

**ALFABS GROUP - TERMS & CONDITIONS OF SUPPLY**

We reserve the right to sublet awarded packages to preapproved contractors for the purpose of achieving client delivery schedules and site deadlines. Sublet packages will be monitored by an Alfabs project coordinator and fall under the same Alfabs quality assurance surveillance standards and requirements.

**Interpretation**

In these Conditions, the following terms have the following meanings:

**Alfabs** refers to:

- ALFABS ADMINISTRATION PTY LTD (ABN 33 002 242 328)
- ALFABS HIRE PTY LTD (ABN 27 638 729 923)
- ALFABS LOGISTICS PTY LTD (ABN 26 638 731 021)
- ALFABS SERVICES PTY LTD (ABN 24 612 864 525)
- ALFABS ENGINEERING GROUP PTY LTD (ABN 77 002 526 463)
- ALFABS FORKLIFT & ACCESS PTY LTD (ABN 97 613 023 564)
- ALFABS LABOUR HIRE PTY LTD (ABN 78 612 870 416)
- ALFABS MINING EQUIPMENT PTY LTD (ABN 18 099 383 650)
- ALFABS STONEDUST SOLUTIONS PTY LTD (ABN 23 638 730 640)
- ALFABS PROTECTIVE COATINGS PTY LTD (ABN 21 123 471 394)

**Conditions** refer to these terms and conditions as stated below.

**Contract** refers to the contract formed when a Purchase Order has been accepted by Alfabs.

**Customer** refers to a person or business who's Purchase Order has been accepted by Alfabs.

**Default Interest** refers to the interest rate equal to the Reserve Bank of Australia Cash Rate Target at the time an invoice is issued by Alfabs plus 4% (the Reserve Bank of Australia Cash Rate Target can be located under the caption "Statistics" at www.rba.gov.au).

**Works** refers to, but is not limited to, supply of equipment, parts and materials, manufacture, protective treatment, maintenance services, delivery and erection of works or other goods and services as specified in the Quotation.

**Purchase Order** refers to the order for Works made by the Customer to Alfabs following the issue of a Quotation.

**Quotation** means Alfabs' quotation for Works normally following a request for quotation from the Customer.

**Terms of Sale**

1. All Works supplied by Alfabs are supplied on these Conditions.
2. These Conditions (which may only be waived or varied in writing signed by Alfabs' authorised representative) will prevail over all conditions of a Purchase Order, to the extent of any inconsistency.

**Quotations, Catalogues, Price Schedules**

1. A Quotation is valid for the period stated in the Quotation or, when no period is so stated, within 30 days only after its date. Alfabs reserves the right to refuse any Purchase Order based on a Quotation.
2. The Customer acknowledges that all particulars of size and dimensions on which the price is based are estimates only and the price is calculated based on these estimates. If there are any adjustments in quantities above or below the estimates used to determine the price, then Alfabs may adjust the price on a unit rate basis according to the unit prices used to calculate the price.
3. The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of this Contract.
4. Prices quoted, or incorporated in a Purchase Order, are those Alfabs applies at the relevant time. These prices are based on the cost of materials, packaging, costs, insurance, sorting and stacking charges, cartage and other carrier charges, rate of wares, applicable taxes and duties and other charges affecting the cost of production at the relevant date and any variations to those underlying costs at any time will be to the Customer's account.

**Purchase Orders**

Following receipt of a Quotation, the Customer may order Works from Alfabs by giving a Purchase Order to Alfabs in a form acceptable to Alfabs, in its discretion. A Purchase Order will constitute an offer by the Customer:

- a) To purchase the Works described in the Quotation;
- b) For the price set out in the Quotation; and
- c) On these Conditions.

Alfabs may accept this offer by sending the Customer an acceptance of order form or by otherwise notifying the Customer in writing that the Purchase Order is accepted. Once a Purchase Order has been accepted by Alfabs, the Customer cannot cancel or withdraw from the Contract without Alfabs' written consent.

**Prices**

1. The Customer agrees to pay Alfabs the agreed price for the relevant Works (as adjusted or varied in accordance with these Conditions). The Customer must also reimburse Alfabs for any costs incurred by Alfabs in connection with supplying the Works to the Customer including, for example, the cost of packaging, freight, insurance and any applicable taxes, imposts or duties.
2. Unless otherwise stated, all prices quoted by Alfabs are exclusive of GST. If Alfabs has any liability for GST under these Conditions, the Customer must pay Alfabs the full amount of GST at the same time as making the payment to which the GST relates. In respect of any such payment, Alfabs will provide the Customer with a tax invoice to enable the Customer to provide an input tax credit.

**Payment**

1. Alfabs reserves the right to demand monthly progressive payment for the Works in progress, irrespective of the location of the works.
2. All payments are to be made by the Customer within thirty (30) days from the end of the month in which an invoice is issued by Alfabs.
3. Failure by the Customer to meet progress payments may result in delay or suspension of any stage of the Works. Alfabs is absolved from all liability for delay and consequential loss in accordance with these Conditions.
4. If the Customer does not pay the price by the date required under this Contract, the Customer will be liable to pay Alfabs, in addition to the price, an amount equal to the Default Interest on the price outstanding for each day from the date payment is required until the payment is actually made.

**Variations**

1. Any variations to the scope of Works and consequential amendments to the price must be approved in writing by Alfabs. Any variation to the scope of works will incur an extension of time of at least one week. Alfabs variation work will be charged at a higher rate. Unplanned works exceeding the planned 45 hour/week manning will be charged at \$ 95.00/hour.
2. The variation procedure is as follows:
  - (a) If the Customer requires a variation to the scope of Works, the Customer must submit a variation proposal in a form reasonably acceptable to Alfabs.
  - (b) Upon receipt of a variation proposal, Alfabs will advise the Customer whether the variation proposal can be effected.
  - (c) If the variation proposal can be effected, Alfabs will provide the Customer with a variation claim which will include an estimate of the effect of the variation on the proposed time for completion of the Works and provide an estimate of any increase in the cost of the variation proposal.
  - (d) The Customer may accept Alfabs' variation claim by giving notice in writing.
3. The Customer is bound by any variation claim approved in writing by the Customer or its employees, contractors and agents. A variation form signed by the Customer (or its employees, contractors and agents) is conclusive evidence the Customer has agreed to the variation claim.
4. If the Customer does not accept Alfabs' variation claim, the scope of Works will continue unvaried.

**Description of Works**

All Works to be supplied by Alfabs shall be as described in the Quotation (as amended by an accepted Purchase Order) and that description of the Works will prevail over all other descriptions.

**Payment for Works in Handling and Storage**

1. Notwithstanding anything inconsistent in these Conditions, the Contract or any other document, the Customer must pay for Works procured and held in storage by Alfabs (and any reasonable cost associated with such storage) on Alfabs' demand.
2. Alfabs is not responsible for any loss or damage to Works in storage and the Customer releases Alfabs from liability in respect of loss or damage to Works in storage, however caused.
3. Failure by the Customer to take delivery of the Works as specified in the Contract may result in Alfabs incurring a storage fee on a square metre basis, per month or part thereof, which will be recoverable in full from the Customer.

**Delivery**

1. The delivery times made known to the Customer are estimates only and Alfabs will not be liable for late delivery or non-delivery. Under no circumstances will Alfabs be liable for any loss, damage, delay, cost or

expense occasioned to the Customer or any third parties arising from late delivery, non-delivery or late installation of the Works.

2. Unless otherwise agreed, Alfabs will be responsible for delivery of the Works to the Customer's site. Delivery will occur when the Works are transported to the Customer's site ready for unloading by the Customer.
3. Upon delivery, Alfabs will allow two hours for the Customer to unload the Works after which Alfabs may incur demurrage charges, which will be recoverable in full from the Customer.
4. If agreed between the parties, Alfabs will generate and deliver a manufacturer's data report (MDR) to the Customer within four weeks after the delivery date. Unless otherwise agreed, Alfabs reserves the right to charge an additional amount for its MDR as a variation to the agreed price.

#### **Transport Equipment**

1. Works will be delivered using various transport equipment including "flat racks" (especially for steel) and timber "bearers". Such transport equipment will remain the property of Alfabs and, wherever possible, delivery dockets will contain flat rack serial numbers.
2. Collection and loading of transport equipment onto transport (provided by Alfabs) is the responsibility of the Customer.
3. If transport equipment is not ready for collection within two weeks of delivery, the Customer must pay Alfabs a hire fee of 12% of the Contract price per annum plus GST for each additional day until the date of collection.
4. The Customer will be responsible for any loss or damage to transport equipment whilst in the possession of the Customer. Alfabs will invoice the Customer for the cost of repair or rectifying such damage or replacing damaged or lost transport equipment, which will be payable by the Customer to Alfabs in accordance with clause 12.

#### **Risk and Title**

1. Risk in the Works passes to the Customer on delivery.
2. Title in the Works does not pass to the Customer until the Customer has paid all monies owing for the Works to Alfabs in full. Until title passes to the Customer, the Customer must:
  - (a) Store the Works which have not been paid for, in a safe manner, in accordance with Alfabs' instructions and in a manner which makes it clear that the Works are the property of Alfabs;
  - (b) insure the Works against loss, damage or destruction, keep the Works clearly identifiable and not grant any charge, bill of sale, mortgage or other encumbrance over the Works; and
  - (c) keep the Works as bailee and fiduciary of Alfabs in a manner that clearly shows Alfabs retains ownership of the Works and, if the Customer sells the Works, keep the proceeds of sale in a separate bank account and give a full account to Alfabs in respect of the proceeds of sale in accordance with the Customer's fiduciary obligations to Alfabs.
3. Alfabs may register its interest in the Works on the Personal Property Securities Register ("PPSR") as a purchase money security interest ("PPSI") or otherwise in accordance with the Personal Property Securities Act 2009 ("PPSA"). Where Alfabs makes repeated supply of Works to the Customer on these terms, Alfabs will only make a single register on the PPSR.
4. If the Customer does not pay for the Works in accordance with these Conditions, Alfabs is irrevocably authorised by the Customer to enter the premises where unpaid Works are stored and use reasonable force to take possession of the Works. The Customer releases and indemnifies Alfabs and its employees and agents against any liability, loss, cost, claim charges or expenses which the Customer may suffer or incur arising from the exercise of powers under this clause.

#### **Shortage and Adjustments**

The Customer waives any claim for shortage of Works delivered, incorrect charges or other adjustments to the Contract if a claim for the relevant shortage or adjustment has not been lodged with Alfabs within seven (7) days from the date of receipt of Works by the Customer. If no such claim is made within that time, the Customer is deemed to have accepted that the Works have been correctly charged and delivered and payment is to be made in accordance with these Conditions.

#### **Liability**

1. If Works are not manufactured by Alfabs the guarantee of the manufacturer (if any) will be accepted by the Customer and is the only guarantee given to the Customer in respect of the Works.
2. To the extent permitted by law, all express and implied warranties,

guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Works for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded by Alfabs.

3. Where Alfabs' liability for a breach of a condition or warranty implied by the Competition and Consumer Act 2010 (Cth) cannot be excluded, Alfabs' liability is limited, at Alfabs' option, to:
  - (a) In the case of goods, any one or more of the following:
    - i. The replacement of the goods or the supply of equivalent goods;
    - ii. The repair of the goods;
    - iii. The payment of the cost of replacing the goods or of acquiring equivalent goods;
    - iv. The payment of the cost of having the goods repaired; or
  - (b) In the case of services:
    - i. The supplying of the services again; or
- (ii) The payment of the cost of having the services supplied again.
4. The Customer releases Alfabs from all claims, demands, loss or damage that the Customer suffers directly or indirectly in connection with these Conditions or the Works (however caused).
5. Alfabs will not be liable to the Customer for any special, indirect, consequential or economic loss or damage of any nature.
6. The Customer is liable for, and indemnifies Alfabs against, any liability or loss arising from, and any cost, charge and expense (including legal costs on a full indemnity basis) incurred directly or indirectly by the Alfabs in connection with any of the following:
  - (a) The Customer's breach of these Conditions;
  - (b) The acts or omissions of the Customer and its employees, contractors and agents in connection with these Conditions; and
  - (c) Any claim against Alfabs by any third party, including the Customer's customers, employees, contractors or agents in connection with the Works.

The above release and indemnity survives termination of these Conditions.

#### **Termination**

1. If the Customer fails to make any payments under this Contract, Alfabs may immediately terminate this Contract if Alfabs has given the Customer notice in writing of the late payment and the Customer has not paid this payment (and Default Interest if applicable) within five (5) business days of receipt of such notice.
2. A party (the "non-defaulting party") will have the right to terminate this Contract on written notice to the other ("the defaulting party") if:
  - (a) the defaulting party commits a breach of this Contract and either such breach is not capable of remedy or, if capable of remedy, the defaulting party has failed to remedy the breach within fifteen (15) Business Days of receipt of notice from the non-defaulting party; or
  - (b) The defaulting party has entered into any form of insolvency, administration or liquidation, whether voluntary or involuntary, formal or otherwise.
3. The termination of this Contract is without prejudice to the accrued rights of the parties as at the date of termination.
4. On termination of this Contract, the Customer must return all copies of any manuals, drawings, plans or other materials from Alfabs in the Customer's possession or control.

#### **Customer's Property**

Any property of the Customer under Alfabs' custody or control shall be entirely at the Customer's risk as regards loss or damage caused to the property or by it.

#### **Returned Goods**

Alfabs is not under any obligation to accept Works returned by the Customer.

Any Works returned under the provisions of the Competition and Consumer Act 2010 (Cth) will be handled according to these Conditions.

#### **Cancellation**

Upon entering into a Contract with Alfabs, the Customer must not cancel the Contract unless expressly approved by Alfabs in writing.

Should Alfabs accept cancellation of the Contract, the Customer agrees to reimburse Alfabs for all costs reasonably incurred in fulfilling the Contract and carrying out the Works. Alfabs will issue a final invoice for these costs which is to be paid by the Customer on these Conditions.

**Intellectual Property**

1. Alfabs retains full ownership, right and title in all intellectual property developed and owned by Alfabs including rights subsisting or capable of subsisting or being obtained under intellectual property legislation, including legislation dealing with copyright, circuit layouts, designs, patents, plant varieties or trademarks, and whether in Australia or overseas ("**Intellectual Property Rights**").
2. The Customer shall not copy, modify or reverse engineer the goods or any materials supplied by Alfabs, in whole or in part.
3. The Customer shall notify Alfabs immediately on becoming aware of any unauthorised use or copying of the whole or any part of the goods and materials supplied by Alfabs or any of the Intellectual Property Rights.
4. The Customer must, both during and after the operation of these Conditions, comply with any request Alfabs may make in order to protect or secure ownership of such Intellectual Property Rights.
5. The Customer will assign to Alfabs any Intellectual Property Rights that may directly or indirectly arise or be capable of being claimed as a result of anything done by or on behalf of the Customer (including, without limitation, its employees, subcontractors or related entities) during the course of, or in connection with, the supply of the Works by Alfabs.
6. The Customer indemnifies Alfabs against any losses, costs, actions, demands, expenses, judgments, court orders or other liabilities arising directly or indirectly out of or in connection with any breach of Alfabs' intellectual property.

**Confidentiality**

1. The Customer must keep confidential all information relating to the dealings between the Customer and Alfabs. The Customer must only disclose such information to its employees and agents insofar as it is necessary for them to know the information for the use of the Works.
2. The Customer must not use any trade secrets, disclosures or other information or technical data unless:
  - (a) Such disclosure is forced by laws, regulations or orders;
  - (b) The information is generally available in the public domain except where that is a result of a disclosure in breach of this Agreement; or
  - (c) The Customer can prove that it knew the information before it disclosed the information to another party.

**General**

1. These Conditions cannot be varied without Alfabs' written consent.
2. No cash retentions are permitted. Any retention by the Customer to be agreed by Alfabs will be in the form of a bank guarantee only.
3. These Conditions are governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any court hearing appeals from those courts.
4. Neither party will be liable for any delay or failure to perform its obligations under these Conditions where such delay is due to an act, event or cause which is beyond the reasonable control of Alfabs or the Customer, including acts of God, lightning strike, earthquake, flood, storms, explosions, fires and any natural disaster, acts of war, terrorism, riots, malicious damage, sabotage and strikes.
5. Alfabs may subcontract the supply of the Works, in whole or in part, as it sees fit from time to time.
6. Alfabs can assign its rights under these Conditions without the consent of the Customer.
7. Alfabs may amend these Conditions at any time by notice to the Customer in writing.