



CONDITIONS OF SALE

1. DEFINITIONS

These conditions are part of a quotation by Asahi Diamond Industrial Australia Pty Limited (“the Company”), to the person named on the face of this form (“the Buyer”) to supply the items and equipment described in this quotation (“the Goods”) for the price, or such other price as varied pursuant to these conditions (“the Purchase Price”)

2. ACCEPTANCE

This quotation may only be accepted in writing to the Company within thirty days from the date hereof and if not accepted within such period shall be deemed to have lapsed.

3. THE CONTRACT

- 3.1 Upon acceptance of this quotation, a binding contract (“the Contract”) shall be created between the Company and the Buyer solely on these terms (which shall include the terms contained on the face of this form) and in any other document incorporated herein.
- 3.2 No variation of the Contract shall be effective unless agreed to by the Buyer and the Company in Writing.
- 3.3 The waiver by the Company of performance or a breach of any of these terms by the Buyer shall not be deemed to be a waiver of performance of any other term or any subsequent breach of that or any other term.

4. TERMS OF PAYMENT

- 4.1 Subject to Clause 4.2, the terms of payment shall be 30 days from date of invoice
- 4.2 If after acceptance of this quotation the Company notifies the Buyer that it is not satisfied as to the Buyer’s credit standing, the terms of payment shall be Cash with Order.

5. MATERIALS DETAILS AND DIMENSIONS

The Buyer acknowledges that it has ensured before accepting this quotation that the Goods specified on the face hereof are of the correct type, size, standard, quality, colour, finish, etc, and conform in every detail with its specifications, requirements and proposed usage.

6. DELIVERY SCHEDULE

At the time of acceptance of this quotation, the Buyer shall submit to the Company its proposed delivery schedule for supply of the Goods. If the Company agrees with the delivery schedule, it shall form part of the Contract and shall not be varied except in accordance with these terms. If a delivery schedule is not submitted or agreed upon, the Company shall complete the supply of the Goods within a reasonable time.

7. DELIVERY

- 7.1 Delivery of the Goods, or any part thereof shall be deemed in accordance with Clause 7.1.1 or Clause 7.1.2 (whichever is declared on the face of this quotation to be applicable.)
 - 7.1.1 When the same is handed to the Buyer or is deposited with the Buyer’s nominated representative at a location nominated in writing by the Buyer, whereupon the Goods shall thereafter be at the Buyer’s risk.
 - 7.1.2 When the same is delivered to the Buyer’s nominated carrier whereupon the Goods or any part thereof shall be at the Buyer’s risk from the time of delivery to such carrier.
- 7.2 The Company shall not be obliged to make deliveries to a nominated Buyer’s representative or carrier unless a written direction has been previously given by the Buyer and acknowledged by the Company.
- 7.3 Unless otherwise agreed in writing, all charges for carriage and delivery to the Buyer, the Buyer’s representative or the carrier shall be borne by the Buyer and shall be added to the purchase price.
- 7.4 If the Buyer fails to accept any part of the Goods which the Company has delivered to the Buyer, the Buyer’s representative or carrier in conformity with the Buyer’s instructions, and such part of the Goods is subsequently re-delivered, all additional charges associated with the re-delivery shall be added to the Purchase Price.
- 7.5 If the Buyer has paid for the Goods or any part thereof prior to delivery, the property in the Goods or that part shall pass to the Buyer upon delivery. In all other Circumstances property shall remain in the Company in accordance with Clause 12.

8. VARIATIONS

- 8.1 If the Buyer requests any variation in the Goods after acceptance of this quotation including but not limited to any variation in materials or dimensions, or variations arising from inaccuracies in documents supplied to the Company for quotation purposes, the Company shall, if it accepts the variation, be entitled to increase or decrease the purchase price to take account of all extra costs incurred or to be incurred associated with such variation, as the case requires, (including an allowance for materials already manufactured or procured, or work already done but not required) and shall be entitled to an extension of time to complete supply of Goods.
- 8.2 If after the date of the Company’s quotation, the cost to the Company of manufacturing, or having manufactured the goods increases and decreases because of changes in statutory, government or semi-government charges, rates, levies, taxes or imposts with respect to the Company or the goods in currency exchange rates, the Purchase Price shall be increased or decreased to the extent of such changed costs.

9. EXTENSION OF TIME

- 9.1 If the Company is unable to continue or complete supply of the Goods due to any cause beyond its control (including, but not limited to, acts of God, strikes lockouts or other industrial disturbances, fire, flood, explosion and application of any laws, rules, regulations or order of any Government or Authority or delays caused by any other person or company), its obligations shall be suspended whilst such cause exists and the Company shall be entitled to an extension in the time to complete the supply of Goods.
- 9.2 If any such cause continues for six months either party may, by notice in writing to the other, terminate the Contract. The termination of the Contract shall not affect the prior accrued rights and obligations of either party to the other.

10. WARRANTY

- 10.1 Save as hereinafter provided, the Company will rectify any defects in materials supplied by, or faults in workmanship of the Company appearing in the Goods within twelve months of the date of delivery.
- 10.2 Where any guarantee or warranty has been given by a third party in respect of materials, components or processes supplied by that third party to the Company, and incorporated into the Goods, and such guarantee or warranty imposes a lesser obligation on the third party than those imposed on the Company by clause 10.1, the Company shall only give a like guarantee or warranty to the Buyer, which shall apply to such materials, components or processes to the exclusion of clause 10.1
- 10.3 Any defects appearing in the Goods, caused by the use of the Buyer or any third parties of the Goods in a manner contrary to the Company’s and third party’s recommendations (as referred to in clause 10.2), are expressly excluded from the provisions of clauses 10.1 and 10.2.

11. LIMITATION OF LIABILITY

- 11.1 The Company shall not be liable in contract in tort or otherwise for any consequential, special or contingent damages which may be claimed to have resulted from the Company’s failure to perform any obligation under the Contract.
- 11.2 Notwithstanding anything to the contrary herein contained, in no circumstances whatsoever shall the Company be liable in contract in tort or otherwise, for loss or damages incurred, sustained or suffered by the Buyer in an amount exceeding the Purchase Price.

12 RETENTION OF TITLE

Until payment in full of the Purchase Price by the Buyer, the property in the Goods or any part of the Goods does not pass to the Buyer and the Buyer shall hold the Goods or the unpaid part thereof and any other Goods manufactured therefrom or incorporated therewith as bailee for the Company PROVIDED HOWEVER that the Buyer may sell any of the Goods in the ordinary course of its business on condition that should the Company so require, the Buyer will assign to the Company all of its rights in respect of the sale price therefore.

13 CONFIDENTIALITY

All drawings, specifications, patterns and information supplied by either party shall be treated as confidential and shall not, unless agreed by both parties, or reasonably necessary to be disclosed, having regard to the nature or subject matter of the Contract, be disclosed to a third party.

14 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

The Buyer warrants to the Company that any design, materials, documents and methods of working advised to or provided to the Company so as to assist or enable the Company to manufacture and supply the goods will not infringe any patent, registered design, trademark, name, copyright or other intellectual property right. The Buyer hereby indemnifies the Company in relation to any breach of this clause, which indemnity shall survive completion or termination of this Contract.

15 ASSIGNMENT

Neither party shall assign the Contract in whole or in part without the prior written approval of the other party, but the Company shall be entitled to sub-let the Contract wholly or in part

16 CLAIMS AGAINST THE COMPANY

Subject to clause 7 hereof:

16.1 Any claim which the Buyer may have against the Company for short delivery of materials shall be deemed to be waived if not made in writing within seven days from the date of delivery of that part of the goods alleged to be short delivered.

16.2 The Company shall not be liable for any damage to the Goods caused by the Buyer or third parties.

16.3 No cause of action shall lie against the Company if Goods supplied in accordance with this quotation fail to conform with the requirements of any government, municipal or other Authority, or with any Federal or State Act or Regulation in the particular location in which they are installed. The Buyer hereby indemnifies the Company in relation to any breach of this Clause, which indemnity shall survive completion or termination of this contract.

16.4 The Company will not accept the return of, or give verdict for, any goods supplied in accordance with this quotation.

17 DEFAULT

17.1 The Company may suspend manufacture of the Goods, or terminate the Contract and repossess any portion of the Goods which remain property of the Company if the Buyer fails to perform or observe any terms of the Contract (including the Terms of Payment) or enters into an agreement or arrangement with its creditors as a result of insolvency, or being an individual, commits an act of bankruptcy or is made bankrupt, or being a company, resolves or is ordered to be wound up or has a liquidator, receiver, receiver and manager, official manager or administrator appointed for all or any part of its assets and undertakings.

17.2 Such suspension or termination shall not affect any prior accrued rights of the Company against the Buyer.

17.3 The Company shall be entitled to be indemnified by the Buyer for any loss or damage it may sustain as a result of the default by the Buyer, including any loss or damage sustained as a result of the suspension and subsequent resumption of manufacture and supply.

18 CANCELLATION

If the Buyer requests cancellation of the Contract, and such request is accepted, then the Company may impose terms which may include that the Buyer shall pay for work done pursuant to the Contract to the date of such request and shall pay the Company compensation for all losses (including consequential losses and lost profits) suffered by it as a result of such cancellation.

19 IMPLIED TERMS

Subject to all statutory provisions to the contrary, no warranty condition or representation other than those expressly contained herein shall be included in this Contract.

20 DIAMONDS

All surface set diamond drill bits and reamers are offered to the Buyer on the following conditions in respect of the salvage of diamonds from such bits and reamers.

20.1 The Company reserves the right to accept or not accept any goods for the salvage of any useable and any scrap diamonds therefrom.

20.2 Any diamonds salvaged shall be held by the Company on these terms:

20.2.1 They remain the property of the Buyer

20.2.2 The Company accepts no responsibility for loss or damage to diamonds occasioned by salvage operations.

20.2.3 The Buyer will pay to the Company, within 30 days of being invoiced therefore, the Company's reasonable salvage charges

21 APPLICABLE LAW AND FORUM

The law governing the Contract, its interpretation, any agreement to arbitrate and the conduct of any arbitration of litigation is the law of the State of New South Wales, Australia and all arbitration (where agreed) and all litigation shall be heard by an arbitrator located within such state and all litigation shall be conducted in the Courts of such State.