



## TERMS OF SALE

### 1 Definitions

1.1 In this Agreement:

- (1) terms defined in the Credit Application have the same meaning when used unless the context requires otherwise; and
- (2) the following terms shall have the following meaning unless the context requires otherwise:
  - (a) **Agreement** means the agreement between AKD and the Customer for the ongoing supply of Products as constituted by these Terms of Sale, the Credit Application, as completed by the Customer and any other conditions of credit as agreed between AKD and the Customer;
  - (b) **AKD** means AKD Timber Trading Pty Ltd ACN 623 057 429 and any subsidiary or associated entity;
  - (c) **Cleared Funds** means cash or a cleared cheque or bank deposit or credit card payment;
  - (d) **Credit Application** means the Customer's Application for Commercial Credit made by the Customer to AKD;
  - (e) **Customer** means the person named as the customer in the Credit Application;
  - (f) **Information** means information about the Customer, including information regarding the Customer's credit arrangement with AKD and other trade creditors and the Customer's credit worthiness, credit history and credit capacity;
  - (g) **Intellectual Property** means all rights resulting from intellectual activity and includes copyright, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and all rights and interests of a like nature, including but not limited to methods and techniques, together with any documentation relating to such rights and interests;
  - (h) **Products** means products ordered by the Customer in accordance with AKD's usual order process;
  - (i) **Products and Services** means Products and Services;
  - (j) **Trade references** means any referee listed in the Credit Application and any referee who may in future be submitted to AKD as a referee for the Customer;
  - (k) **Services** means services ordered by the Customer in accordance with AKD's usual order process.

### 2 Information Provided by Customer & Change of Circumstances

- 2.1 The Customer acknowledges that AKD has relied on the information provided by the Customer in the Credit Application.
- 2.2 The Customer warrants that the information provided by the Customer in the Credit Application is correct and is for use by AKD in determining the amount and conditions of credit to be extended to the Customer.

### 3 Credit Account

- 3.1 AKD may, at its sole discretion, offer the Customer a credit account subject to this Agreement and the Customer will provide such information as AKD may reasonably request to enable it to assess the Customer's Credit Application.

- 3.2 In the event that AKD agrees to offer the Customer a credit account, the terms and conditions upon which a credit account is opened, and Products and Services are purchased by the Customer will be as set out in this Agreement.
- 3.3 Without limiting clause 3.1 AKD may, at its sole discretion, impose a condition on the provision of a credit account that the Customer obtain for the benefit of AKD a bank and/or other guarantee:
- (1) guaranteeing the payment to AKD of all money due and owing to AKD by the Customer in accordance with this Agreement or otherwise; and
  - (2) guaranteeing the performance by the Customer of any and all of its obligations under this Agreement.
- 3.4 AKD may amend the terms on which the credit account is provided to the Customer at any time by giving not less than 30 days' notice to the Customer and the Customer may immediately pay the amount owing to AKD if the amended terms are not acceptable to the Customer.
- 3.5 Where AKD agrees to provide a credit account it will be subject to an approved credit limit which is advised to the Customer at the time AKD agrees to offer the Customer a credit account.
- 3.6 The Customer must ensure the account trades within the Customer's approved credit limit and any amount in excess of the approved credit limit shall be repayable immediately by the Customer.
- 3.7 Where the Customer obtains authority from AKD allowing a third party to conduct transactions upon the Customer's account, such authority can only be cancelled by notice in writing from the Customer. The Customer acknowledges that third party authority to operate a credit account is given solely for the convenience of the Customer and under no circumstance will AKD be liable for any unauthorised transaction on the credit account by a third party and the Customer will remain liable to AKD for any Products and Services purchased by the third party on the Customer's credit account.

#### **4 Credit reporting and the Privacy Act**

- 4.1 Each party must comply with the *Privacy Act 1988* (Cth) (**Privacy Act**) in respect of any personal information, as that term is defined in the Privacy Act (**Personal Information**), that is collected, used, held or disclosed by that party under or in connection with this Agreement
- 4.2 By signing this Agreement, the Customer acknowledges that it has been made aware of the matters set out in AKD's Privacy Collection Notice as published on AKD's website at [www.akd.com.au/customer.php](http://www.akd.com.au/customer.php) (**Collection Notice**).
- 4.3 Without limiting clause 4.1, the Customer:
- (1) represents and warrants to AKD that that the Customer has made all necessary disclosures (including at the time of collection of any Personal Information) and obtained all necessary consents or permissions in respect of any Personal Information disclosed to AKD for the purpose of AKD performing this Agreement; and
  - (2) must give to, or otherwise make available to, each person whose Personal Information the Customer provides to AKD a copy of AKD's Collection Notice relating to AKD's collection of that person's Personal Information.
- 4.4 If AKD offers the Customer a credit account, then in addition to the consents and authorisations given in the Credit Application:
- (1) to assist AKD in determining whether to establish or continue the Customer's credit account with AKD, the Customer authorises AKD to obtain Information from Trade references; and
  - (2) this Agreement constitutes authority by the Customer to the Trade references to release the Information to AKD and a copy of this Agreement may be used by AKD as proof of the Customer's consent to the use of the application for this purpose.

## **5 Quotations and Orders**

- 5.1 A quotation given by AKD, AKD's employees, contractors or agents:
- (1) is an estimate only, unless expressed to be a fixed quotation;
  - (2) is not transferable;
  - (3) automatically expires on the later of the expiry date set out in the quotation and 10 days after its issue date; and
  - (4) may be withdrawn or amended by notice from AKD to the Customer.
- 5.2 An order submitted by the Customer is not a binding contract until accepted by AKD.

## **6 Cancellation**

- 6.1 If the Customer varies, withdraws or cancels an order, the Customer will, upon demand, indemnify AKD against any reasonable out of pocket expenses AKD incurs as a result of the variation, withdrawal or cancellation.
- 6.2 AKD may, in AKD's complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products and Services to the Customer.
- 6.3 Without limiting clause 6.2 above, if an Event of Default occurs, AKD may, without prejudice to AKD's other rights, call up monies owed to AKD by the Customer, retain all monies paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Products and Services for which payment remains outstanding.

## **7 Price**

- 7.1 The price payable for the Products and Services is that by AKD.
- 7.2 Prices may be specified as a fixed amount or calculated by a specified rate.
- 7.3 Where prices are specified as a fixed amount, AKD may charge for part provision or completion of Products and Services at the specified rate if the Customer is in default or purports to terminate the engagement.
- 7.4 Where an hourly rate applies for the provision of Services, the Customer will be charged for the actual time spent by AKD in providing the Services.
- 7.5 Prices may be increased by notice to the Customer by an amount equal to any increase in:
- (1) taxes, duties and excises; or
  - (2) any other costs incurred by AKD in connection with the provision of Products or Services that are beyond the control of AKD.
- 7.6 If any price increase under clause 7.5 is not agreed to by the Customer, the Customer must notify AKD that it does not agree to the increased prices and must repay all amounts owing to AKD in connection with the provision or completion of Products and Services within [7] days of giving that notice.
- 7.7 Prices are exclusive of GST and any other taxes, duties or excises, and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the A New Tax System (Goods and Products and Services) Act 1999 (Cth).

## **8 Payment terms**

- 8.1 The Customer will not order Products and Services unless the Customer has the capacity to pay the purchase price of those Products and Services.
- 8.2 AKD may, in its sole discretion, from time to time, provide the Customer with a discount where the Customer pays for the Products prior to the due date of payment.
- 8.3 Any discount under clause 8.2 will be by way of a refund of part of the payment made by the Customer.
- 8.4 Unless otherwise agreed upon in writing by the Customer and AKD, a set-off given by AKD in relation to one purchase of Products and Services by the Customer imposes no obligation upon AKD to give a discount in relation to any further purchases of Products and Services by the Customer.
- 8.5 Without limiting any other right or entitlement of AKD under this Agreement, where a payment is overdue, AKD may charge interest on amounts not paid within the credit period specified by AKD at a rate equivalent to [2]% more than the business overdraft commercial interest rate of AKD's principal bankers per annum from the invoice date until the repayment of the debt.

## **9 Property**

- 9.1 Notwithstanding anything to the contrary express or implied, title and ownership in the Products shall remain with AKD and shall not pass to the Customer until AKD has received payment in full in Cleared Funds for the Products and the Customer has discharged its obligations under this Agreement.
- 9.2 The Customer agrees that until title and ownership in the Products has passed to it, the Customer shall not:
- (1) make any additions or alterations to the Products without the written consent of AKD;
  - (2) remove, obscure or deface any identifying mark, label or device on the Products or any part thereof;
  - (3) dispose of, charge or encumber the Products; or
  - (4) assign the Customer's rights to the Products, without AKD's prior consent and without immediately accounting to AKD for any amounts owing by the Customer to AKD in respect of the Products.
- 9.3 Nothing in this Agreement will prevent the Customer from selling or on-hiring the Products to any third party in the ordinary course of business provided that the proceeds of any such sale shall be held in a separate account on trust by the Customer for AKD until AKD has received payment in full for the Products and Services and all monies owing under this Agreement.
- 9.4 Without limiting any other rights or remedies of AKD to recover the Products or register its interest in the Products, whether pursuant to this Agreement or any applicable law, should the Customer fail to comply with clause 9.2, AKD shall be entitled to enter upon the Customer's premises on reasonable notice and repossess the Products and the Customer will indemnify AKD against any consequences of taking such action.
- 9.5 The Customer must procure access rights for AKD where the Products are located at premises not owned by the Customer.

## **10 Delivery & Freight**

- 10.1 Delivery of the Products and Services will be at the Customer's premises or as otherwise specified in the quotation or order form.

- 10.2 Any time stated for delivery of the Products or completion of the Services is an estimate only and AKD:
- (1) may extend the delivery or completion date by notice to the Customer; and
  - (2) is not liable in any way for any delay or failure to deliver including for any direct or consequential loss or damage.
- 10.3 If the Customer fails or refuses to accept the delivery of completed Products and Services then:
- (1) the Products and Services will be deemed to have been delivered and completed when AKD was willing to deliver and complete; and
  - (2) AKD may charge the Customer for any additional reasonable expenses incurred as a result of the Customer's failure to accept delivery.
- 10.4 The Customer will pay the freight costs of Products returned by the Customer.
- 10.5 Where Products are to be supplied by way of sale property in the Products shall not pass until the Customer has paid all money owing to AKD in full. Risk in the Products passes to the Customer at the time of delivery.

## **11 Default**

- 11.1 The Customer will be in default of this Agreement if an Event of Default occurs.
- 11.2 Upon the occurrence of an Event of Default:
- (1) AKD may at its option and without prejudice to any other rights it has at law or in equity, immediately suspend or terminate this Agreement without further notice, and payment for the Products and Services provided up to the date of such suspension or termination will immediately become payable; and
  - (2) the Customer will be liable for all costs incurred by AKD (including legal costs on an indemnity client basis) and mercantile agents fees incurred by AKD in recovering any amount outstanding by the Customer or recovery of the Products.

## **12 Warranties & Limitation of Liability**

- 12.1 AKD warrants that the Products and Services comply with the warranties included in any warranty document provided with the Products and Services and any guarantees that cannot be excluded under any applicable law.
- 12.2 The Customer must notify AKD in writing within 5 business days of delivery of the Products of any claim in relation to damage to the Products which is evidenced by damage to the external packaging of the Products, failing which the Products will be deemed to have been delivered in product order and condition.
- 12.3 To the full extent permitted by law, AKD accepts no liability for:
- (1) any claim (of any kind or nature) by the Customer or any other person, including (without limitation) any claims relating to or arising from all terms, conditions, guarantees and warranties (expressed or implied), and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise;
  - (2) any representations, warranties, conditions or agreements made by any agent or representative which are not expressly confirmed by AKD in writing;
  - (3) any costs, loss or damage suffered by the Customer as a result of the provision of the Products and Services; or
  - (4) any consequential loss or damage, loss of profits or economic loss, which may in any way arise out of Products and Services supplied.

12.4 To the full extent permitted by law, AKD's liability for defective Products and Services and loss caused by defective Products and Services is limited, at AKD's option, to either:

- (1) replacing or substituting the Products and Services; or
- (2) refunding the price of the Products and Services.

### **13 Notices**

13.1 Any correspondence or written communication (**Notice**) must be given in English and sent by pre-paid ordinary post, facsimile transmission or email delivery.

13.2 A Notice sent by facsimile is deemed to be received by the recipient at the time and date specified on the sender's confirmation slip.

13.3 A Notice sent by email is deemed to be received by the recipient at the time when a delivery confirmation report is received by the sender that records the time that the email was delivered to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee).

### **14 Information**

14.1 The Customer consents to AKD collecting, holding, using and disclosing the Customer's details, personal, financial and trading information to any credit providers stipulated in the Credit Account application, any credit reporting agency or any financial institution in accordance with the Privacy Act 1988 (Cth) for the following purposes:

- (1) administering (directly or indirectly) AKD's contracts and enforcing AKD's rights under this Terms of Sale;
- (2) ascertaining (from time to time) the Customer's creditworthiness and obtaining (from time to time) credit reports, character references or credit statements; and
- (3) enabling AKD to notify any credit agency of any application for credit or default on any obligation of the Customer to AKD and enabling AKD to provide such information to any credit agency so such credit agency can maintain effective Credit Accounting records; and
- (4) enabling AKD to correspond with the Customer for any purpose.

14.2 The Customer acknowledges that each of the subclauses in clause 14.1 remain in force until the Customer's credit account is closed the supply of Products and Services ceases and all the amounts owing to AKD have been paid in full by the Customer.

14.3 The Customer will provide written notice to AKD of any change in the Customer's structure or management, including any change of director, shareholder, partnership, trusteeship, or address within 7 days of the change.

14.4 The Customer will provide AKD with such information reasonably requested by AKD within 7 days of any request.

### **15 Miscellaneous**

15.1 These Terms of Sale are governed by and construed in accordance with the laws of Victoria and the parties consent to the jurisdiction of the courts of Victoria.