

SALE AGREEMENT BETWEEN LOWES AND YOU

IMPORTANT NOTICE:

PLEASE COMPLETE AND SIGN THIS FORM WHERE INDICATED, AND RETURN IT TO YOUR LOCAL DEPOT.

Your depot manager may be able to assist if you require.

All references to "LOWES" in this agreement are references to Chippen Holdings Pty Ltd (ACN 054 492 474).

1. SECTION ONE – CUSTOMER’S DETAILS

YOU MUST COMPLETE ALL DETAILS IN ONE OF THE THREE SUB-SECTIONS ON THIS PAGE, DEPENDING ON WHETHER YOU ARE A SOLE TRADER, A PARTNERSHIP OR A COMPANY.

SOLE TRADER			
Q.1(A) COMPLETE THIS SECTION IF YOU ARE A SOLE TRADER			
Your Name:		Date of Birth:	
Address:			
Work Telephone:		Mobile:	
Home Telephone:		Fax:	
The Name of your Business and its ABN (If Applicable):			
Driver's Licence Number:		Sighted By:	
PARTNERSHIP			
Q.1(B) COMPLETE THIS SECTION IF YOU ARE A PARTNERSHIP			
Name of Partnership:		A.B.N:	
Address of Partnership:			
Work Telephone:		Mobile:	
Home Telephone:		Fax:	
Please provide full names, dates of births and driver licence numbers of each partner or Lowes Petroleum Service will only supply goods on a "Cash on Delivery" basis.			
Name/s of Partner	Date of Birth	Driver's Licence No.	Address and Telephone Number
COMPANY			
Q.1(C) COMPLETE THIS SECTION IF YOU ARE A COMPANY			
Company Name:		A.C.N:	
Telephone Number of Company:		Facsimile Number of Company:	
Company Address:			
Please provide the details of each Director failing which Lowes Petroleum Service will only supply goods on a "Cash on Delivery" basis.			
Name/s of Director/s	Date of Birth	Driver's Licence No.	Address and Telephone Number
1.			
2.			
3.			
Please provide the details of at least one Guarantor failing which Lowes Petroleum Service Pty Ltd will only supply goods on a "Cash on Delivery" basis.			
Name/s of Guarantor/s	Date of Birth	Driver's Licence No.	Address and Telephone Number
1.			
2.			
3.			

Initial Here: _____
Initial of Witness: _____

YOU MUST COMPLETE EVERY SECTION ON THIS PAGE
YOU MUST SIGN THE BOTTOM IN THE PRESENCE OF A WITNESS

2. SECTION TWO – TRADE REFERENCES – EVERYONE MUST COMPLETE

Please provide the details of at least three trade references (major suppliers):

1.	Name of Trade Reference:
	Address:
	Telephone Number/s:
	Contact Person:
2.	Name of Trade Reference:
	Address:
	Telephone Number/s:
	Contact Person:
3.	Name of Trade Reference:
	Address:
	Telephone Number/s:
	Contact Person:

3. SECTION THREE – DETAILS OF YOUR BUSINESS – EVERYONE MUST COMPLETE

What is the address of your business?
What is the nature of your business?
When was the business established?
What are your anticipated average monthly purchases?
What is the turnover of your business?

4. SECTION FOUR – EXECUTION CLAUSE – EVERYONE MUST COMPLETE & SIGN

YOU MUST COMPLETE AND SIGN THIS SECTION IN THE PRESENCE OF A WITNESS

	Sign Here	Print Your Full Name Here	Date of signing	Witness signs here
Customer/Person signing on behalf of the customer This must be signed by all customers (whether the customer is a company, trust, partnership or sole trader business)			___/___/20__	
			___/___/20__	
First Guarantor Only complete if the customer is a company			___/___/20__	
Second Guarantor Only complete if the customer is a company or trust			___/___/20__	

Witness' full name (Witness must be over 18 years old):

Witness' Address:

By signing this document, the customer and the guarantor(s):

- Acknowledge that they have read and understood the terms and conditions on this form;
- Agree to the terms and conditions printed on this form;
- Agree that the customer and the guarantor are jointly and severally bound by these terms and conditions; and
- Acknowledge and agree that a signature by one partner in a partnership business is a valid acceptance of these terms, and all partners will be jointly and severally liable as if they also had signed this Agreement.

5. SECTION FIVE - TERMS AND CONDITIONS OF SALE

1. Terms of Account

- 1.1. The Customer agrees to pay all amounts payable (including interest payable) to LOWES within twenty-one (21) days of the invoice or statement date, time being of the essence, unless otherwise agreed in writing by LOWES.
- 1.2. The Customer agrees to pay interest of 1.75% per month (compounding monthly) on the largest amount payable (including interest and other charges payable pursuant to this agreement) during the preceding month.
- 1.3. The interest payable pursuant to this clause is payable on the last day of every calendar month at the rate of 1.75% per month on the largest amount owing during that calendar month.
- 1.4. The Customer acknowledges and agrees:
 - 1.4.1. To pay all sums owing to LOWES in accordance with terms and conditions expressed in this document and on any written quotation or LOWES invoice;
 - 1.4.2. To pay a credit card payment fee of two per cent (2%) on payments made by the Customer by credit card;
 - 1.4.3. To pay a dishonour fee of \$50.00 for each cheque or direct debit payment dishonoured;
 - 1.4.4. To pay an account information fee of \$15.00 per page for each request for printed account information, documentation or notices which have previously been provided to the Customer;
 - 1.4.5. To pay a fixed fee of \$500.00 in the event that the Customer is outside the payment terms required by this Agreement and Lowes instructs solicitors to send a letter of demand to the Customer with such \$500.00 to cover the costs of instructing solicitors to demand payment together with the costs associated with any consequent negotiations;
 - 1.4.6. To pay a fixed fee of \$1,500.00 to LOWES in the event that LOWES commences legal proceedings to cover recover monies owed by the Customer to cover such fees borne by LOWES in instructing lawyers and supervising the legal process;
 - 1.4.7. To pay for requests (in writing or otherwise) for all goods and/or services supplied to all agents, employees and/or directors (or any other person with apparent or ostensible authority) of the Customer unless the Customer provides prior written notice to LOWES that the requestor does not have authority to request supply of goods or services on behalf of the Customer;
 - 1.4.8. That the supply of goods and/or services at the request of agents, employees and/or directors (or any other person with apparent or ostensible authority) of the Customer, whether in writing or otherwise, will be on the terms and conditions specified herein;
 - 1.4.9. That the Customer must pay all amounts owed to LOWES before it can offset any debt owed by LOWES (or any counter-claim that the Customer may have against LOWES).
 - 1.4.10. That LOWES may immediately set-off any debt owed to LOWES by the Customer with any debt owed to the Customer immediately upon the Customer's debt becoming due to LOWES;
 - 1.4.11. That LOWES may supply goods and services over and above the Customer's credit limit (at LOWES's sole discretion), and that such supplies remain subject to these terms and conditions specified herein;
 - 1.4.12. To pay all costs and expenses incurred by LOWES on an indemnity basis in connection with LOWES's attempts to obtain payment of any outstanding amounts, including fees charged by a collection agency or Solicitor, whether or not formal proceedings are brought to remedy the Customer's breach of this agreement or to collect any amount due; and
 - 1.4.13. To pay costs and expenses by reference to 150% of the Queensland Supreme Court scale if costs on an indemnity basis are unenforceable.

2. Invoice or Statement Dispute Procedure

- 2.1. The Customer acknowledges and agrees:
 - 2.1.1. To notify LOWES within three (3) days of LOWES rendering an invoice or statement of any dispute that it may wish to raise to that invoice or statement;

- 2.1.2. That if LOWES does not receive notice of a dispute within three (3) days of LOWES rendering an invoice or statement then the Customer agrees to pay the amount payable pursuant to that invoice (without dispute, offset, or any counter-claim that the Customer may wish to raise); and
- 2.1.3. That if the Customer fails to provide this notice within three (3) days of LOWES rendering the invoice or statement then the Customer must pay the full amount of that invoice or statement before it can raise:
 - (a) a dispute to the amount said to be payable on the invoice or statement; or
 - (b) claim that a set-off should be allowed.

3. Use of Personal Information

- 3.1. The Customer permits LOWES:
 - 3.1.1. to validate and collect information on the Customer's credit background;
 - 3.1.2. to receive and disclose the Customer's personal information to and from a credit reporting agency for continued assessment of the Customer's credit worthiness;
 - 3.1.3. to contact all of the Customer's credit references and sources; and
 - 3.1.4. to report details of defaults under this agreement and the Customer's personal information to appropriate credit reporting agencies, debt collection agencies and its solicitors.
- 3.2. The Customer certifies that the information contained in this application is true and correct and that LOWES may rely on the information provided by the client when considering whether to extend credit to the Customer.
- 3.3. All personal information collected by LOWES will be treated in accordance with LOWES's privacy policy available at www.lowespetrol.com.au as amended from time to time.

4. Limitation of Liability

- 4.1. The Customer agrees that the liability of LOWES is limited to the minimum required by the *Trade Practices Act 1974* (Cth), or \$100, whichever is larger.
- 4.2. This limitation of liability applies to:
 - 4.2.1. Any personal injury, or loss of, damage to, or delay in relation to any goods or in relation to any services provided under any circumstances whatsoever;
 - 4.2.2. Any negligent or wrongful act or deliberate act or default on the part of contractors of LOWES, its agents, servants or subcontractors;
 - 4.2.3. Any mis-delivery, delay or non-delivery (whether any specific time for delivery has been agreed or not);
 - 4.2.4. Any breach of contract or tortious duty;
 - 4.2.5. Any consequential loss for whatever reason and under any circumstances;
 - 4.2.6. Any loss of or damage to or deterioration in or contamination of goods while the goods are in the possession, custody or control of the Customer;
 - 4.2.7. Any claim for delay or damage, to the amount of LOWES charges to the company for or in relation to the goods;
 - 4.2.8. Any failure or delay in performance hereunder due in whole or in part to strikes, work stoppages, fire, acts of terrorism, accidents, wars, rebellions, civil commotion, public strife, acts of any government, whether legal or otherwise, acts of public enemies, forces majeure, or qualified labour, or any other causes beyond the reasonable control of LOWES;
 - 4.2.9. Any delays or inability to obtain product because of the actions of a supplier to LOWES; and
 - 4.2.10. Any matter or claim that is not brought to the attention of LOWES in writing within seven (7) days of the Customer becoming aware of any such matter or claim.
- 4.3. This limitation of liability applies to any claim or counter-claim that the customer may wish to seek against LOWES.
- 4.4. The Customer agrees that LOWES enters this contract not only on its behalf but also as agent and trustee for such contractors, servants, sub contractors and agents as it may appoint from time to time.

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- 4.5. The Customer must defend, indemnify and hold harmless LOWES from and against all claims, costs and demands whatsoever and by whosoever made in relation to or arising out of the goods and services provided, in excess of the liability of LOWES under the terms of these conditions and without prejudice to the generality of this clause, this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence or wrongful or deliberate acts of LOWES, its contractors, servants, sub-contractors and agents.
- 4.6. The Customer expressly discharges LOWES from all liability unless:
- 4.6.1. The Customer provides LOWES notice of any alleged loss or damage immediately or (if lawful damage is not immediately apparent) within seven (7) days of the goods being collected by or delivered to the Customer at the conclusion of the services; and
- 4.6.2. A suit is brought in the appropriate form and written notice is received by LOWES within seven (7) days after the date of delivery of the goods or the date upon which the goods should have been delivered.
- 4.7. LOWES is under no obligation to take any steps for or on behalf of the Customer for the purpose of extending or preserving the liability of any contract or third party and may (according to the extent of liability) obtain services in relation to goods at the lowest possible cost.
- 4.8. To the extent that any clause or any part of any clause above would be declared unenforceable or void, such clause(s) (or part thereof) are to be read to limit LOWES's liability to the greatest extent permitted by law. Such clauses are to be read only as limiting the liability of the company in accordance with Section 68A of the *Trade Practices Act 1974* (Cth).

5. Title/Risk of Loss/Insurance

- 5.1. The risk or loss of goods passes from LOWES to the Customer when the goods or component parts (whether manufactured by LOWES or another supplier) are placed in the possession of the carrier for shipment to the Customer.
- 5.2. The Customer must provide insurance to be for no less than the total amount owing to LOWES with loss first payable to LOWES.

6. Acceptance of Goods

The Customer agrees that it has accepted the goods if:

- 6.1. No written complaint is raised with LOWES in three (3) days of the delivery of the goods; or
- 6.2. The goods are used or otherwise placed in commercial operation.

7. Warranty

- 7.1. LOWES warrants that the goods will conform to the description contained on the invoice, and no further warranty is to be implied.
- 7.2. To the extent permitted by law, LOWES disclaims any implied warranty of merchantability or fitness for a particular purpose. The Customer agrees there are no representations or warranties have been made by LOWES except as confirmed in writing by a Director of LOWES.
- 7.3. The Customer holds LOWES harmless and indemnifies and defends LOWES (including its directors, officers, employers, agents and representatives) for any claims arising out of or relating to the design, specification or use of product(s) sold or otherwise provided by LOWES to the Customer.
- 7.4. Lowes can rely upon the above disclaimers and warranties as a defence to any claim that the Customer may wish to make against LOWES.

8. Returns

- 8.1. The Customer agrees that LOWES may require prior written consent prior to accepting any returned goods, and that such returns may result in handling, inspection, restocking, and invoicing charges which are to be paid by the Customer.
- 8.2. All returns must be shipped at the Customer's expense and must be in excellent re-sale condition.
- 8.3. Goods made to a Customer's specification are not returnable.

9. Defaults

- 9.1. LOWES (at its sole discretion) may retain all monies paid by the Customer on accounts as liquidated damages if the Customer refuses to accept a shipment or otherwise defaults under this agreement.
- 9.2. If the Customer fails to make any payments when due, or if there is a breach of any covenant or agreement by the Customer, or if LOWES deems the Customer insecure, then the Customer is deemed in default and LOWES may elect (at its sole discretion) to take immediate possession of the goods, and/or declare all unpaid amounts immediately due and payable and/or suspend shipments to the Customer.
- 9.3. LOWES is entitled to settle for any amount owed by the Customer or any of the Customers related entities against any amount payable to LOWES in connection with any unpaid monies due to LOWES.
- 9.4. A waiver by LOWES of any breach or default does not constitute a waiver of any subsequent breach or default.

10. Cancellation

- 10.1. Upon receipt of written notice from the Customer, LOWES may cancel any orders as requested by the Customer subject to LOWES (or its sub-contractors) rights to continue processing and or delivering material to the point at which processing or delivery can be halted with the least disruption and cost to LOWES.
- 10.2. The Customer is responsible for all costs associated with the cancellation and/or the completion of the processing and/or delivery of the goods.

11. Acceptance

- 11.1. The Customer agrees to be bound by these terms and conditions by its purchase of products from LOWES following LOWES providing these terms and conditions to the Customer.
- 11.2. By ordering goods or services from LOWES, the Customer accepts the most recent version of these terms and conditions available at www.lowespetrol.com.au at the time of each request.
- 11.3. The Customer agrees to check the website prior to each order to ensure acceptance with the terms presented therein.

12. General

- 12.1. LOWES may assign its rights and obligations under these terms and conditions. If the Customer changes its corporate status, then the Customer acknowledges and agrees that both the Customer and its successors continue to be bound by these terms and conditions of sale.
- 12.2. In any event, even if the successor does not execute a new agreement, LOWES reserves its rights pursuant to this agreement. If either the Customer or any of its successors order goods or services from LOWES then the making of that order constitutes acceptance by the Customer or successor to these terms and conditions.
- 12.3. The Customer agrees no prior representation, affirmation, or agreement can be enforceable unless set forth herein.
- 12.4. If the Customer sells part or all of its business to another entity, and that other entity purchases any goods from LOWES, then that purchase shall be payable by the Customer as at the date of this agreement.
- 12.5. The terms of this agreement cannot be amended, reduced or modified and govern any contradictory term contained in any other document, unless a Director of LOWES has expressly stated in writing to the contrary.

13. Choice of Law

- 13.1. This contract shall be governed by the laws of the State of Queensland.
- 13.2. LOWES and the Customer agrees:
- 13.2.1. to submit to the exclusive jurisdiction of the Courts of the State of Queensland; and
- 13.2.2. that proceedings are to be filed and trialled in the Court registry located at Brisbane (including the Magistrates, District and Supreme Courts at Brisbane) at the sole discretion of LOWES.

14. Severability

- 14.1. These terms and conditions are to be interpreted and construed so far as possible to not to be invalid, illegal or unenforceable in

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any respect. If a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- 14.1.1. that provision is to be read down to the extent that it is necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- 14.1.2. if the provision or part of it cannot effectively be read down, that provision or part of it is to be deemed void and severable and the remaining provisions of this Agreement are not in any way to be affected or impaired and are to continue notwithstanding that illegality, invalidity or unenforceability.

15. Goods and Services Tax (GST)

In the event of a supply being made under these terms and conditions by LOWES or the Customer, the supplying party may (subject to the issuing of a valid tax invoice) recover from the Customer an additional amount equal to that of the GST in accordance with the New Tax System (Goods and Services Tax) Act 1999 and or as amended.

16. Prices

- 16.1. All quotations are exclusive of GST. GST will have the meaning of a tax, impost or duty on goods, services or other things introduced by a Government Authority either before, on, or after the quotation has been given.
- 16.2. All quotations are provided as estimations only and should only be relied upon as a guide. The price provided for within the quotation will not include any additional or incidental charges incurred by LOWES in providing the goods will be payable by the Customer even if those incidental or additional charges are in addition to the amount stipulated in a quote.

17. Termination

- 17.1. LOWES may at any time (without prior notice or explanation to the Customer) withdraw or terminate the supply of goods or the provision of credit facilities granted to the Customer.
- 17.2. LOWES disclaims all liability to the Customer for any loss, damage or injury resulting from such withdrawal or termination.

18. Guarantee

The person (the "Guarantor") who undersigned the purchase docket on behalf of the Customer guarantees to LOWES to do everything that the Customer is required to do and that the Guarantor will not do anything the Customer is required not to do under these Trading Terms. The Guarantor will separately continually indemnify LOWES against any loss and damage that LOWES suffers because the Customer fails to comply with the Trading Terms. The Guarantor is jointly or severally liable to perform the terms contained herein with the Customer. LOWES is entitled to enforce these Trading Terms against the Guarantor solely due to the Customer's breach of any terms herein. This guarantee includes all costs of LOWES on a full indemnity basis including all legal costs on a Solicitor and own client basis. If costs on an indemnity basis are not enforceable, then costs and expenses are to be calculated by reference to 150% of the Queensland Supreme Court scale.

19. Enduring Power of Attorney

- 19.1. The Customer irrevocably appoints LOWES and each and every one of LOWES's directors to be the true and lawful attorney of the Customer to act at any time after the Customer breaches any terms herein. The attorney is empowered (but not limited):
 - 19.1.1. to do all things which the Customer is required to do under these Trading Terms; and
 - 19.1.2. to execute and register (if necessary) any document to effect a bill of sale or mortgage, over the Customer's assets or properties for the amount of debt owing.
- 19.2. The Customer acknowledges and agrees that LOWES may register a caveat over any real property held by the Customer or Guarantor while there are any alleged monies owed to LOWES until the monies owed are paid or until a Court so orders.

20. Notices

The Customer agrees that notices (including the service of legal proceedings) to the Customer may be sent by regular pre-paid post to the address detailed on this form, or by facsimile to any fax number provided on this form. The Customer agrees to provide LOWES with updated customer information should their address, contact numbers or facsimile numbers change.

21. Equitable Security and Caveatable Interest

The Customer, Directors of the Customer and Guarantors jointly and severally provide irrevocable guarantees of the following obligations and liability of the Customer:

- 21.1. That the said Customer, Directors and Guarantors provide equitable security over any and all real property in their possession either now or any time in the future including (but not limited to) any property, undertaking or rights held as trustee; and
- 21.2. The Customer, Directors of the Customer and Guarantors provide a caveatable interest over any real property held by said persons or parties (including by way of joint tenancy) either now or in the future as security for any monies owing under this agreement which includes the costs of lodging the caveat as well as legal fees in all debt recovery procedures for any liquidated demand or debt owing under this agreement.

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