

General Terms and Conditions

1. The goods and services the subject of this Cash Sales Invoice is supplied on the following terms and conditions.
2. Unless otherwise agreed in writing by Diverse Industries Australia Pty Ltd ATF the Diverse Industries Australia Trust hereinafter called the "Company" or required by law any conditions of any order for the supply of goods or services by any Purchaser inconsistent with these conditions are expressly excluded.
3. The Purchaser agrees that all monies payable in respect of this Cash Sales Invoice are payable on a Cash on Delivery ("COD") basis at the time of the issue of this invoice.
4. All payments to be made by the Purchaser shall be made without set-off or counterclaim and shall be free of and without deduction for and on account of any taxes, duties, imposts, fees, levies and charges whatsoever now or hereafter imposed or made.
5. All such taxes, duties, imposts, fees, levies and charges shall be paid or made, as the case may be, by the Party liable for its own account prior to the date on which penalties attach thereto and that Party shall indemnify the other Party upon demand in respect of all such taxes, duties, imposts, levies and charges.
6. If any such payments to be made by a Party are subjected to any such taxes, duties, imposts, levies and charges, and the aforesaid provisions either cannot be effected, or do not result in the other Party actually receiving an amount equal to the full amount which it would have received had the payments not be made subject to such taxes, duties, imposts, levies and charges, the relevant Party shall pay to the other Party such additional amounts as may be necessary to enable the other Party to receive a net amount equal to the full amount provided for under this Agreement in respect of each such payment.
7. Any legal costs, stamp duties or any other expenses whatsoever incurred by the Company in respect of this Cash Sales Invoice, or in respect of any agreements, guarantees, securities or other documentation required by the Company and all other costs reasonably incurred by the Company in consequence of this Cash Sales Invoice together with any collection costs, dishonoured cheque fees and legal costs (on an indemnity basis, whether charged on scale or on any other basis) shall be paid by the Purchaser on demand.
8. For the sake of clarity any debt collection costs (including but not limited to commissions, fees and all outlays howsoever calculated), and/or legal costs (calculated on a complete indemnity basis and including but not limited to fees, outlays and counsel's and experts fees) and/or any Insolvency related expense including anything arising out of the insolvency of the Purchaser incurred by the Company as a result of the Purchaser's failure to pay any amounts due to the Company or any other breach of these General Terms and Conditions of Supply can be recovered by the Company from the Purchaser.
9. Unless the Company agrees in writing to the postponement of payment of any monies owing to the Company by the Purchaser, interest shall be payable by the Purchaser from the date upon which any payment becomes overdue.
10. Such interest shall be charged at a rate of 18% per annum (subject to any alteration pursuant to these terms) on the highest amount owing during a calendar month, and shall be compounded monthly.
11. The parties agree that the interest charged pursuant to these terms is a credit and administration charge and not a penalty.
12. Nothing in these terms shall be construed as an offer of credit by the Company.
13. Any payments tendered by the Purchaser to the Company shall be applied as follows, regardless of any direction to the contrary made or purported to be made by the Purchaser:-
 - a) Firstly as reimbursement for any costs incurred by the Company.
 - b) Secondly in payment of any interest charged to the Purchaser; and
 - c) Thirdly in satisfaction of the oldest portion of the Purchaser's Debt.
14. Where the Purchaser is a Trustee, the Purchaser warrants that it has full power and authority to enter into this transaction on behalf of the trust and agrees to be bound by these conditions both personally and as a trustee, regardless of whether or not it discloses to the Company that it is a trustee at the time of entering into this Agreement.
15. If the Purchaser defaults in the due and punctual observance of all or any of his obligations arising out of these terms or
 - a) Takes advantage of any laws relating to insolvency or is deemed by law to be insolvent; or
 - b) If the Applicant (being an individual) commits any act of bankruptcy or (being a partnership) any of the partners commits any act of bankruptcy, or (being a company), has a receiver, administrator, controller (or similar) appointed over it or all or part of its assets or goes into liquidation or provisional liquidation.
- c) Then the Company may suspend performance of all or any of its obligations and at any time during such suspension terminate the agreement breached or any part.
16. The Company may then
 - a) Treat as discharged all or any obligations arising from any agreement with the Purchaser; and/or
 - b) Retain any security given or monies paid by the Purchaser or available through the enforcement of any guarantee, security or bond and apply this in reduction of any sum which may be lawfully recovered by the Company.
17. On the suspension or termination the Company may recover possession of any goods belonging to it (and, where relevant, possession and title to any of the Purchaser's property in the Company equipment at no charge to the Company) and the Purchaser irrevocably authorises the Company to enter its premises for this purpose.
18. Termination will be without prejudice to any accrued rights of either party.
19. This agreement sets out the entire agreement of the parties with respect to this Cash Sales Invoice and all matters pertaining thereto.
20. No other agreement, warranty or representation, express or implied, has been given or made with respect to this Cash Sales Invoice.
21. The Company shall not be bound by any agreement purporting to vary these conditions of credit unless such agreement is in writing and signed on behalf of the Company by an authorised officer of the Company.
22. These terms and conditions supersede all previous negotiations and conditions, whether oral or written.
23. These terms and conditions supersede and override any earlier set of terms and conditions issued by the Company.
24. No oral explanations or information provided by any Party to another shall:
 - a) Affect the meaning or interpretation of this Cash Sales Invoice; or
 - b) Constitute any collateral agreement, warranty or representation.
25. To better secure to the Company any indebtedness of the Purchaser from time to time arising under this Cash Sales Invoice or otherwise the Purchaser and if more than one, the Purchasers jointly and severally hereby charge with payment of the moneys and the compliance with all obligations howsoever arising pursuant to the Cash Sales Invoice all beneficial interests (freehold and leasehold) in all real and personal property held now or in the future by the Purchaser.
26. The Purchaser and if more than one, the Purchaser jointly and severally acknowledge and agrees that if demand is made upon the Purchaser by the Company, that the Purchaser will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required by the Company and against the event that if the Purchaser fails to do so within 3 days from being so requested, that the Purchaser hereby irrevocably and by way of security appoints any credit manager or solicitor engaged by the Company (or any other person authorised by the Company to be the Purchaser's true and lawfully appointed attorney to execute and register such instrument).
27. The Purchaser agrees that the obligation created by the 2 preceding clauses shall remain in full force and effect and shall not be discharged until the expiry of not less than two (2) years from the date of receipt of the last payment made by or on behalf of the Purchaser in satisfaction of any monies due by the Purchaser.
28. A Certificate in writing signed by the Administration Manager of the Company (or any other person authorised by the Company stating monies due and payable by the Purchaser to the Company shall be deemed to be the amount payable by the Purchaser to the Company and the Purchaser shall not dispute same.
29. This Cash Sales Invoice is governed by and is to be construed in accordance with the laws of the State of Queensland and the Commonwealth of Australia.
30. The Company and the Purchaser irrevocably and unconditionally submit to the exclusive jurisdiction of the Courts and Tribunals of Queensland and the Commonwealth of Australia to determine any dispute arising hereunder.
31. Each Party irrevocably and unconditionally waives any right it has to object to any action being brought in these Courts and/or Tribunals referred to the preceding clause, to claim that the action has been brought in an inconvenient forum or to claim that these Courts and/or Tribunals do not have jurisdiction.
32. The Purchaser agrees:-
 - a) Words importing the singular or plural number shall include the plural or singular number respectively.
 - b) Masculine gender shall include the feminine and neuter and vice versa.
 - c) Words importing persons include corporations and vice versa.
 - d) Derivatives of words have corresponding meanings.
 - e) Where the Purchaser comprises two or more persons, any agreement or obligation to be performed or be observed by the Purchaser, binds those persons jointly and severally.
33. The Purchaser agrees:-
 - a) Notices may be sent or documents served by ordinary prepaid post by either party to the other at that party's postal address.
 - b) A notice forwarded or a document served on the Purchaser by ordinary prepaid post shall be deemed to have been received by the Purchaser on the next business day following the day on which it was posted.
34. These terms and conditions apply to all supplies of goods and services by the Company to the Purchaser pursuant to this Cash Sales Invoice.
35. If any provision of these terms and conditions are found to be illegal, invalid or unenforceable, that provision may, at the Company's option, be read down to the extent necessary and reasonable in all the circumstances to give it a valid operation of partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions will not in any way be affected or impaired.
36. All warranties, releases, exclusions of liability and indemnities will remain valid and binding following termination.
37. In interpreting any agreement between the Company and the Purchaser no rules of construction shall apply to the disadvantage of the Company on the basis that the Company put forward the agreement, or any part thereof.
38. The Purchaser must notify the Company immediately of any error on an invoice.
39. If at any time the Company costs change due to government action or to a change in the law the Company reserves the right to adjust prices to take account of such change in its costs even after date of invoice if the change adversely affects the Company.
40. The currency applicable to this Cash Sales Invoice is the lawful currency of the Commonwealth of Australia.
41. Any reference to legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means all amended, re-enacted or replaced legislation.
42. A thing or amount is a reference to the whole or each part of it.
43. Writing or written includes a facsimile transmission and an email transmission and any means of reproducing words in a tangible and permanently visible form and copies of email and facsimiles will for the purposes of these terms be treated and are deemed to be originals.
44. Conduct includes, without limitation, an omission, statement or undertaking whether or not in writing.
45. The Parties shall observe the utmost good faith towards each other and shall furnish each other properly and without delay with all necessary information.
46. The Parties shall be entitled to rely on any communication or document believed by that Party to be genuine, correct and fully authorized, and to have been communicated or signed by the person by or on behalf of whom it purports to be communicated or signed and shall not be liable to any other person for any of the consequences of any such reliance.
47. In addition to any mode of service provided by any statute, any document in any proceedings (including without limitation, any writ of summons or other originating process or application or third party notice) may be served on any Party by being delivered to that Party at his address for service of notices as provided by these terms.
48. The Parties agree that these terms operate as a Deed between the parties.
49. The Purchaser agrees that except where goods delivered are not in accordance with Purchaser's order, or the Company selling specification, or are defective, the return of goods for credit is at the absolute discretion of the Company.
50. Where credits are granted they may be subject to charges for handling or testing.
51. If any order is cancelled by the Purchaser at any time a cancellation fee may apply.
52. For the purpose of this Cash Sales Invoice:
 - a) "GST" means GST within the meaning of the GST Act, "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
 - b) Expressions set out in this Cash Sales Invoice bear the same meaning as those expressions in the GST Act;
 - c) Except where express provision is made to the contrary the consideration payable by the Purchaser (Customer) to the Company represents that value of any taxable supply for which payment is to be made;
 - d) If the Company makes a taxable supply to the Purchaser (Customer) for a consideration, which represents its value, then the Purchaser (Customer) must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
53. Nothing in any agreement between the Company and the Purchaser excludes, restricts or modifies any terms, conditions or warranties or the Company liability for them which are imposed or implied by any statute, including but not limited to the Trade Practices Act, 1974 and which by statute cannot be excluded, restricted or modified.
54. Limitations and exclusions are made only to the extent that the Company may legally do so.
55. The Company liability for all kinds of loss or damage suffered by the Purchaser in the context of a supply of goods and services (or an agreement to make such a supply) from the Company to the Purchaser, irrespective of whether such liability arises in or is claimed on the basis of the Company breach of contract, breach of a term, warranty, or condition implied by statute, negligence or other tort, or breach of any statutory or equitable duty, and whether the act or omission of the Company is wilful or otherwise, is excluded and/or limited (as the case may be) as set below.
 - A. The Company liability for personal injury or death is excluded except to the extent that such injury or death is caused by the Company's negligence, in which case the Company accepts unlimited liability.
 - B. The Company liability for damage to or loss of property is excluded except to the extent that such loss or damage was directly caused by a breach of contract or the Company negligence in connection with the performance of a contract, in which case the Company accepts liability to a maximum of \$1 million per event or series of causally connected events.
 - C. The Company liability for loss incurred in respect of the goods and/or services themselves supplied (or agreed to be supplied) by the Company to the Applicant shall be limited to:
 - a) In the case of goods, at the Company option:
 - 1) The replacement of the goods or the supply of equivalent goods;
 - 2) The repair of the goods;
 - 3) The payment of the cost of replacing the goods or of acquiring equivalent goods;
 - b) The payment of the cost of having the goods repaired; and
 - c) In the case of services, at the Company option:
 - 1) Supplying the services again; or
 - 2) Paying the cost of having the services supplied again.
- The parties agree that nothing in this Cash Sales Invoice constitutes an admission of liability on the part of the Company.
57. The Company liabilities for indirect loss, economic loss, consequential loss, loss of profit and loss of business opportunity are excluded.
58. If the supply of goods and services is a supply to which Division 2 of Part V of the Trade Practices Act 1974 applies (conditions and warranties in consumer transactions) and the goods or services supplied are not of a kind ordinarily acquired for personal domestic or household use or consumption, the Company liability for a breach of a condition or warranty implied by that legislation (other than section 69) is limited in the manner set out in this Cash Sales Invoice.
59. The Purchaser indemnifies the Company against any loss, damage or claims arising from the Company presence on the Purchaser's site except to the extent caused by the negligence of the Company.
60. If the Company performance of any contract obligation by its normal means is prevented or delayed due to any cause beyond the Company reasonable control that contract obligation will be suspended during the period the Company is affected by such cause.
61. The Purchaser will provide free of charge adequate and safe access to the Purchaser's premises, information and facilities (including labour for loading and unloading of goods and utilities supply) for the Company to carry out its duties and rights under this Cash Sales Invoice.
62. The Purchaser will ensure that all works and materials for which the Purchaser is responsible comply with industry standards and all legal and statutory requirements and with any specifications provided by the Company.
63. The Purchaser shall obtain all necessary consents and comply with all legal obligations in connection with installation or use of any goods supplied.
64. The Purchaser shall notify the Company in writing as soon as reasonably practicable after the Purchaser becomes aware of any defect in goods or services supplied by the Company, any alleged breach of contract on the part of the Company, any negligence or other tort on the part of the Company or any breach of statutory duty by the Company.
65. The Purchaser acknowledges and agrees that prompt notification may enable the Company to mitigate the loss or damage suffered by the Purchaser as a result of the alleged act or omission or to assist the Purchaser in doing so.
66. Prompt notification may also enable the Company to identify defective goods and services and prevent other customers from suffering loss or injury.
67. That collection of goods from the Company premises or agent will be at the Purchaser's own risk and the Purchaser is responsible for handling and transporting the load safely, training the driver on the hazards of the goods and compliance with all relevant legislation.
68. The Company weights, records and measurements will be accepted as prima facie evidence of the quantities of goods delivered to the Purchaser.
69. The Company delivery/collection note will be conclusive evidence as to the goods delivered.
70. Failure by the Company to deliver or perform by any time specified will not entitle the Purchaser to terminate any agreement or make any claim against the Company.
71. If full delivery cannot be made due to the Purchaser's act or omission the Company may charge for abortive journeys or part deliveries.
72. The Company may suspend deliveries of goods if the goods storage or handling equipment or process equipment is considered by the Company not to be safe.
73. The Purchaser agrees:-
 - a) All goods sold remain the property of the Company until the Purchaser has paid for them and has paid all other outstanding amounts due and payable to the Company.
 - b) The risk in goods sold or supplied passes to the Purchaser upon delivery or collection.
 - c) If the Purchaser mingles or mixes any goods supplied by the Company with other goods then the Purchaser declares that it holds the totality of the mixed goods on trust for the Company until the Purchaser has paid for them and has paid all other outstanding amounts due and payable to the Company.
74. The Purchaser further acknowledges that prior entering into this transaction as evidenced by this Cash Sales Invoice, the Purchaser has
 - a) Carefully read these terms including and that it has understood them and has had the opportunity of seeking independent legal, accounting and commercial advice and has sought such advice;
 - b) Not relied upon any statement, representation or warranty made by the Company or any of their employees or agents;
 - c) Entered into this transaction, as evidenced by this Cash Sales Invoice, as an entrepreneurial exercise and has accepted the inherent dangers, risks and benefits associated therewith.
75. Nothing in this Agreement shall be deemed construed by the Parties or by any other person as creating or constituting the relationship of partnership or principal and agent between the Parties or any of them.
76. No waiver by any Party of any default in the strict and literal performance of or compliance with any provision, condition or requirement of these terms shall be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement in the future nor shall any delay or omission of any party to exercise any right under these terms in any manner impair the exercise of any such right accruing to it thereafter.
77. The Delivery of the goods and/or services provided hereunder shall be consideration for and deemed acceptance and agreement by the Purchaser of these terms.
78. Time shall be of the essence of all obligations and requirements of this Agreement.
79. The Company shall not be liable for any loss or damage due to any delay in the due performance of the terms hereof by reason of strikes, lock-outs or other labour trouble, fires, riots, wars, embargos, civil commotion, terrorism or acts of God.
80. Any such delay shall extend performance only so long as such event is in progress and shall not extend to obligations for the payment of money.