors, permitted assigns and substitutes, executors and administrators.

**Guarantor & Witness Signature**

Witness Signature	
Witness Name (print)	
Address	
Date (DD/MM/YYYY)	

Garuantor Signature	
Guarantor Name (print)	
Date (DD/MM/YYYY)	