

Danterr Pty Ltd Terms and Conditions of Sale

1. APPLICATION

The following terms apply to all Orders of Supplies by you from Danterr Pty Ltd (ACN 154 705 610) trading as Danterr, Concrete Jointing Systems Australia and Confidence Cleanse (**us, we, our**). Each Order is a separate agreement between you and us.

If you are not a natural person:

- 1.1. you warrant that any person that places an Order on your behalf is authorised to do so and will also do so as agent for each of your related entities that use or access the Supplies; and
- 1.2. you must procure that your Personnel comply with these terms and you take responsibility for the acts and omissions of your Personnel.

2. QUOTES

If we provide you with a quote, unless the quote states otherwise, it will be valid for 30 days from the date of issue and may be adjusted by us prior to you placing an Order.

A quoted Price is exclusive of all Taxes unless otherwise specified and quoted times for delivery are an estimate only.

3. ORDERS

You must provide sufficient information with an Order (including any special requirements) to enable us to provide you with the Supplies.

We may refuse to accept an Order (or part of it) on reasonable grounds.

If an Order includes any special conditions agreed by us, they will, unless stated otherwise take precedence over these terms.

4. CANCELLATION OF ORDERS

If you cancel an Order prior to delivery (in accordance with clause 8 of these Terms), we will refund any Price paid, less any cancellation fees notified to you and costs incurred by us due to the cancellation.

We may cancel an Order at any time prior to delivery by notice to you where the requested Supplies are not available, there is an error in the Price or description of the Supplies, or the Order has been placed in breach of these terms. Where we cancel an Order, we will give you a refund of any Price paid for that Order.

5. PRICE

Your payment of the Price is due on placement of the Order, unless we agree you may pay on your receipt of the Supplies or, if your Credit Application has been approved and subject to any statement in it to the contrary, within 30 days of the end of the month in which the tax invoice was rendered.

We may change any advertised price for Supplies at any time without notice. A Price will not change once an Order has been accepted by us.

6. CREDIT CUSTOMERS

If you have been approved for credit terms you must pay the Price in accordance with the terms of your approved Credit Application.

We may disclose information about you and your Credit Application to third parties and the Personal Property Security Register in accordance with our Credit Reporting Policy.

7. FAILURE TO PAY

Where you fail to make full payment of the Price by the due date, we may:

- 7.1. refuse to supply you with further Supplies; or
- 7.2. require you to pay for further Supplies in full prior to delivery; or
- 7.3. impose interest on any overdue amounts at the fee stipulated in the *Penalty Interest Rates Act 1983* plus 2%, calculated daily.

Time is of the essence in respect of your obligation to pay the Price. If we incur costs of collection of any amount you have failed to pay by the due date you agree to indemnify us against such costs.

8. DELIVERY

We will endeavour to meet the delivery milestones specified in an Order, however you acknowledge that we will not be responsible for delays in delivering the Supplies to the extent we are not directly and solely responsible.

Unless otherwise stated, the Price is quoted Ex-Works at the warehouse in which the Supplies are located and you will be responsible for any delivery fees or charges in addition to the Price.

You agree to comply with any delivery requirements we notify to you when you place an Order.

9. SALE OF GOODS

Delivery of the Supplies occurs when you, your Personnel or your nominated carrier collect them from our premises or when they are delivered to you at the address specified on the Order.

Risk in the Supplies pass to you on delivery.

You must inspect the Supplies immediately upon delivery to satisfy yourself they comply with the Specifications. You will be deemed to have accepted the Supplies if you have not notified us within 5 business days that the Supplies do not meet the Specifications.

Ownership of and title to the Supplies remains with us until you have paid us the Price in full and any other money that you may owe to us at any time on any account.

10. RETURN FOR CHANGE OF MIND

If you wish to return any Supplies because of a change of mind, we may, in our absolute discretion, accept the return of Supplies by you and provide you with a credit in respect of those Supplies if:

- 10.1. you provide us with proof of purchase;
- 10.2. the Supplies are not special orders (must be a stocked item);
- 10.3. the Supplies are undamaged and/or unused; and
- 10.4. the Supplies are returned to the located specified by us within 7 days of delivery to you; and
- 10.5. you pay us any restocking fee advised to you (which we may deduct from any credit offered); and
- 10.6. you pay for all freight and insurance related to the return of the Supplies;.

For the avoidance of doubt, nothing in this clause prejudices your rights under the Warranty Information or clause 14 of these Terms.

11. PERSONAL PROPERTY SECURITIES ACT

You grant us a Security Interest in all your present and after-acquired property to secure the payment of all amounts owed to us and the compliance by you of your obligations under these Terms and your approved Credit Application. We may register that Security Interest on the Register and you consent that registration and agree to do all things necessary to facilitate that registration.

To the extent the law permits:

- 11.1. for the purposes of sections 115(1) and 115(7) of the PPSA we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and sections 142 and 143 are excluded;
- 11.2. for the purposes of section 115(7) of the PPSA, we need not comply with sections 132 and 137(3); and
- 11.3. you agree not to exercise your rights to make any request of us under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

Upon our request, you will reimburse us for any costs incurred by us in registering, preserving and or enforcing our rights under the PPSA.

12. ONLINE PRESENCE

We operate the Site, which is provided for your personal use only via standard web and mobile internet browsers. Access to the Site may be suspended, restricted or terminated at any time.

We do not warrant that the Site will be available at all times or is free from viruses and where the Site contains links to third party sites, we assume no responsibility for the content of such third-party sites.

We grant you a limited, personal, non-transferable, non-exclusive, revocable license to access and use the Site pursuant to these Terms.

All IPR in the Site, materials, information and content on the Site, any database operated by us, all the Site design, text, graphics, software, photos, video, music, sound, data, all software compilations, underlying source code (including applets and scripts) is our property (or that of our licensors). You shall not, and shall not attempt to, obtain any ownership or title to any such property. All rights are reserved.

13. SET-OFF

If you owe money under one Order, we may set-off that money against any money that we owe to you under another Order.

14. WARRANTIES

The Supplies may come with a limited manufacturer's warranty as specified in the Warranty Information. You confirm your understanding and acceptance of the relevant warranty upon acceptance of the Supplies, including any limitations and exclusions contained in the Warranty Information or these terms.

If you are a Consumer under the ACL, the Supplies also come with guarantees that cannot be excluded under the ACL and you are entitled to: Your choice of a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage;

- 14.2. our choice of having the Supplies refixed, repaired, replaced or refunded if failure does not amount to a major failure. We'll do this within a reasonable time.

To the extent permitted by law, we exclude all other guarantees, warranties, undertakings and representations expressed or implied, whether arising by statute or otherwise, which are not given in these terms or any warranty document given at the time of supply.

15. YOUR RESPONSIBILITIES

You are solely responsible for ensuring that the Supplies meet your needs and requirements and are appropriate for the purpose for which it was selected.

You are solely responsible for any use or misuse of the Supplies by you or any third party, including in respect of installations, whether authorised or not, and you must not resell the Supplies without our written consent.

You must not alter, tamper, reverse engineer, repair or cause or allow a third party to do so without our consent.

16. SUSPENSION OF SUPPLIES

We may limit, suspend or cancel the provision of Supplies to you:

- 16.1. in the event of an emergency, where the supply is or likely to be unlawful or in our reasonable opinion the supply is likely to cause death, injury or damage to property;
- 16.2. if you do not pay us any amounts due for the Supplies on time;
- 16.3. if an administrator or receiver is appointed to you or you are unable to pay your debts as and when they fall due.

17. LIABILITIES

Where the ACL applies, and the Supplies are not of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability under the ACL is limited, at our option (and provided it is fair and reasonable to do so), to one or more of the following:

- 17.1. for Supplies that are services, resupplying those services again; or reimbursing you the cost of having someone else supply services; and
- 17.2. for Supplies that are goods, their replacement or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired

Other than as specifically accepted by us above, we are not liable for any other losses or damages you may suffer, including any:

- 17.3. loss caused by you or to the extent it results from your failure to take reasonable steps to avoid or minimise that loss;
- 17.4. loss caused by events falling outside our reasonable control;
- 17.5. indirect or consequential losses (including loss of revenue, profits, enjoyment or loss of business), or losses you might suffer as a result of unauthorised access to information we hold.

Where our liability cannot be excluded, and subject to law, we limit our liability to you to the Price you paid for the relevant Supplies.

18. INDEMNITY

You indemnify, and keep indemnified, us and our directors, officers, employees and agents from and against any loss (including reasonable legal costs and expenses) or liability incurred or suffered by us arising from any claim, demand, suit, action or proceeding by any person against us where such loss or liability arose out of, or in connection with your acts or omissions or breach of these terms, or use of the Supplies.

19. TERMINATION

If you commit an Act of Default which is not remedied within 5 days of us giving written notice to do so, we may terminate these terms or suspend supply until you remedy the Act of Default.

If we terminate these terms all amounts payable by you to us will immediately become due and payable notwithstanding that the due date has not yet arisen.

If we commit an Act of Default which is not remedied within 5 days of you giving written notice to do so, you may terminate these terms and obtain a refund of any amount of the Price already paid for Supplies not delivered, less any other amounts due and payable to us.

20. INTELLECTUAL PROPERTY

We retain ownership of all IPR owned or made available by us in the delivery of the Supplies that is in existence at the time of Order and grant to you a non-exclusive, non-transferrable and non-sub-licensable licence to this IPR for the sole purpose of using the Supplies in the ordinary course of your business.

If you communicate with us, you grant to us an irrevocable, perpetual, non-exclusive, royalty-free, world-wide licence to use, copy, display and distribute the content of your correspondence or communication and to prepare derivative works of the content or incorporate the content into other works in order to publish and promote such content. This may include, but is not limited to, publishing testimonials on our Site and developing your ideas and suggestions for improved goods or services we provide.

21. VARIATIONS

We may amend these terms at any time by posting such amendments on the Site. In relation to an Order, you will be bound only to the version of the terms in force at the time of that Order.

22. CONFIDENTIALITY

All information supplied by a party to the other party will be treated as confidential except to the extent that it becomes public knowledge (otherwise than through a breach of confidentiality) and must not be disclosed to a third party without the prior written consent of the party who originally supplied the information, or as required by law.

23. PRIVACY

Our commitment to privacy is set out in our Privacy Policy.

24. FORCE MAJEURE

Neither party will be liable for any delay or failure in the performance of any obligation or the exercise of any right under these terms (other than an obligation to pay money due) or for any loss or damage if such performance or exercise is prevented or hindered in whole or in part by reason of an event beyond that party's reasonable control.

25. DISPUTES

If a dispute arises under these terms, the party claiming that a dispute has arisen must give notice to the other party specifying the nature of the dispute and the parties will attempt to negotiate a resolution in good faith.

If a dispute persists for more than 14 days, either party can refer the dispute to mediation before a mediator to be appointed by the Australian Commercial Disputes Centre. The costs of mediation will be shared by the parties equally.

Save for seeking urgent interlocutory or injunctive relief, neither party may issue court proceedings in relation to a dispute until resolution by mediation has been attempted.

26. ASSIGNMENT

Neither party may assign, novate or otherwise transfer any of its rights or obligations arising out of or under these terms to another person without the other party's prior written approval (which will not be unreasonably withheld).

27. ENTIRE AGREEMENT

These terms represent the entire agreement between the parties in relation to the Supplies and supersedes all prior discussions, negotiations, understandings and agreements in relation to those Supplies.

28. GOVERNING LAW

These terms will be governed by the Laws of Victoria. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in that jurisdiction.

29. WAIVER

A provision of these terms, or right, power or remedy created under them, may not be varied or waived except as agreed in writing.

30. RELATIONSHIP

The relationship between us is that of principal and independent contractor. You must not represent yourself as our employee or agent.

31. UNFAIR TERMS TO BE READ DOWN

If any law making unfair contract terms void or unlawful could apply to a term in these terms, the following rules apply to interpreting that term.

- 31.1. if the law would make the term void because the term permits us to exercise a right or discretion in a way that would cause detriment to you, the term shall be read down and construed to the extent as not to permit us to exercise the right or discretion in such a way.
- 31.2. if the law would make the term void because it authorised us to recover costs or losses or damages to be calculated in a way we chose, the term shall be read down and construed as authorising us to recover the maximum reasonable costs, losses and damages to be calculated in a reasonable way that did not cause the term to be void.

If, despite the application of this clause, the law would make the term void, the term is to be read down and construed as if it were varied, to the minimum extent necessary, so that the term is not void. These reading down rules apply before any other reading down or severance provision in these terms and conditions.

32. GST

32.1. For the purpose of this clause:

- (a) **GST** Means GST within the meaning of the GST Act;
- (b) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time);
- (c) expressions used in this clause have the same meanings as when used in the GST Act.

32.2. To the extent that a party makes a taxable supply in connection with these Terms to the other party then, except where express provision is made to the contrary, the amount payable by the recipient of that supply is a GST exclusive amount and the recipient of that taxable supply will pay to the supplier of it the GST payable in respect of that supply in addition to the other consideration payable.

32.3. A party's right to payment of the GST under clause 31.2 is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

33. INTERPRETATION

In the Agreement:

- 33.1. headings, bold type and square brackets are for convenience only and will not affect interpretation of this Agreement;
- 33.2. words in the singular include the plural and words in the plural include singular, according to the requirements of the context;
- 33.3. a reference to a legislation or other Law includes delegated legislation and consolidations, amendments, re-enactments or replacements of any of them;
- 33.4. a reference to any of the words "include", "includes" and "including" is read as if followed by the words "without limitation";

34. DEFINITIONS

34.1. **ACL** means the Australian Consumer Law.

34.2. **Act of Default** occurs if either party:

- 34.2.1. commits a material breach of these terms;
- 34.2.2. is unable to pay its debts as and when they fall due;
- 34.2.3. commits an act of bankruptcy, enters into any composition or arrangement with its creditors or does anything which would make it liable to be put into liquidation;
- 34.2.4. has a receiver, other form of insolvency administrator or statutory or official manager appointed over any of its assets.

34.3. **Credit Application** means a current written application in the approved form to purchase Supplies on credit, approved by us;

34.4. **Credit Reporting Policy** means our credit reporting policy in force from time to time as set out in the Credit Application approved form;

34.5. **Interested Person, Security Interest and Verification Statement** have the meanings prescribed to them in the PPSA;

34.6. **IPR** means includes all copyright, patents, trademarks, service marks, trade names, domain names, social media identifiers, designs, whether registered or unregistered;

34.7. **Order** means any request for the provision of Supplies by you that has been accepted by us, evidenced by a document constituting a tax invoice;

34.8. **Personnel** means a party's employees, secondees, directors, officers, contractors, professional advisors and agents;

34.9. **PPSA** means the *Personal Property Securities Act 2009 (Cth)*;

34.10. **Price** means the amount payable for the Supplies specified in an Order;

34.11. **Privacy Policy** means our Privacy Policy from time to time available on the Site;

34.12. **Site** means <https://www.danterr.com/> ;

34.13. **Specifications** means any official specifications or descriptions provided by us with the Supplies;

- 34.14. **Supplies** means the concrete and construction products, items, deliverables and goods provided, or to be provided, by us to you as identified in an Order;
- 34.15. **Taxes** means taxes, levies, imposts, duties, excise, and charges, deductions or withholdings, however described, imposed by Law or government authority or agency other than Australian GST or any tax imposed on, or calculated having regard to, net income;
- 34.16. **Terms** means these terms and conditions of sale; and
- 34.17. **Warranty Information** means the warranty information (if any) provided with the Supplies and includes all associated exclusions and limitation.
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