



DMB EQUIPMENT PTY LTD

ACN 689 358 209

(TRADING AS DMB EQUIPMENT SOLUTIONS)

STANDARD TERMS AND CONDITIONS

Payment terms

1. The terms of payment are strictly thirty (30) days from the end of the month of purchase and payment is due and payable on that date. DMB Equipment Pty Ltd (Supplier) and its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Supplier)) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.

Capital Equipment Sales are always COD unless authorised in writing by the Finance Officer, CEO or Incumbent Officer or each occasion. A Deposit or Progress Payments may also form a part of the arrangement, enforced by the Supplier.

Jurisdiction

2. The Applicant acknowledges and agrees that this agreement shall be governed by the laws of Western Australia, and the laws of the Commonwealth of Australia which are in force in Western Australia.
3. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
4. 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.

Security/charges

5. The Applicant charges in favour of the Supplier all of its estate and interest in any real and/or personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
6. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant'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 Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.

Purpose of credit

7. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.
8. The credit facilities provided by the Supplier are not transferable by the Applicant without the prior written consent of the Supplier. The Supplier may assign this agreement to another party without prior notice to the Applicant. The Supplier will give the Applicant notice when the assignment has been effected.

Formation of contract

9. Quotations made by the Supplier shall 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. Only written acceptance by the Supplier of the Applicant's offer shall complete a contract.
10. Placement of an order, either verbally or in writing, shall imply acceptance of the Supplier's offer and of these terms and conditions.

Quotations

11. Any quotation made by the Supplier shall not be construed or operate as an offer or obligation to sell but shall be an invitation to treat only and the Supplier reserves the right to accept or reject in its absolute discretion any orders which may be received by the Supplier.

Validity

12. Unless otherwise stated, quotations are valid for a maximum period of thirty (30) days from date of quotation and notwithstanding the Applicant's purported acceptance after such period has elapsed are subject to confirmation by the Supplier and the Supplier reserves the right to alter or withdraw any quotation.

Prices

13. Unless otherwise stated, prices are net and F.O.T. at the Supplier's warehouse or such other point of delivery as provided for in paragraph #18.



Exchange Rates

14. The Supplier's prices for imported goods are based on the exchange rate prevailing at the date of the Supplier's quotation or if there be no quotation, at the date of acceptance of the Applicant's order (the initial exchange rate). Should there be any variation for any reason in the exchange rate subsequent to the date of quotation or acceptance (as the case may be) then the price for the goods shall be adjusted in accordance with the increase or decrease between the initial exchange rate and the exchange rate existing at the date of payment for the goods by the Supplier.

Duty

15. The Supplier's prices for imported goods are based on the rate of duty for the goods prevailing at the date of the Supplier's quotation or if there be no quotation, at the date of acceptance of the Applicant's order (the initial duty rate). Should there be any variation for any reason in the classification of the goods or in the method of assessment or rate of the duty subsequent to the date of quotation or acceptance (as the case may be) then the price for the goods shall be adjusted in accordance with the increase or decrease between the initial duty rate and the applicable rate existing at the date of payment of duty for the goods by the Supplier.

Delivery Charges

16. Metropolitan - A \$30.00 charge for orders under \$5,000.00 will apply, unless otherwise stated.

Country - All shipments outside of the metropolitan area are to the account of the Applicant, unless otherwise agreed.

In all cases, if special courier delivery is required, the charge will be to the account of the Applicant, unless stated otherwise.

Delivery

17. Point of Delivery - The Applicant shall take delivery of the goods at the Supplier's nominated warehouse as notified to the Applicant or, at the Supplier's sole option, at the warehouse in which the goods were stored at the time of the Supplier's acceptance of the purchase order. Alternatively, the Applicant shall take delivery at such other point nominated by the Supplier and notified to the Applicant. The risk in the goods shall pass to the Applicant on delivery to the Applicant or collection of the goods by the Applicant's agent or courier as the case may be.
18. Partial Deliveries - The Supplier reserves the right to make partial deliveries of any goods subject to any contracts between the Supplier and the Applicant and to invoice such deliveries separately. Partial delivery shall not entitle the Applicant to cancel its order or to claim compensation from the Supplier and the Applicant agrees to indemnify the Supplier against any claims by third parties consequent on partial deliveries.
19. Storage - If for any reason the Applicant fails to take delivery of the goods within seven (7) days from the date on which the Applicant is notified that the goods are ready for delivery, and notwithstanding any other provision hereof, (the risk in the goods shall forthwith pass to the Applicant and the Supplier shall be entitled to payment for the goods in accordance with the provisions hereof. In such circumstances the Supplier shall in its entire discretion be entitled to arrange for storage of the goods at its warehouse or such other place as the Supplier may decide in its sole discretion to be suitable and all costs of and risks incidental to such storage including insurance shall be for the account of the Applicant and payable on demand.
20. Loss or Damage in Transit - Where delivery takes place at a point other than the Supplier's nominated warehouse and only where the Supplier has agreed in writing to be responsible for carriage to the place of delivery the Supplier agrees to repair or at its sole option to replace free of charge any goods lost or damaged in transit to the place of delivery provided always that written notice of such loss or damage is given to the Supplier no later than 3 days after the date of delivery or within such other period of time as will enable the Supplier to reasonably comply with the carrier's conditions of carriage (if any) concerning loss or damage in transit (whichever period is the longer). In addition, it is agreed and declared that:
- (a) the Supplier is not a common carrier; and
 - (b) this condition limits the nature and extent of the liability of the Supplier to the Applicant or to any other person that provides the sole and exclusive remedy of the Applicant against the Supplier for or on account of such loss or damage.
21. Acceptance - The Applicant agrees to inspect the goods forthwith upon delivery and shall within 7 days from the date of such inspection given written notice to the Supplier of any matter or thing by reason of which the Applicant may allege that the goods are not in accordance with the contract. If the Applicant fails to give such notice then the goods shall be deemed to have been accepted by the Applicant in the state in which they have been received and the Applicant shall make payment for the goods in accordance with the provisions hereof.
22. Applicant's Property - Any property of the Applicant under the Supplier's custody or control shall be entirely at the Applicant's risk as regard loss or damage caused to the property or caused by such property.



23. Cancellation - No tender which has been accepted by the Applicant or Applicant's order which has been accepted by the Supplier may be cancelled except with the Supplier's consent in writing and on terms which will indemnify the Supplier against all losses.

Risk

24. Risk in the goods supplied shall pass to the Applicant immediately on delivery. The Applicant should insure the goods thereafter against any such risks as the Applicant thinks appropriate.

Returns

25. The Supplier shall not be under any obligation to accept goods returned by the Purchaser and in its sole discretion will do so only on terms to be agreed in writing in each individual case. Credits for standard stock items only will be considered in the Supplier's sole discretion if goods were sold to the Applicant within the last 12 months and are in original packaging, undamaged and saleable and will be subject to a 20% service charge. They must be accompanied by your "Request for Credit". Freight for returns is to be born by the Applicant and shall be payable on demand. Goods specially manufactured for the Applicant are normally non-returnable.

Warranty

26. In the event that a claim or demand is made by the Applicant against the Supplier with respect to the state, quality, condition, correspondence with description or fitness of the goods then the Supplier warrants that in respect of goods obtained from a supplier it shall notify its supplier of the making of such claim or demand and pass on to the Applicant the benefit of any condition, warranty or guarantee which is available to the Supplier and actually received by it as a result of such notification but no further guarantee is given by the Supplier whatsoever.
27. Apart from this warranty the only conditions, warranties, liabilities to compensate or indemnify, representations and statements which are binding on the Supplier with respect to the state, quality, condition, correspondence with description or fitness of the goods supplied by it are those express or implied and all representations, statements and obligations which would otherwise be binding upon the Supplier in this regard are hereby expressly excluded and negated.
28. The Supplier does not promise that facilities for repair of the goods or parts therefore will be available.
29. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
30. In relation to the supply of goods, the Supplier's liability is limited to:
- (a) replacing the goods or supplying similar goods;
 - (b) repairing the goods;
 - (c) providing the cost for replacing goods or for acquiring equivalent goods; and
 - (d) providing the cost for having the goods repaired
32. In relation to the supply of services, the Supplier's liability is limited to:
- (a) supplying the service again; or
 - (b) providing for the cost of having the services supplied again.
33. 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 indirect loss suffered by the Applicant.
34. Except to the extent provided for above the Supplier hereby excludes all liability (including liability in negligence) it may have to any person for any loss or damage consequential or otherwise howsoever suffered or incurred by any such person and without limiting the generality of the foregoing in particular any loss or damage caused by or resulting directly or indirectly from the goods or from any failure, breakdown, defect or deficiency of whatsoever nature and kind of or in the goods or any act, neglect or default whatsoever and howsoever arising on the part of the Supplier, its servants or agents, including late delivery or non delivery. The Applicant agrees to indemnify the Supplier against any claims by third parties arising out of any of the foregoing.
35. Freight costs associated with any repair or replacement option will be born by the Applicant unless otherwise arranged and shall be payable on demand.
36. In the event that any products supplied pursuant to this agreement are supplied to the Applicant as a "consumer" of goods or services within the meaning of that term in the *Competition and Consumer Act 2010* as amended and/or similar State legislation the Applicant will have the benefit of certain non excludable rights and remedies in respect of the products or services and nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, right or remedy which is conferred pursuant to the Competition and Consumer Act or similar legislation.



Information and Drawings

37. All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by the Supplier or otherwise or contained in catalogues, price lists and other advertising matter of the Supplier are approximate only and are intended to be by way of a general description of the goods and shall not form part of the contract unless certified by the Supplier in writing, in which case they shall be subject to recognised tolerances. Where specifications, drawings or other particulars are supplied by the Applicant, the Supplier's price is made on estimates of quantities required. Should there be any adjustments in quantities above or below the quantities estimated by the Supplier and set out in a quotation, then any such increase or decrease shall be adjusted on a unit rate basis according to the Supplier's unit prices then prevailing.

Packing

38. Unless stated in writing to the contrary the Supplier's prices include packing in accordance with the Supplier's standard practice. The cost of any additional or other form of packing requested by the Applicant or which may be deemed reasonably necessary by the Supplier on account of the nature of the goods shall be for the Applicant's account and shall constitute an additional charge to the Applicant payable on demand.

Minimum Order

39. The minimum order value placed by the Applicant to the Supplier shall be \$100.00

Retention of title

40. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods shall not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
41. Until payment in full has been made to the Supplier, the Applicant 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 shall not mix the goods with other similar goods.
42. The Applicant shall 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 Applicant shall sell as agent and bailee for the Supplier and the proceeds of sale of the goods shall be held by the Applicant on trust for the Supplier absolutely.
43. The Applicant's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 42 hereof unless and until the funds held on trust are remitted to the Supplier.
44. The Applicant 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 Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
45. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 44. 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 Applicant against the Supplier, its employees, servants or agents.
46. The Applicant 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 Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
47. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

Cancellation of terms of credit

48. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.
49. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

Indemnity

50. The Applicant 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

51. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
52. If the Applicant 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

53. If the Applicant is a corporation, the Applicant 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 Applicant's obligations to the Supplier.

Trustee capacity

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

Partnership

56. If the Applicant enters into this agreement as partners, the Applicant 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 Applicant's obligations to the Supplier.
57. If the Applicant 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

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

Waiver

59. 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 Applicant must be made by the Applicant's authorised officer in writing.

Costs

60. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
61. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
62. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows.
 - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 44 and 61.
 - (b) Secondly, in payment of any interest incurred in accordance with clause 65.
 - (c) Thirdly, in payment of the outstanding invoice(s).



Taxes and duty

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

64. If as a result of:

- (a) any legislation becoming applicable to the subject matter of this agreement; or
- (b) 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 Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

Interest rates

65. The interest rate on any overdue debts is a fixed rate of 15% per annum from the date of invoice.

Set-off

66. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

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 Applicant by the Supplier.

Severance

68. 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.

69. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

70. The Applicant 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 Applicant.

71. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

Consent to register

72. The Applicant 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.

Entire agreement

68. 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 merged in this agreement and are of no further effect. 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.

Privacy Act

The Applicant agrees to the terms of the *Privacy Act 1988* authorisation contained in this document