

# DUSTTECH PTY LTD — TERMS & CONDITIONS OF TRADE

## Terms and Conditions of Trade

### 1. DEFINITIONS

"**Seller**" means Dusttech Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Dusttech Pty Ltd.

"**Customer**" means the person/s buying the Goods as specified in any invoice document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.

"**Goods**" means all Goods or Services supplied by the Seller to the Customer at the Customer's request from time to time (where the context so permits the terms Goods or Services shall be interchangeable for the other).

"**Price**" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Seller and the Customer in accordance with clause 5 below.

"**GST**" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Ch).

### 2. ACCEPTANCE

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.

2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.

2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

2.4 These terms and conditions may be meant to be read in conjunction with the Seller's Hire Form, and (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein, and (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

### 3. AUTHORISED REPRESENTATIVES

3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to the Seller as the Customer's duly authorised representative, once introduced that person shall have the full authority of the Customer to order any Services or Goods on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies the Seller in writing that said person is no longer the Customer's duly authorised representative).

3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.

3.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Seller's profit margin) in providing any Goods, Services, or variations requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

### 4. CHANGE IN CONTROL

4.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice).

4.2 The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.

### 5. PRICE AND PAYMENT

5.1 At the Seller's sole discretion, the Price shall be either: (a) as indicated on any invoice provided by the Seller to the Customer, or (b) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

5.2 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods beyond the Seller's control (including, but not limited to any variation as a result of increases to the Seller in the cost of materials and labour) will be charged for on the basis of the Seller's quotation and will be detailed in writing, and shown as variations on the Seller's invoice. The Customer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

5.3 At the Seller's sole discretion, a non-refundable deposit may be required.

5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be: (a) on delivery of the Goods; (b) by way of instalments/progress payments in accordance with the Seller's payment schedule; (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices; (d) the date specified on any invoice or other form as being the date for payment; or (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller.

5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Seller.

5.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 6. DELIVERY OF GOODS

6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

6.2 At the Seller's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

6.3 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.4 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that: (a) such discrepancy in quantity shall not exceed five percent (5%), and (b) the Price shall be adjusted pro rata to the discrepancy.

6.5 Any time specified by the Seller for delivery of the Goods is an estimate only. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. The Seller will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods as arranged then Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

### 7. ACCESS

7.1 Antiquated rules are removed. The Customer shall ensure that the Seller has clear and free access to effect delivery of the Goods. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Seller.

### 8. RISK

8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

8.3 If the Customer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

### 9. ACCURACY OF CUSTOMER'S PLANS AND MEASUREMENTS

9.1 In the event the Customer gives information relating to the Goods (including plans, specifications, measurements, quantities and other information provided by the Customer): (a) it is the Customer's responsibility to verify the accuracy of the information before the Customer or the Seller places an order based on the information. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause. (b) The Seller shall be entitled to rely on the accuracy of such information. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting therefrom.

### 10. DIMENSIONS, PLANS AND SPECIFICATIONS

10.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods, unless the Seller and the Customer agree otherwise in writing.

### 11. RETENTION OF TITLE

11.1 The Seller and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid the Seller all amounts owing to the Seller and (b) the Customer has met all of its other obligations to the Seller.

11.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

11.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 11.1: (a) the Customer is only a bailee of the Goods and must return the Goods to the Seller on request; (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; (c) the Customer must not sell, dispose or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand; (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs; (e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods; (f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred; (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller; (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 12. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

12.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.

12.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in Goods and/or collateral (account) being a monetary obligation of the Customer to the Seller for Services—that have previously been supplied and that will be supplied in the future by the Seller to the Customer.

12.3 The Customer undertakes to: (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to: (i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register; (ii) register any other document required to be registered by the PPSA or (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii); (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby; (c) not register a financing charge statement in respect of a security interest without the prior written consent of the Seller; (d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller; (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

12.4 The Seller and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

12.5 Unless otherwise agreed to in writing by the Seller the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

12.6 The Customer must unconditionally ratify any actions taken by the Seller under clauses 12.3 to 12.5.

12.7 Subject to any express provisions to the contrary (including those contained in this clause 12) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 13. SECURITY AND CHARGE

13.1 In consideration of the Seller agreeing to supply the Goods the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to the payment of any money).

13.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.

13.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to signing any document on the Customer's behalf.

### 14. DEFECTS, WARRANTIES AND RETURNS (CCA)

14.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Seller in writing of any category of defect, damage, shortage or failure. The Customer must notify any other alleged defect as soon as reasonably possible. The Customer must allow the Seller to inspect.

14.2 Certain statutory implied guarantees and warranties may be implied into these terms and conditions (Non-Excluded Guarantees). The Seller acknowledges that nothing purports to modify or exclude them.

14.3 Except as expressly set out, the Seller makes no warranties or other representations including the quality or suitability of the Goods. Liability is limited to the fullest extent permitted by law.

14.4 If the Customer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2. If the Seller is unable to replace the Goods, they may refund the money.

14.5 If the Customer is not a consumer, liability for defect is limited to the value of any express warranty card or any warranty to which the Seller is entitled, or otherwise negated absolutely.

14.6 Returns will only be accepted provided that the Customer has complied with 14.1, the Seller has agreed the Goods are defective, and items are returned within a reasonable time at the Customer's cost in original condition.

14.7 The Seller is not liable for defect caused by failure to properly maintain/store Goods, unintended usage, continuous use after defect is apparent, or failing to follow guidelines, fair wear and tear or acts of God.

14.8 Non-defective Goods may be accepted for return at the Seller's discretion subject to a handling fee of up to 20% plus freight costs. The Seller is not liable for suction capacity discrepancies if based on an unducted fan against advice.

### 15. INTELLECTUAL PROPERTY

15.1 Copyright in any designs, drawings and documents developed by the Seller remains the property of the Seller and may not be used without written approval. The Customer warrants that instructions will not cause any patent/trademark infringement. The Seller may use created work for marketing or competition at no cost.

### 16. DEFAULT AND CONSEQUENCES OF DEFAULT

16.1 Interest on overdue invoices shall accrue daily at a rate of 2.5% per calendar month and compound monthly. The Customer shall indemnify the Seller from all collection costs, administration fees, legal fees, contract default fees, and dishonour fees.

16.2 If a transaction is subsequently reversed, the Customer is liable for the reversed amount plus costs. The Seller may suspend or cancel outstanding orders if any payment is overdue, credit limits are exceeded, or the Customer faces insolvency, receivership or bankruptcy.

### 17. CANCELLATION & PRIVACY (SUMMARY)

17.1 The Seller may cancel any contract or delivery before delivery by giving notice and returning any money paid. The Customer is liable for direct or indirect loss resulting from their cancellation. Production items cannot be cancelled.

17.2 The Customer agrees for the Seller to obtain CRB credit reports, exchange info with other credit providers to assess creditworthiness, collect overdue amounts, and register defaults over 60 days or \$150.

17.3 Notices are deemed served when handed over, left at, or sent via registered post, fax or email to the last known address.

17.4 Disputes are subject to the Building and Construction Industry Security of Payment Act 2002 and governed by the laws of Victoria.