

ALMONTE DIAMOND Terms and Conditions of



Formation of Contract

- These terms and conditions shall apply to all services and goods supplied by ALMONTE DIAMOND PTY LTD Pty Ltd and its related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth)) (Supplier or ALMONTE DIAMOND PTY LTD).
- Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it.
- Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.

Payment Terms

- The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the date of the statement. Supplier may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
- Should the Purchaser not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administration fee (excluding interest provided for elsewhere in these terms) of:
 - 10 percent of the amount of the invoice payable; and
 - a further 10 percent per annum payable per year, or part thereof, until payment by the Purchaser.

Pricing

- Unless otherwise agreed in writing, the price charged for goods shall be the price as determined by the Supplier at the date of delivery.
- Any price indications or price lists are subject to alteration.
- Where applicable the Purchaser must bear any GST on the goods.

Delivery

- The Supplier will make all reasonable effort to have the goods delivered to the Purchaser or their designated agent on the date agreed between the parties but the Supplier shall not be liable for any failure to deliver or delay in delivery for any reason.
- Delivery should be deemed to have taken place at the time of physical taking of the goods by the Purchaser or by a carrier, whether engaged by the Supplier or by the Purchaser.
- The Purchaser's representative must be present at the delivery address at the time the goods are delivered. The representative must sign the delivery advice that the driver of the delivery vehicle presents.
- If specifically agreed that the goods are sold ex-Supplier factory, at its costs and risk, the Purchaser must collect the goods within the time agreed, or within thirty (30) days of the contract.
- The Supplier shall not be liable for freight costs on goods returned to it by the Purchaser.

Cancellation of Orders

- Orders placed with the Supplier cannot be cancelled without written approval of the Supplier.
- In the event that the Supplier accepts the cancellation of any order placed with it, it shall be entitled to charge a reasonable fee for any work done on behalf of the Purchaser to the date of cancellation including a fee for the processing and acceptance of the Purchaser's order and request for cancellation.

Customer return of Goods/Credit Policy

- The Purchaser will be deemed to have accepted the goods as being in accordance with its order unless it notifies the Supplier in writing of any alleged defect or deficiency in the quality, quantum or otherwise of the goods within seven (7) days of receipt of the goods.
- In the case of Supplier's error:
 - Where the Supplier has a non-compliance issue covering size, quality or quantity, the items are returnable at the Supplier's cost including freight; and
 - The Supplier will re-supply complying goods.
- In the case of Purchaser's changed requirement or error:
 - Where the Purchaser changes an order, has excess requirements or has made an error, these items will only be accepted if the items are the Supplier's standard products and the Supplier can resell as new items (which it may determine in its sole discretion):
 - a restock fee of 10 percent will be charged;
 - goods only accepted on inspection if in a good condition;
 - all freight costs will be borne by the Purchaser;
 - Non-standard or numbered bags are not returnable.
 - Specially manufactured goods or bought in goods are not returnable.
- Prior written approval is required for returns which may be provided in the Supplier's sole discretion and:
 - All items being returned must be agreed with a sales representative who will prepare documents that support the administration process, including a Returns Authorisation Reference that will be advised by sales to the Purchaser;
 - Purchasers must not return items without this reference number and prior approval.
 - Goods returned must be accompanied by the Return Authorisation Reference number provided by the sales representative.
 - Prior approval to return goods may be provided but the Supplier retains the right to revoke the approval pending final inspection of the returned goods at the Supplier's stores. The goods must be in as new condition. If the goods are not in such condition the Supplier will advise.
 - If the returned goods are in acceptable condition the processing of credit notes will then proceed and documents forwarded to the Purchaser.
 - Goods not authorised for return will not be accepted by the Supplier.

Jurisdiction

- The Purchaser acknowledges and agrees that this agreement will be governed by the laws of Western Australia, and the laws of the Commonwealth of Australia which are in force in Western Australia.
- The Purchaser acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Purchaser is formed at the address of the Supplier.
- The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Western Australia and the relevant federal courts and courts competent to hear appeals from those courts.
- The Purchaser agrees that the proper forum for any dispute is the courts of Western Australia and any claim must be commenced in such courts.

Security & Charges

- The Purchaser charges in favour of the Supplier all of its estate and interest in any real property that the Purchaser owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- The Purchaser charges in favour of the Supplier all of its estate and interest in any personal property that the Purchaser owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- The Purchaser appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Purchaser's name and as the Purchaser's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Purchaser may own in any Land Titles Office in any state or territory of Australia, even though the Purchaser may not have defaulted in carrying out its obligations hereunder.
- Where the Purchaser has previously entered into an agreement with the Supplier by which the Purchaser has granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Retention of Title

- Title in the goods does not pass to the Purchaser until the Purchaser has made payment in full for the goods and, further, until the Purchaser has made payment in full of all the other money owing by the Purchaser to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
- Whilst the Purchaser has not paid for the goods supplied in full at any time, the Purchaser agrees that property and title in the goods will not pass to the Purchaser and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
- Until payment in full has been made to the Supplier, the Purchaser will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
- The Purchaser will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Purchaser will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Purchaser on trust for the Supplier absolutely.
- The Purchaser's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 30 hereof unless and until the funds held on trust are remitted to the Supplier.
- The Purchaser agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Purchaser, to enter upon any premises occupied by the Purchaser (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Purchaser) to inspect the goods of the Supplier and to repossess the goods which may be in the Purchaser's possession, custody or control when payment is overdue.
- The Purchaser will be responsible for the Supplier's costs and expenses in exercising its rights under clause 31. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Purchaser against the Supplier, its employees, servants or agents.
- The Purchaser agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Purchaser on those goods, and the Purchaser hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Purchaser.
- For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009* (Cth).

Cancellation of Terms of Credit

- If the goods are supplied on credit, the Supplier reserves the right to withdraw credit at any time, whether the Purchaser is in default under the terms of this agreement or not.
- Upon cancellation with or without notice all liabilities incurred by the Purchaser become immediately due and payable to the Supplier.

Indemnity

- The Purchaser agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

Provision of Further Information

- The Purchaser undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Purchaser's creditworthiness, including an updated credit application if requested.

- If the Purchaser is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Corporations

- If the Purchaser is a corporation, the Purchaser warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Purchaser's obligations to the Supplier as requested by Supplier.

Trustee Capacity

- If the Purchaser is the trustee of a trust (whether disclosed to the Supplier or not), the Purchaser warrants to the Supplier that:
 - The Purchaser enters into this agreement in both its capacity as trustee and in its personal capacity;
 - The Purchaser has the right to be indemnified out of trust assets;
 - The Purchaser has the power under the trust deed to sign this agreement; and
 - The Purchaser will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
- The Purchaser must give the Supplier a copy of the trust deed upon request.

Partnership

- If the Purchaser enters into this agreement as partners, the Purchaser warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Purchaser's obligations to the Supplier.
- If the Purchaser is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

- If the Purchaser becomes insolvent, the Purchaser remains liable under this agreement for payment of all liabilities incurred hereunder. The Purchaser remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Purchaser being insolvent.

Waiver

- A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Purchaser must be made by the Purchaser's authorised officer in writing.
- Until ownership of the goods passes, the Purchaser waives its rights it would otherwise have under the PPSA:
 - under section 95 to receive notice of intention to remove an accession;
 - under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
 - under section 121(4) to receive a notice of enforcement action against liquid assets;
 - under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
 - under section 130 to receive a notice to dispose of goods;
 - under section 132(2) to receive a statement of account following disposal of goods;
 - under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
 - under section 135 to receive notice of any proposal of the Supplier to retain goods;
 - under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
 - under section 142 to redeem the goods;
 - under section 143 to reinstate the security agreement; and
 - under section 157(1) and 157(3) to receive a notice of any verification statement.

Costs

- The Purchaser must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Purchaser. The Purchaser must also pay for all stamp duty and other taxes payable on this agreement (if any).
- The Purchaser will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Purchaser, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Purchaser to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
- The Purchaser acknowledges and agrees that payments by the Purchaser will be applied by the Supplier as follows:
 - in payment of any and all collection costs and legal costs in accordance with clauses 31 and 49;
 - in payment of any interest incurred in accordance with clause 53; and
 - in payment of the outstanding invoice(s).

Taxes and Duty

- The Purchaser must pay GST on any taxable supply made by the Supplier to the Purchaser under this agreement. The payment of GST is in addition to any other consideration payable by the Purchaser for a taxable supply.

54. If as a result of:
- any legislation becoming applicable to the subject matter of this agreement; or
 - any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
 - the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Purchaser, then the Purchaser must pay the Supplier these additional amounts on demand.

Interest Rates

55. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

Set-off

56. All payments required to be made by the Purchaser under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
57. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Purchaser by the Supplier.

Miscellaneous

58. The Supplier is not liable for any loss caused to the Purchaser by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other matter beyond the Supplier's control.
59. In relation to the supply of goods, the Supplier's liability is limited to the lesser of:
- replacing the goods or supplying similar goods;
 - repairing the goods;
 - providing the cost for replacing the goods or for acquiring equivalent goods; or
 - providing the cost for having the goods repaired.
60. In relation to the supply of services, the Supplier's liability is limited to the lesser of:
- supplying the service again; or
 - providing for the cost of having the services supplied again.
61. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other similar loss suffered by the Purchaser.
62. The Purchaser will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Purchaser under the PPSA.
63. The Purchaser agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Purchaser or the Purchaser's authorised representative.
64. The Purchaser further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
65. The Purchaser irrevocably grants to the Supplier the right to enter upon the Purchaser's property or premises, without notice, and without being in any way liable to the Purchaser or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Purchaser shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
66. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions of the Competition and Consumer Act 2010 (Cth) or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified. Severance
67. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
68. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

69. The Purchaser agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Purchaser.
70. Any proposed variation to these terms and conditions by the Purchaser must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
71. No variation to the terms requested by the Purchaser shall be effective unless agreed to in writing by the Supplier in a document which is hand-signed by an authorised officer of the Purchaser.

Consent to Register

72. The Purchaser hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
73. The Purchaser waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register

Entire Agreement

74. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are superseded by this Agreement and its terms. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

Electronic signature

75. For the purpose of this clause "Electronic Signature" shall mean data in electronic form which is attached to or logically associated with other data in electronic form and which is used by a signatory to sign and includes, without limitation, typing a name into a contract, inserting a signature (in the form of an image) into a contract or using a web-based electronic signature platform to generate an electronic representation of a handwritten signature or a digital signature using public key encryption technology.
- The parties agree that this agreement, and any documents to be signed in connection herewith, may be electronically signed and the use by a party of an Electronic Signature shall, for the purposes of validity, enforceability and admissibility, be conclusive evidence of that party's intention to be legally bound as if such signature had been written by hand.
 - In the event that an Electronic Signature is, for any reason whatsoever, not recognised by any relevant person, entity or authority in any applicable jurisdiction, each party undertakes, upon request, to promptly provide a handwritten signature on any relevant document.
 - This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement. A counterpart bearing an Electronic Signature shall satisfy the requirements of this clause.

Privacy Act Authority

The privacy of your personal information is important to ALMONTE DIAMOND PTY LTD and we will ensure that it is held, used and disclosed consistently with the Privacy Act 1988 (Cth) (Act) which is binding on us. The following is an outline of certain matters relating to the collection and use by ALMONTE DIAMOND PTY LTD and the disclosure of your personal information to ALMONTE DIAMOND PTY LTD in connection with this application for credit.

Subject always to the provisions of the Act and to the extent it applies:

Collection and use of your personal information

ALMONTE DIAMOND PTY LTD collects and uses your personal information to assess Applications for commercial credit, manage accounts and, if necessary, insure our risk in respect of debts and to enable us to supply you with our products and/or services. By providing personal information in this application you warrant to ALMONTE DIAMOND PTY LTD that you have obtained consent of the individuals whose personal information is contained in the application and any other documents provided by you to ALMONTE DIAMOND PTY LTD.

If all or part of the information requested is not provided we may not be able to consider your application or provide you with commercial credit. ALMONTE DIAMOND PTY LTD may be required by law, such as the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) to collect certain information. We may also collect your personal information from third parties, such as credit reporting bodies and other credit providers.

Disclosing your personal information

ALMONTE DIAMOND PTY LTD may disclose your personal information to our related or associated companies, contractors and/or to a credit reporting body which may provide this information in reports provided to other credit providers to assist them to assess your credit worthiness. You may request a credit reporting body not to use your credit reporting information for the purposes of pre-screening of direct marketing by a credit provider. You may also request a credit reporting body not to use or disclose credit reporting information about you, if you believe on reasonable grounds that you have been, or are likely to be, a victim of fraud.

ALMONTE DIAMOND PTY LTD is likely to disclose your personal information to its agents and credit reporting bodies. We may also disclose your personal information to other credit providers whether or not your account is overdue and, if necessary, our risk insurers, debt collectors and credit reporting bodies. The names of these credit reporting bodies are available upon request by the Customer to ALMONTE DIAMOND PTY LTD. These agents and credit reporting bodies have policies about the management of credit related personal information available on each reporting body's website.

You may access your personal information that we hold (except in the limited circumstances recognised by the Act) by submitting this Application, the Customer acknowledges and agrees that ALMONTE DIAMOND PTY LTD may:

- Give a credit reporting agency certain personal information including (your personal identifying details; the fact that this application for credit has been made and the amount; payments which become overdue for more than 60 days and for which recovery steps have commenced; advice that payments are no longer overdue; payments including cheques, credit cards and direct debits which have been dishonoured; court judgments or bankruptcy orders made against you; in the opinion of ALMONTE DIAMOND PTY LTD, you have committed a serious credit infringement; ALMONTE DIAMOND PTY LTD ceases providing services to you);
- Seek from or give to, persons (including your nominated trade referees, your creditors, bankers, financiers, credit providers, mortgage and trade insurers and/or credit reporting agencies), reports, information or opinions about your credit worthiness, credit standing, credit history or credit capacity and make any other inquiries as ALMONTE DIAMOND PTY LTD considers reasonably necessary for such purposes;

- Give to a guarantor or intending guarantor of the proposed credit account such personal information about your creditworthiness, history, standing, and capacity relating to the subject of the guarantee, as is necessary for the entry into or enforcement of proposed enforcement of the guarantee; and
- Disclose your personal information to government or regulatory bodies or otherwise where this is required or authorised by law; to persons or entities involved in maintaining, reviewing and developing ALMONTE DIAMOND PTY LTD's business systems, procedures and infrastructure; to debt collecting agencies, and to ALMONTE DIAMOND PTY LTD's agents, contractors and advisers.

Contact us

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