

Diamond Property Developments Limited trading as DIG IT EARTHWORKS - TERMS OF SUPPLY OF GOODS & SERVICES

The following terms and conditions ("Terms of Supply") apply to credit facilities and all purchases of goods or services made by you ("You") from Diamond Property Developments Limited ("we" or "us").

Terms and Acceptance of Orders:

- (a) All goods and services that we supply to you (the "Works") are supplied pursuant to these Terms of Supply unless we agree otherwise in writing. We may amend these Terms of Supply from time to time.

2 Ownership Retention:

- (a) We will remain the owner of the goods you purchase from us (the "Goods") until paid for in full, even if you incorporate the Goods with other products.
- (b) You irrevocably authorise us to enter premises where the Goods are located (or we believe them to be located) and take possession of and/or remove them while we remain the owner if you are in default of any provision in this agreement and you agree to and shall indemnify us from any liability arising from any claims made by any third party as a result of such exercise.
- (c) If you wish to resell any Goods before you become the owner, you may do so only if the sale is made in the ordinary course of your business. You must then immediately pay for the Works and hold the proceeds in trust for us until you do so.
- (d) You acknowledge that these Terms of Supply are a Security Agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") that create a Purchase Money Security Interest as defined in the PPSA in favour of us in the Goods and the proceeds of the Goods and that we may at any time register a financing statement on the Personal Property Securities Register to protect our security interest in the Goods.
- (e) You will not permit any third-party security interest to subsist in relation to the Goods.
- (f) You will not change your name and if you are a company you will not change your directors without first notifying us in writing at least 14 days before such change takes effect.
- (g) While we retain ownership of Goods in your possession or under your control, you must properly store and secure the Goods, and insure the Goods for their full replacement value until the Goods are sold pursuant to sub-clause 1 above or consumed in the ordinary course of your business.
- (h) You will not permit the Goods to become mixed with other goods so as to become undistinguishable or allow any accessions to be incorporated into the Goods.

3 Payment:

- (a) You must pay for the Works (including any delivery charges) by the 20th of the month following the date upon which we provide an invoice for the Works to you, without any set-off or deduction. We may, however, require you to pay sooner, possibly before the Works are provided to you.
- (b) If a payment due to us is overdue or we determine in our sole opinion that you are unable or unlikely to immediately pay your debts to us we will be entitled to cancel all or part of your orders which have not been delivered in full.
- (c) We may receive a rebate, commission or fee from our suppliers for selling Works to you.

4 Overdue Payments:

- (a) If we demand it you must pay in respect of all overdue payments:
 - i. interest at our then current default interest rate (as advised by us and in the absence of such advice then at our bank's commercial unsecured overdraft rate plus a margin of 5% per annum) compounding monthly for the period from the date payment is due until the date we receive payment. We may review our default rate from time to time;
 - ii. a late payment administration charge of \$20.00 per month.
- (b) You must immediately pay all costs (including legal costs on a solicitor-own client basis) incurred by us in collecting or attempting to collect any overdue payments including any interest and all debt collection costs.

5 Risk:

- (a) Risk in all Works will pass to you on delivery even though we may remain the owner of them.

6 Warranties:

- (a) We warrant that the Works supplied are free from defects that could be ascertained by us at the time of their supply.
- (b) All other guarantees, warranties and representations in relation to goods or services or their supply (including those expressed or implied or contained in the Contract & Commercial Law Act 2017 & the Consumer Guarantees Act 1993) are excluded except to the extent that we cannot lawfully exclude them. If you are a business or the Works are acquired for business purposes or the Works are not of a kind ordinarily acquired for personal use the provisions of the Consumer Guarantees Act 1993 shall not apply.

7 Limitation of Liability:

- (a) We will not be liable for any indirect or consequential loss incurred by you as the result of any act or omission by us.
- (b) We will not be liable to you for failure to deliver the or any Works by a specified date or for loss caused by anything which is beyond our reasonable control.
- (c) Our liability to you whether arising in contract, tort (including negligence), equity, by virtue of a breach of any statutory duty or warranty or otherwise is limited to the cost of the Works as paid by you.
- (d) We may, at our option, either replace or refund to you the price you paid us for any Works that are defective.
- (e) We will not however accept responsibility for any defective Works unless:
 - i. you notify us of the defect within 5 working days of your receiving the Works (time being of the essence); and
 - ii. you allow us to fully investigate your claim and you will, if requested, return the Works or, if we so request, a sample of the Works to us at your cost for inspection at our cost.
- (f) This clause 1 will not apply to the extent that the law prohibits us from limiting our liability.

8 Waiver:

(a) If we delay or do not exercise any of our rights or remedies under these Terms of Supply or otherwise at law, that will not be a waiver of the right or remedy. Any waiver or consent we give you must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.

9 Severability:

(a) If part of these Terms of Supply is deemed to be invalid, illegal or unenforceable, the remaining provisions will remain in full force and effect.

10 Cancellation:

(a) We shall be entitled to cancel any credit granted to you and all or part of your orders which have not been delivered in full, without prejudice to any rights which may have accrued up to the date of cancellation, if:
i. you being a company or body corporate go into liquidation, receivership or voluntary administration or being a person become bankrupt; or
ii. you breach any term of these Terms of Supply or are in default of any of those terms and fail to remedy the breach or default within 7 days of receiving notice from us of the breach or default.

11 Quotations

(a) Where a quotation is given by us for Works and except to the extent that a contrary provision appears on that quotation:
i. The quotation shall be valid for one month from the date of issue; and
ii. The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
(b) Where Works are required in addition to those appearing in any quotation, that were unforeseen when the quotation was given, you agree to pay the cost of the additional Works.

12 Collection and use of information

(a) You authorise us to collect, retain and use any information about you for the purpose of assessing your credit worthiness, enforcing any rights under any contract between us or under these terms of trade, or marketing any goods and services provided by us to any other party.
(b) You agree to provide all information about you that we ask. You accept we are relying on the accuracy and completeness of all information you provide to us.
(c) You authorise us to disclose any information obtained to any person for the purpose set out in clause 2.
(d) Where you are a natural person the authorities under clauses 2 and 2 are authorities or consents for the purposes of the Privacy Act 1993.

13 Force majeure

(a) We shall not be liable for failure to perform, supply or complete our obligations under any contract governed by these terms of trade due to any cause beyond our reasonable control including (but without limiting the generality of the foregoing) prohibition or restrictions on importing; refusal to issue import licences; Government direction; statute; lock out; refusal to load, unload or handle goods; labour disputes; fire, flood, earthquake, severe weather, tidal wave, landslide, lightning, explosion, act of God, war, riot or civil commotion.

Your name:..... (full legal name of customer / company printed legibly please)

Signed by You (or by a director):

If you are a company the following guarantee must be completed by at least one Director.

DEED of Guarantee

To: **Diamond Property Developments Limited ("You")**

In consideration of you supplying the above-named customer with goods and services from time to time I hereby:

1. Unconditionally guarantee to You the due and punctual payment by the Customer to You of all monies as and when they become due for payment to You in respect of or arising from the purchase of goods and services or otherwise howsoever.
2. Agree that although my liability under this guarantee as between the Customer and me is as a surety only, I shall be liable to You as a principal debtor and my liability shall not be discharged or abrogated or affected by the happening of any thing that in law would release a surety including (without limitation):
 1. granting of time, credit or any other indulgence to the Customer
 2. by the release or waiver of any security or the non-enforcement of any right You hold against the customer;
 3. any alteration, modification, variation or addition to any agreement relating to the supply of goods and services between You and the customer;
 4. any change in shareholding or directorship of the Customer.
3. Agree that this guarantee is an irrevocable and continuing guarantee and it shall remain in full force and effect until all released by You in writing.
4. Agree to waive any rights of subrogation in respect of any security held by You until the Customer has paid all monies owing to You.

Your name:..... (full legal name printed legibly please)

Signed by You:

Signature of Witness:

Witness name, address and occupation (printed):

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