

CREDIT APPLICATION AND SUPPLY AGREEMENT

TIMBERKING GROUP PTY LTD

Registered Company Partnership Sole Trader

Company Name _____

Trading As _____

ACN No. _____ ABN No. _____ Years Established _____

Email Address _____ No. Employees _____

Address _____

Postal Address _____

Telephone _____ Fax _____ Mobile _____

D.O.B _____ License Number _____

A/C Pay Contact _____ Title _____

Proprietor/ Partners or Directors Name & Addresses

1. _____

2. _____

Date & Place of Registration _____ Years in Above Business _____

Trade Credit References (MUST BE SUPPLIED)

Supplier Name _____ Average Monthly Purchase \$ _____

Phone _____ Fax _____

Supplier Name _____ Average Monthly Purchase \$ _____

Phone _____ Fax _____

Supplier Name _____ Average Monthly Purchase \$ _____

Phone _____ Fax _____

TERMS AND CONDITIONS OF SALE

ANY ORDER PLACED BY THE CUSTOMER IS DEEMED TO BE AN ORDER INCORPORATING THESE TERMS AND CONDITIONS DESPITE ANY INCONSISTENCIES WHICH MAY BE INTRODUCED IN THE CUSTOMERS ORDER ON ACCEPTANCE UNLESS EXPRESSLY AGREED TO BY THE COMPANY IN WRITING.

1. GENERAL

In these terms and conditions (unless the context requires otherwise)

- (a) "Carrier" means a Carrier nominated to take delivery of the goods pursuant to Clause 5.2
- (b) "Company" means the company referred to above
- (c) "Consignment Address" means the delivery address of the Customer stated in an Order or otherwise agreed by the Company
- (d) "Customer" means any person who enters into a contract with the Company for the purchase of goods and includes:
- (i) Any successors or permitted assigns, and
 - (ii) If the Customer consists of more than one person both of them jointly and each of them severally.
- (e) "Goods" means any goods supplied or to be supplied by the Company as specified in an Order accepted by the Company.
- (f) "Order" means an order placed with the Company for the supply of Goods
- (g) "Related Body Corporate" has the same meaning as in the Corporations law.

2. CONTRACT FOR SALE OF GOODS

2.1 Each order constitutes an offer by the Customer to acquire the Goods subject to these terms and conditions and to the exclusion of any other terms and conditions asserted by the Customer. A contract will be made between the Company and the Customer for the supply of Goods only when an Order is accepted by the Company in writing, orally or by conduct.

2.2 The Company may at any time refuse to extend credit to the Customer and need not give any reason for its refusal.

2.3 These terms and conditions supersede all previous terms and conditions and may only be varied if authorized in writing on behalf of the Company.

3. PAYMENT

3.1 The price in relation to Goods (including GST) must be payable within 30 days from end of month from delivery of the goods to the Customer unless other terms of payment are expressly stated in writing and signed by the Company.

3.2 Should the Customer fail to pay the Company the price within 30 days from end of month of delivery of goods, then the Company is entitled to charge an account keeping fee and interest at the rate of 4% higher than the rate for the time being fixed under Section 2 of the Penalty Rates Act 1983 calculated from the due date to the date the Company receives payment.

3.3 If the Customer defaults in payment to the Company, the Customer will be responsible to pay all debt collection expenses including commissions and/or legal costs that are charged by any party to recover any money due.

3.4 If any of the matters referred to in Clause 6.2.1, 6.2.2 and/or 6.2.3 occur, then all moneys which the Customer owes the Company (including amounts which would not otherwise be payable until a later date) become immediately due and payable by the Customer.

3.5 If there are any monies owing by the Customer, either pursuant to this agreement or otherwise, any monies which the Customer receives following the due date of payment will be held on trust for the Company.

4. PRICES

4.1 All prices must be as quoted or in accordance with the Companies current price at the time of Order whichever will be the higher. Verbal quotations are subject to written confirmation.

4.2 Unless expressly stated otherwise, all prices quoted or specified are expressed to be exclusive of GST. In addition to the price, the Customer must pay the full amount of GST on the price of the Goods at the same time and in the same manner as the price of the Goods.

5. DELIVERY AND RISK

5.1 Risk of loss of, or damage to, the Goods will pass to the Customer when the Goods are collected by the Customer or are delivered to a Carrier. The Customer appoints the Company as agent to deliver or procure the delivery of Goods to the Consignment Address and in such case a separate contract is deemed to be created in relation to such delivery.

5.2 Unless otherwise agreed between the Company and the Customer, the Company may in its absolute discretion select a Carrier to deliver the Goods to the Customer.

5.3 Without limiting any other clause, the Goods remain at the risk of the Customer and not the Company and the Company will not be under any liability to the Customer or any other person (other than liability which may not be lawfully excluded) for loss or damage (including direct or consequential loss or damage such as, without limitation, loss of profit or anticipated profit, loss of use, damage to goodwill and loss due to delay) however caused (and without limitation whether by negligence, breach of stature, breach of contract, wilful act or otherwise) which may be suffered or incurred or which may arise from or in connection with directly or indirectly the supply of the Goods and/or any failure by the Company to comply with or breach by the Company of any of its obligations under any Order and whether or not its occurrence was contemplated or should reasonably have been foreseen by the Company and/or the Customer, or it constitutes a fundamental breach by the Company of the contract or a breach by the Company of a fundamental term of it.

5.4 The Customer will not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery or despatch. The Company reserves the right to accept any Order in whole or in part, or to decline any Order. The Company reserves the right to deliver by instalments, and each instalment will be deemed to be sold under a separate contract. Failure to deliver any instalment will not entitle the Customer to repudiate the contract.

5.5 The delivery times made known to the Customer are estimates only and the Company will not be liable for late delivery or non-delivery and under no circumstances will the Company be liable for any loss, damage or delay occasioned to the Customer or its customers arising from late delivery or non-delivery of Goods.

5.6 The Company will be conclusively presumed to have delivered the Goods in accordance with this agreement if the Goods are delivered to the Consignment Address, whether or not the Company obtains a receipt or signed delivery docket for the Goods from any person.

5.7 If delivery cannot be effected, the Company may store the Goods or redeliver the Goods to the Customer and the Customer must pay or indemnify the Company for all costs and expenses incurred.

5.8 The Company will not be responsible for any loss or damage to Goods in transit. The Company will render the Customer such assistance as may be necessary to press claims on Carriers provided the Customer will have notified the Company and the Carrier in writing immediately loss or damage is discovered on receipt of Goods and must lodge a claim on the Carrier within three days of the date of receipt of the Goods.

5.9 In the event of the Company agreeing to the return of the Goods by the Customer, the Goods will be at the Customer's risk until such time as the Goods reach the Companies place of business. The expense of return will be borne by the Customer.

6. RIGHTS IN RELATION TO GOODS

6.1 The property in the Goods will not pass to the Customer until final payment in full on any account whatsoever has been received by the Company and the Customer's cheque has been honoured whether or not that account relates to the sale of Goods. If the Customer fails to honour any of these terms and conditions of sale, the Company, without notice, will have the right to take possession of the Goods which are the subject of this reservation of title, or trace the proceeds of sale thereof, as the case may be, and to recover the full amount owing to the Company together with interest and costs, if any. The Customer will hold the Goods supplied by the Company in such a way as to identify them as being goods in which property has not passed to the Customer pending payment in full and must notify the Company of the Customer's intention to sell its business or undertakings to any party, where that sale may include goods in which property has not yet passed to the Customer.

6.2 Until payment of all debts owing to the Company (some of which may not necessarily be due for payment), the Customer agrees that the Company may without prejudice to any of its other rights and without prior notice, re-take and resume possession of any of the Goods which remain its property and, by its servants and agents, enter upon the Customer's premises, or to any other place where the Goods may be, without liability for trespass or any resulting damage, for that purpose if:

- 6.2.1 there is any breach of any contract between the Company and the Customer; or
- 6.2.2 the Customer takes any action that could result in the Customer being made bankrupt or an arrangement under Part X of the Bankruptcy Act 1966 is invoked against the Customer or the Customer is the subject of an application to wind up or is placed under official management, or a receiver, or a receiver and manager, or a voluntary administrator is appointed in respect of the Customer, its undertakings or property or any part thereof, or an encumbrancer, by itself or by an agent, takes possession of the Customer's undertaking or property or any part thereof; or
- 6.2.3 the Customer parts with possession of the Goods or any of them otherwise than by way of sale in the ordinary course of its business.

6.3 The Company may recover the price of the Goods by action, and may apply to wind up or bankrupt the Customer, if the Goods are not paid for within the Companies usual credit terms, notwithstanding that property in the Goods has not yet passed to the Customer.

6.4 These provisions apply notwithstanding any arrangement under which the Company provides credit to the Customer. To the extent there is any inconsistency, these provisions prevail.

7. WARRANTY/LIABILITY

7.1 The Company agrees and acknowledges that the Customer is entitled to all rights and remedies in respect of the Goods which the Customer has under the Trade Practices Act and similar State and Territory laws and which cannot be lawfully excluded, restricted or modified. These terms and conditions do not purport to, and do not have the effect of, excluding, restricting or modifying the exercise of any such right or remedy.

7.2 The Customer does not have any rights or remedies in respect of the Goods other than the rights and remedies expressly provided for in these terms and conditions or agreed and acknowledged by the Company in these terms and conditions.

7.3 Subject always to Clauses 7.1 and 7.4:

- (a) all conditions, warranties and guarantees other than those expressly provided for in these terms and conditions or agreed and acknowledged by the Company in these terms and conditions are excluded to the fullest extent of the law; and
- (b) the Company will not be liable to the Customer for any loss caused (in whole or in part) by or arising out of any use of the Goods or any defect in the Goods or any failure, malfunction, breakdown or deterioration of the Goods.

7.4 Where the Customer is a consumer under the Trade Practices Act or similar State and Territory laws and Goods supplied or services provided to the Customer are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then unless the Customer establishes that reliance on this provision would not be fair and reasonable, the liability for a breach of a condition or warranty implied into these terms and conditions by the Trade Practices Act or by any similar State and Territory laws (other than a condition implied by section 69 of the Trade Practices Act or by the equivalent provisions of any similar State or Territory laws) is limited to any one of the following as determined by the Company:

(a) in the case of Goods supplied:

- (1) the replacement of the Goods or the supply of equivalent Goods;
- (2) the repair of the Goods;
- (3) the payment of the cost or replacement of the Goods or of acquiring equivalent Goods; or
- (4) for the payment of the cost of having the Goods repaired.

(b) in the case of services provided:

- (1) the supply of the services again; or
- (2) the payment of the cost of having the services supplied again.

7.5 The Customer acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in the Order or these conditions whether as to the fitness of the Goods for any particular purpose or any other matter.

8. CANCELLATION

No Order may be cancelled except with the Companies consent in writing and on terms which will indemnify the Company against all losses.

9. TERMINATION

9.1 The Company will be entitled to terminate any Order with the Customer or revoke any credit terms granted if the Customer fails to punctually pay any money due to the Company, has any security enforced against it, commits an act of bankruptcy or, being a company, passes a resolution for winding up (except for the purpose of reconstruction) or a court makes an order winding up the company or if the Company notifies the Customer that it is of the view that the Customer or any Related Body Corporate of the Customer is in financial difficulties.

9.2 Upon the occurrence of a termination event referred to in Clause 9.1, the Company reserves the right to cancel an Order with the Customer (to the extent that the Order remains unperformed) in whole or in part without any liability attaching to the Company, stop any Goods in transit and dispose of the Goods produced for the Customer to a third party and all moneys owing to the Company in respect of any Order will be immediately payable.

9.3 Termination is without prejudice to any right or obligation which may have accrued prior to termination.

10. CLAIMS AND DISPUTES

Any claims as to quality or quantity of Goods supplied must be made within 14 days of delivery of the Goods to the Customer. In the event of a dispute between the Customer and the Company relating to either the quality or delivery of the Goods the Customer agrees to pay the Company all such amounts owing to the Company by the Customer until such time as the dispute is resolved.

11. FORCE MAJEURE

11.1 The Company will not be liable for any loss incurred as a result of delay or failure to meet an accepted Order or to observe any of these terms and conditions (other than an obligation to pay money) due to an event of force majeure, being any cause or circumstance beyond the Company's control, including but not limited to any failure or delay in performance caused by air strikes, lockouts, labour disputes, fires, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-government authorities or embargoes.

11.2 During the continuance of an event of force majeure affecting the Company, its obligations hereunder will be suspended and will resume as soon as possible after the cause or circumstance has ceased to have effect

12. SEVERABILITY

If any of these terms and conditions infringes any law in Australia it must be read down so that it does not infringe that law, otherwise it will be deemed void and severable.

13. GOVERNING LAW

These terms and conditions are governed by and must be construed in accordance with the laws of Victoria and the Customer hereby agrees to submit to the exclusive jurisdiction of the Courts of Victoria and any court of appeal therefrom.

ACCEPTANCE BY CUSTOMER OF TERMS AND CONDITIONS OF PROVISION OF CREDIT

(This page must be completed and signed by all applicants, partners and directors.)

I/We agree that in consideration of the Company providing goods on credit, we agree to be bound by the Terms and Conditions of Sale attached.

I/We confirm and agree as follows:

- (a) I/We have read and understand the Terms and Conditions of Sale and agree that, subject to the Company's acceptance of the application, those conditions will apply and will prevail over all other terms and conditions of the Customer's order to the extent of any inconsistency. I/We agree that the Company reserves the right to accept or reject this application in its absolute discretion;
- (b) the information provided in this application is true and correct in every particular and I/we acknowledge that the Company will be relying upon the information to determine whether or not to grant this application for credit;
- (c) I/We authorize the Company to make enquiries including obtaining a credit report concerning my/our credit worthiness or as to the accuracy of the information provided in this application and consent to any credit report concerning me/us being made available to the Company for the purpose of assessing this application. I/We authorize the Company to exchange or disclose any information concerning my/our credit worthiness or this application from or to any person or source and acknowledge that all or some of the information may be disclosed to a credit reporting agency within the meaning of the Privacy Act 1988 as amended;
- (d) I/We acknowledge that if the account is overdue, the Company at its discretion, reserves the right to refer the account to a Mercantile Agency for collection and I/we agree to be responsible to meet all reasonable costs and commissions incurred in employing the said mercantile agent to collect the overdue account;
- (e) Any signatory for a proprietary company applicant shall be personally liable for the due performance of the applicants obligations as if the signatory was the applicant;
- (f) the Company may make additional periodic checks that it sees fit to continue its assessment;
- (g) the Company's terms of payment are strictly nett 30 days;
- (h) the terms and conditions provide that interest may be charged by the Company on amounts which exceed the 30 day credit limit;
- (i) I/We understand and accept the consent we have given under the Privacy Act 1988.

SIGNATURE:

SIGNATURE:

PRINT NAME:

PRINT NAME:

DATE:

DATE:

GUARANTEE

WE/I

OF

AND

OF

BEING DIRECTORS OF THE CUSTOMER IN CONSIDERATION OF THE COMPANY GRANTING CREDIT TO THE CUSTOMER HEREBY JOINTLY AND SEVERALLY:

- (i) GUARANTEE THE COMPANY PAYMENT OF ALL DEBTS TO BE PAID, BY THE CUSTOMER AND AGREE THAT THIS GUARANTEE WILL BE A CONTINUING GUARANTEE AND WILL NOT IN ANY WAY BE WAIVED OR AFFECTED BY ANY TIME OR INDULGENCE GRANTED BY THE COMPANY TO THE CUSTOMER, AND WILL IF CALLED UPON BY THE COMPANY SIGN A GUARANTEE IN MORE COMPREHENSIVE FORM AND OBTAIN INDEPENDENT ADVICE, AS REASONABLY REQUIRED BY THE COMPANY.
- (ii) CHARGE ANY PROPERTY OWNED BY US WHETHER ALONE OR JOINTLY AS A TENANT IN COMMON OR AS A JOINT TENANT IN FAVOUR OF THE COMPANY TO SECURE ANY MONEYS OWING HEREUNDER WHETHER OR NOT THE COMPANY HAS TAKEN OR HAS THREATENED TO TAKE ANY ACTION AGAINST THE CUSTOMER OR AGAINST ANY GUARANTOR IN RESPECT THEREOF.
- (iii) ACKNOWLEDGE THAT THEY HAVE BEEN GIVEN THE OPPORTUNITY TO SEEK LEGAL ADVICE BEFORE SIGNING THE GUARANTEE.

DATED THIS

DAY OF

SIGNED

SIGNED

PRINT NAME

PRINT NAME

Thank you for applying for an account with Diamond Valley Mitre 10.

Please complete all pages and sign GUARANTEE (this is a guarantee that you will be responsible for all goods booked to your account.)

Signing the guarantee is in accordance with standard credit regulations and without it the credit application cannot be processed.

Diamond Valley Mitre 10 trades with confidence and use

(creditor)watch[®]

We regularly monitor & review customers credit history and identify adverse information.

Diamond Valley Mitre 10 is an independent, family-owned business who prides ourselves on fair trade. We look forward to increasing business together.

Thank you for your co-operation.