

## TERMS AND CONDITIONS OF TRADE

### 1. Definitions and interpretation

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1.1 In this Agreement:

**Buyer** means the Buyer issued with the Quotation;

**Company** means Davell Products Pty Ltd ACN 084 197 375;

**Guarantor** means the Guarantor (if any) described in the Quotation;

**Price** means the Price for the Goods and Services in AUS\$ and unless stated is exclusive of GST and freight costs;

**Goods and Services** means the Goods and/or Services the subject of the sale described by the Quotation;

**Quotation** means the quotation provided by the Company to the Buyer (and the Guarantor, if any) which, together with these Terms and Conditions of Trade, form the agreement between the parties, clerical errors and omissions accepted.

1.2 Headings in this Agreement are for convenience only and will not affect their interpretation.

### 2. Orders and payment

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2.1 The terms and conditions of this Agreement apply to every order placed by the Buyer with the Company for the Goods and Services immediately upon acceptance of that order by the Company. No other terms are accepted by the Company. Orders must be placed by the Buyer in writing referring to the Quotation number and subject to any conditions stated on the Quotation. The Buyer must satisfy itself that the quantities, descriptions and specifications in the Quotation are correct and that the goods including their specifications are suitable for the Buyer's purposes before placing an order. The Company reserves the right to withdraw a Quotation at any time. The Company is not obliged to accept any order placed by a Buyer.

2.2 The Company will issue a tax invoice to the Buyer for the supply of the Goods and Services pursuant to an order. Any tax invoice issued by the Company is issued as a payment claim pursuant to section 13 of the *Building and Construction Industry Security of Payment Act 1999* (NSW) if applicable.

2.3 The Company has 2 payment methods and the applicable payment method is stated on the Quotation:

(a) In respect of "**Advance Payment**", the Buyer must pay the deposit specified on the Quotation when placing an order, and if not specified, the deposit is 40% of the Price (plus GST). The balance of the Price must be paid in full prior to supply of the Goods and Services and within 30 days of the date of the tax invoice.

(b) In respect of payment on "**Account**", the terms as to payment of the Price are as set out in the relevant credit application.

2.4 If the Buyer is unable to accept delivery of the goods on the shipment date the Company reserves the right to charge a storage fee of 3% of the price (plus GST) per month until such time as the Buyer accepts delivery of the Goods.

2.5 Signature of any delivery note by the Buyer or any agent, employee, carrier or representative of the Buyer is conclusive proof of delivery. The Company may make delivery of any Goods by instalments.

2.6 The Buyer agrees to pay to the Company interest on any amounts due to the Company but unpaid after 30 days at the rate of 11.0% per annum, calculated daily until paid.

2.7 The Buyer further agrees that all costs and disbursements incurred by the Company in recovering payment of any overdue invoice or in enforcing its rights under this Agreement including, without limitation, legal costs on a solicitor and client basis

(**Recovery Expenses**) are recoverable against the Buyer as a debt.

2.8 The Buyer and the Guarantor hereby charge in favour of the Company any real property and other property in which it has or they have an interest with payment of any outstanding invoices issued to the Buyer and any associated costs and expenses, including Recovery Expenses (**Charge**) irrevocably authorise the Company to lodge caveats to notify and protect that Charge in relation to any real property in which Buyer or the Guarantor have an interest. Where the Buyer or Guarantor is a corporation, if any tax invoice remains unpaid for 60 days or more, the Company may enforce the Charge by the appointment of a receiver by the Supreme Court of New South Wales and the Buyer and Guarantor each consent to the appointment of such a receiver.

2.9 The Buyer irrevocably consents to the Company obtaining information about the Buyer's credit worthiness from its financial institutions, trade references or any credit reporting agency and to the Company providing details of any default or credit to any credit reporting agency.

2.10 Apart from the right of cancellation conferred by clause 6 below, no order from the Buyer may be cancelled by the Buyer except with the written consent of the Company and on terms agreed with the Company, including that the Buyer must immediately pay to the Company a cancellation fee of 25% of the Price (plus GST) or all costs and expenses which may have been incurred by the Company in providing or preparing to provide the Goods and Services to the time of cancellation, whichever is the greater.

2.11 If a Buyer wishes to alter an order placed with and accepted by the Company, the Company may accede to such a request on terms including an increase in the Price. Where no materials have been ordered and no work has been undertaken, there may be no cost for such alterations.

2.12 The Company may refrain from providing any Goods and Services, cease production and terminate this Agreement in accordance with clause 6 if the Buyer has not strictly complied with any term of this Agreement.

2.13 The Company reserves the right to charge a credit card processing fee of 1.5% of the Price (plus GST) in lieu of the merchant fees payable by the Company to credit card providers.

### 3. Title and risk

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3.1 Risk passes to the Buyer upon delivery of any goods associated with the provision of the Goods and Services to the Site.

3.2 Title in such goods does not pass to the Buyer until payment of the Price and any associated costs and expenses, in full. If goods are delivered prior to payment of the Price in full, until payment of the Price in full, the Buyer must hold the Goods as bailee for the Company and must insure and securely store the Goods in a manner such that they are readily distinguishable from other similar Goods of the Buyer or third parties.

3.3 Until payment of the Price in full, the Buyer grants the Company the irrevocable right to enter upon any premises owned or occupied by the Buyer to retake possession of the Goods without liability for any damage caused.

### 4. Force majeure

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4.1 The Company will not be liable to the Buyer in any manner or be deemed to be in breach of this Agreement because of any delay in performing or any failure to perform any of the Company's obligations under this Agreement if the delay or failure was due to any cause beyond the Company's reasonable control.

- 4.2 The following will be included (without limitation) as causes beyond the Company's reasonable control: (a) governmental actions, war or threats of war, national emergency, riot, civil disturbance, sabotage or requisition; (b) Acts of God, fire, explosion, flood, epidemic or accident; (c) import or export regulations or embargoes; (d) labour disputes not including disputes involving the Company's work-force; (e) any kind of carriage, transportation or postal delay; or (f) inability to obtain or delay in obtaining supplies to enable the provision of the Goods and Services.

## **5. Warranties**

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The Company will provide the Goods and Services in accordance with any applicable industry or statutory standards, any applicable literature regarding the Goods and Services as published by the Company from time to time and any specifications agreed in writing between the parties. This warranty does not affect the Buyer's obligation to pay the Price. To the maximum extent permitted by law, the Company does not provide any other warranty in relation to the Goods and Services other than that in this clause. To the maximum extent possible, any other warranties that may be asserted whether express or implied and including through statute, are expressly negated and excluded.

## **6. Termination**

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- 6.1 The Company may terminate this Agreement without cause and without prior notice at its absolute discretion.
- 6.2 Subject to clause 2.10, the Buyer may terminate this Agreement on 7 days notice.
- 6.3 Termination by either party must be notified in writing to the other party.
- 6.4 Upon the termination of this Agreement, the Buyer must immediately pay to the Company an amount equal to 25% (plus GST) of the Price as a cancellation fee or reimburse the Company for any amounts payable for work done in providing or preparing to provide the Goods and Services to that time, whichever is the greater. A tax invoice in this regard will be issued as in clause 2.2.
- 6.5 The termination of the Agreement is without prejudice to the rights and obligations of either the party accrued prior to termination.

## **7. Guarantee**

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The Guarantor irrevocably guarantees to the Company the performance by the Buyer of all obligations under this Agreement, including as to payment.

## **8. Limitation of liability**

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To the maximum extent permitted by law, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement is limited to the Price or provision of further similar Goods and Services at the Company's absolute discretion.

## **9. Claims**

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Any claim by the Buyer for short delivery, damage or defective workmanship must be notified to the Company in writing within 7 days of delivery, failing which no claim may be made. The Company shall have the right to inspect and if warranted, the Company shall have a reasonable time to repair or rectify (in the Company's absolute discretion) the Goods and Services having regard to the time it takes to source products, parts or labour.

## **10. Indemnity**

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The Buyer indemnifies the Company and its officers, contractors, delegates, employees and agents for any and all loss, cost, damage, liability or expense, whether direct, indirect, special or consequential, that the Company suffers itself or incurs in relation to any third party, where the loss, cost, damage, liability or expense is caused by or contributed to by an act or omission of the Buyer or its officers, contractors, delegates, employees or agents for such things including but not limited to the use, installation and maintenance of the goods.

## **11. No assignment**

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Neither this Agreement nor any rights or obligations in this Agreement may be assigned or otherwise transferred by the Buyer without the prior written consent of the Company, which may be withheld in the Company's absolute discretion. The Company may assign its rights or obligations without the Buyer's consent.

## **12. Delegation**

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The Company may delegate or sub-contract the performance of any obligation under this Agreement without the written consent of the Buyer.

## **13. Governing law and jurisdiction**

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This Agreement and the transactions contemplated by this Agreement are governed by the law in force in New South Wales, Australia and the parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia and all courts competent to hear appeals from the courts of New South Wales, Australia in respect of all proceedings arising in connection with this Agreement.

## **14. Arbitration of disputes**

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All questions, disputes or differences which arise between the parties with respect to this Agreement are to be referred to a single arbitrator in accordance with the provisions of the *Commercial Arbitration Act 1984* (NSW) or any re-enactment or statutory modification of that law for the time being in force.

## **15. Variation and waiver**

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The terms of this Agreement may be varied only by a written agreement between the parties. No right or remedy under or arising from this Agreement may be waived other than in writing signed by all the parties. Accordingly, any non-exercise or partial exercise of, or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.

## **16. Severance**

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If any provision of this Agreement should be held to be void, illegal or unenforceable in any way, it may be severed or read down as appropriate and the remaining provisions will not in any way be effected or impaired thereby and this Agreement will be construed so as to most nearly give effect to the intent of the parties as it was originally executed.

## **17. Entire agreement**

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This Agreement (including the Quotation) constitutes the entire agreement of the parties about its subject matter and any previous document, understanding and negotiation on that subject matter ceases to have any effect.