



Conditions of contract for the supply of machinery and spare parts

1. General

1.1 These general conditions of supply shall be binding if declared applicable in the tender or in the order acknowledgment. Any conditions stipulated by the customer which are in contradiction to these general conditions of supply shall only be valid if expressly acknowledged by Diamond in writing.

2. Scope of supplies and services

2.1 Diamond reserves the right to impose minimum order quantities.

2.2 Diamond reserves the right to deliver part of an order for custom made products and in this event Diamond shall be entitled to adjust the price for the products to take into account part deliveries of the order.

2.3 Contracts shall not be deemed to have been entered into nor shall Diamond be liable to supply any products until such time as Diamond has received and accepted the customer's order.

2.4 After acceptance, orders may only be cancelled with the agreement of both parties. In the event of cancellation, Diamond may, at its sole discretion, offer to retain the cancelled items subject to a re-stocking fee.

3. Prices

3.1 Unless otherwise agreed upon, all prices shall be deemed to be net ex works including GST, if any, and excluding packing, without any deduction whatsoever.

4. Terms of payment

4.1 Payments shall be made at Diamond's principal place of business in Melbourne, Australia within thirty (30) days of the date of the invoice without any deduction for cash discount, expenses, taxes, levies, fees, duties and the like. Payment shall be deemed to have been made when Diamond has full and unlimited access to funds covering the total amount invoiced. Partial deliveries will be invoiced accordingly.

4.2 If any customer defaults in making payment, it shall be liable to pay, without reminder, for interest with effect from the date on which the payment was due at a rate of 4 per cent over the current rate from time to time applied by the Commonwealth Banking Corporation on overdrafts in excess of \$100,000. The right to claim further damages is reserved.

5. Delivery time

5.1 The time for delivery shall start on the later of the following namely the date the contract is entered into, the date all official formalities have been completed, the date upon which payments due with the order have been made, the date upon which any agreed securities are given or the date on which the main technical points are settled. Diamond shall be deemed to have delivered the products at the time it forwards a written notice to the customer advising the customer that the products are ready to or have been dispatched.

5.2 Diamond shall not be liable for any delay in the delivery of products which occurs as a result of any fact or circumstance beyond the reasonable control of Diamond including (without limiting the generality thereof) war, whether declared or not, civil rebellion, strike, fire, storm or other severe action of the elements, accident, government or statutory restriction or from other similar causes.

6. Passing of benefit and risk

6.1 Property in the products shall not be deemed to have passed to the customer until such time as payment in full has been made.

6.2 Notwithstanding condition 6.1 the risk in the products shall pass to the customer on the date the products are placed with a carrier for delivery to the customer and from the date of risk passing until the date the property in the products passes the customer hereby indemnifies Diamond against any loss or damage to the products and any insurance taken out by the customer in respect of the products shall note Diamond's interest therein.

7. Inspection and taking-over of the supplies and services

7.1 As far as being normal practice, Diamond shall inspect the products before dispatch. If the customer requests further testing this has to be specially agreed upon and paid for by the customer.

7.2 The customer shall inspect the products within 14 days after receipt of products and shall immediately notify Diamond in writing of any deficiencies. Unless such notice in writing is received within the said 14 day period then the customer is deemed to have accepted delivery of the products.

8. Guarantee, liability for defects

8.1 The "guarantee period" shall be 12 months commencing from the date upon with the products leave Diamond's works provided however that in the event that the time for delivery is delayed by an event referred to in condition 5.2 then the guarantee period shall be extended by a corresponding period of time.

8.2 The guarantee period shall immediately terminate upon the customer or any other person to whom the customer sells the products making inappropriate modifications or repairs to the products or using the products for a purpose other than that for which they were designed or contrary to their specifications.

8.3 In the event of a defect in the design, construction or workmanship of the products being proven to the satisfaction of Diamond during the guarantee period then Diamond will repair or replace the products at its option and at its cost provided however that the cost of returning the products from the customer to Diamond will be borne by the customer.

8.4 In all cases Diamond's liability to the customer shall be limited to refunding to the customer the purchase price of the products or replacing the product.

9. Exclusion of further liability

9.1 Save as otherwise stated in these conditions Diamond shall not be liable for any loss or damage suffered or incurred by the customer arising from any fault or defect or alleged fault or defect in the products or the purchase of the products or any consequential loss arising therefrom.

10. Intellectual Property Rights

10.1 All intellectual property rights in the design of the products and any manufacturing process shall remain with Diamond.

11. Re-export

11.1 The customer is responsible for compliance with all domestic and foreign export regulations. The export or re-export of certain Diamond products is permitted only with a certificate from the appropriate Australian Government Department as required and in accordance with COCOM requirements, whichever is applicable. Diamond will clearly state on all quotations and invoices which products are subject to export restrictions and shall further pass such responsibility to all subsequent third parties.

12. Loaned Material

12.1 The customer shall be held accountable for the maintenance of loaned materials or tools and for damage incurred during the time that they are in his possession.

13. Jurisdiction and applicable law

13.1 The place of performance shall be at the principal place of business of Diamond in Melbourne, Australia.

13.2 Any contract or agreement entered into will be governed and constructed according to the laws of the State of Victoria and the parties irrevocably submit to the jurisdiction the courts of the State of Victoria.

13.3 Unless application is mandatory by law no legislation, proclamation, order, regulation or moratorium whether present or future shall apply to these conditions.