



B R DURHAM & SONS PTY LTD
 ACN: 105893007 ABN: 74 105893007
 27 Curtis Rd, Mulgrave (PO Box 6014 Sth Windsor) NSW 2756
 Tel: +61 2 4587 7011 Fax: +61 2 4587 7069
 Email: sales@durham.com.au Web: www.durham.com.au

TERMS AND CONDITIONS

Any order for Products or Service placed with B R Durham and Sons Pty Ltd or its related entities or nominees ("the **Company**") constitutes your (the "**Customer**") agreement to be bound by these terms. Any additional or different terms you may stipulate or state in any communication with us (including any order) are hereby rejected and will have no force or effect whatsoever unless we expressly agree in writing. No sales representatives, agent or other person engaged by the Company (or purporting to do so) is authorised by us to give any guarantee, warranty or representation in addition to, or contrary to these terms or to vary these terms in any way whatsoever. In any event, all supplies of goods (and related services or works) by the Company are governed exclusively by these terms.

These terms form part of and govern exclusively any quote submitted by the company. Any order and/or request placed with the company also constitutes your agreement to be bound by these terms.

The Customer:

- a) represents and warrants that they have read and fully understand the nature and effect of these terms;
- b) represents and warrants that they have the authority to enter into and be bound by these terms;
- c) acknowledges and agrees that the granting of credit to it will be at the absolute discretion of the Company and may be on terms determined by the Company in its absolute discretion;
- d) agrees that the Company may withdraw further credit at any time without notice;
- e) where it comprises more than one person or company, agrees that each such person and company is jointly and severally liable for all or any money owing by the Customer from time to time to the Company; and
- f) agrees that the obligation to pay will be a continuing obligation notwithstanding any change in the constitution, ownership or control of the Customer.

1. APPLICATION & INTERPRETATIONS

These terms apply to the engagement of Durham and by you, the Customer for the supply and/or installation of any Products or Services.

Defined terms:

"Agreement"	means the agreement entered into between the Company and the Customer for the supply of Products and any Services pursuant to an Order and these terms;
"Customer"	means the customer nominated in the Agreement and any of its officers, employees, agents;
"products"	includes any products to be supplied by the Company to the Customer;
"intellectual property"	includes all intellectual property rights throughout the world, whether present or future, registered or unregistered, including the right to apply for registration of any such rights;
"services"	includes any services to be supplied by the Company to the Customer.

2. CUSTOMER OBLIGATION

2.1 These terms also apply if the Company accepts any order for Products and/or Services from the Customer, whether for cash or credit. The Customer has no entitlement to credit unless in the Company's sole discretion the Company extends credit to the Customer. If in a particular case, the Company gives the Customer credit, the Company still reserves the right at any time and for any reason in the Company's sole discretion to refuse to supply any further Products and/or Services to the Customer and to refuse to supply any Products and/or Services or both to the Customer on credit terms. If the Company does decline to give the Customer further credit, then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Company. The Company shall have no liability whatsoever to the Customer where it withdraws credit in any circumstances.

3. ORDERS AND SPECIFICATIONS

- 3.1 No order may be cancelled by the Customer except with the written agreement of the Company and on terms that the Customer indemnifies the Company against any loss the Company pays, suffers, incurs or is liable for as a result of cancellation.
- 3.2 The Customer agrees that these terms apply to the Agreement to the exclusion of any other terms, including any on printed documents issued by the Customer at any time and are in addition to all other rights which the Company may have at law. Any waiver by the Company of any right is not a waiver of any other or future rights the Company may have.



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4. SALE AND PURCHASE

- 4.1 Your placement of an order and/or request for specific Products and/or Services with the Company constitutes an offer by you to purchase Products and/or Services from us on these terms. The order is placed when it is submitted to us.
- 4.2 If we accept the order, a binding agreement between you and us will arise on these terms. The agreement may be amended only by written agreement between you and the Company.
- 4.3 All quotes shall be valid for thirty (30) days unless otherwise stated.
- 4.4 The Customer shall be solely responsible for the accuracy, suitability or completeness of any order it makes, or any specifications, instructions, drawings or quantities which are applicable to any order for any Products and/or Services by the Company. The Customer acknowledges and agrees that the Company makes no representation as to the accuracy or suitability of any Product information, descriptions, specifications, illustrations, drawings, data, dimensions, weights, tolerances or other information supplied by the Company or otherwise contained in catalogues, price lists, advertising or in other material of the Company. Such information is indicative only and the Customer agrees that it shall be responsible for carrying out its own assessment and inquiries to verify any such information prior to issuing any order.

5. PAYMENT

- 5.1 Payment terms for account customers of the Company are strictly thirty (30) days from date of invoice issued.
- 5.2 All and any customers with a credit account with the Company must have at least one guarantor execute a guarantee on terms approved by the Company.
- 5.3 Payment terms for non-account customers of the Company are cash prior to delivery, eft or credit card.
- 5.4 We reserve the right to suspend delivery of further Products and/or Services at any time if the terms of payment are not strictly adhered to by you.
- 5.5 The Customer indemnifies the Company for all costs, expenses, losses and other liability incurred by the Company as a result of the Customer's failure to pay to the Company all sums outstanding as owed by the Customer to the Company including without limitation, all and any debt collection and legal costs incurred in pursuing recovery of the balance of monies.

6. GOODS AND SERVICES TAX

- 6.1 All Products sold and Services provided are subject to goods and services tax (GST) unless classified as GST exempt.

7. DELIVERY OF PRODUCTS

- 7.1 The Company shall use its reasonable endeavours to deliver its "stocked Products" within five-(5) standard working days of an order, although this period may vary in the case of unforeseen circumstances. For the avoidance of doubt, supply of Products shall be subject to availability. The Company shall not in any circumstances be liable for any delay in supplying Products under any order.
- 7.2 The standard delivery period for Products specially manufactured for the customer ("customised Products") shall be a minimum of fifteen-(15) working days from the date of the order, although this period may vary in the event of unforeseen circumstances. In relation to customised Products the following conditions also apply:
 - a) The Customer at the time of order must provide drawings and dimensions and must at all times be responsible for any errors, inaccuracies or unsuitability in any information its provides. In no circumstances shall the Company be liable for any deficiency in any design, specification or other information provided in connection with customised Products.
 - b) In the event the Customer fails to provide drawings and dimensions as provided herein, the Company may elect not to manufacture the Products until drawings and dimensions are provided or alternatively may manufacture the Products based upon the information provided and the Customer agrees to accept those Products as manufactured in compliance with these terms.
 - c) Under no circumstances will customised Products be approved for return or credit.
 - d) Notice of Customer cancellation of orders must be received by the Company within 1 working day of placement of the order. The Customer agrees that failure to cancel within 1 working day of order placement will incur cancellation fees [Note: can we specify what fee this will be and how much?].

8. RETURN OF PRODUCTS

- 8.1 Products may only be returned by the Customer to the Company, subject to the following conditions:
 - a) With written request by the Customer to the Company and the written approval of the Company.
 - b) Concrete products and customised products are considered special items and non-returnable under any circumstances.
 - c) Products damaged by the Customer may not be returned.
 - d) Products approved for return and if returned within seven (7) days of receipt by customer will incur a 25% re-stocking fee (based on the catalogue price) with the balance of 75% being credited to the Customer.
 - e) Where Products approved for return are returned outside the period of seven (7) days of receipt by the Customer, an additional re-stocking fee of 5% (based on the catalogue price) will apply for each seven (7) day period.
 - f) Products approved by the Company to be returned must be received by the Company within a maximum of ten (10)



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weeks from the date of invoicing or delivery (whichever is earlier).

- 8.2 Credit claims will be processed at the end of the accounting month.
- 8.3 Where credit is provided to a Customer the Company shall in no circumstances be required to refund monies.
- 8.4 Products and/or Services on Cash-On-Delivery ("COD") terms or basis cannot be returned or refunded.

9. FORCE MAJURE

- 9.1 The Company is entitled (without liability to Customer) to delay, vary or cancel the performance of any of its obligations if and to the extent that it is prevented from, hindered in or delayed in the performance of any of its obligations by normal route or means of delivery or at costs commercially unacceptable to the Company through any circumstances beyond its reasonable control, including but not limited to acts of God, governmental actions, strikes or other labour disputes (whether or not relating to the Company's workforce), lock-outs, accidents, war or national emergency, acts of terrorism, protests, riot, civil commotion, explosion, flood, epidemic or pandemic, fire, natural disasters, extreme adverse weather, reduction in or unavailability of energy sources, materials or labour shortages or delays, restrictions or delays affecting delivery of the Supplies, default of suppliers or the Company.

10. TITLE AND RISK

- 10.1 The Customer shall at the time of delivery or collection of Products inspect same and sign a delivery docket. By signing the delivery docket, or having a third party sign the delivery docket on behalf of the customer, or otherwise accepting delivery, the customer is acknowledging that the Products have been delivered in good condition, free of defects, and as ordered.
- 10.2 Title in the Products shall not pass to the customer until payment in full and until that time title in the Products will remain with the Company. Further to the passing of title the parties agree as follows:
 - a) In the event that the due date for payment passes the Customer shall be entitled to enter upon the Customer's premises and reclaim possession of the Products.
 - b) In the event the Customer becomes bankrupt or insolvent or enters into a composition or arrangement with its creditors, has a receiver or a receiver and manager or liquidator or controller appointed over all or part of its assets, or an administrator is appointed the Company will be entitled, without prejudice to any other remedy, to enter upon the Customer's premises without notice and take possession of the Products.
 - c) The Customer agrees that where the order is of a value greater than twenty thousand (AUD \$20,000.00) and production of the Products has commenced and the Customer cancels that order then the customer shall incur an applicable cancellation fee equal to 100% of Products manufactured, 50% of unmade standard items or 75% of "Special" unmade items.

11. VARIATION

- 11.1 The Company reserves the right to change these Terms and Conditions at any time by publishing the updates on the Company's website or providing notification in writing from time to time..
- 11.2 A change in the limit of the customer's account under the Agreement is only effective if given in writing and shall not be deemed a termination of any application for credit.
- 11.3 Durham may vary the limit on the customer's credit account without having to re-sign any application for credit.
- 11.4 Except as otherwise provided under these terms, all variations must be in writing and signed by a duly authorised representative of the Customer. Variations to an accepted quote, order or Agreement which are agreed in writing by the Company will incur additional costs to the Customer which will be notified by the Company to the Customer.

12. YOUR LIABILITY AND DEFAULT

- 12.1 The Customer will be in default if any of the following occurs:
 - a) Customer breaches these terms; and/or
 - b) Payments for the Products and/or Services has not been received by the Company by the due date of payment; and/or
 - c) The Customer is subject to any insolvency, winding up proceedings or similar actions initiated by creditors or any administrator appointed under the corporations law.
- 12.2 If the Customer defaults, the Company may, without prejudice to any other rights it have under these terms or at law:
 - a) Terminate the Agreement with the Customer; and/or
 - b) Claim the return of any Products in the Customer's possession where the title has not passed to the Customer; and/or
 - c) Refuse to supply any Products and/or Services to the Customer; and/or
 - d) Without notice to the Customer withdraw or vary any credit the Company has provided to the Customer; and/or
 - e) Without notice to the Customer make all monies owing by the Customer to the Company on any account or order immediately due and payable.



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13. SITE ACCESS & PERMITS

- 13.1 The Customer shall ensure that the Company and/or any of its agents, third parties engaged have clear and uninterrupted access to the site or delivery location until the work and/or services has been completed.
- 13.2 The Customer hereby agrees to indemnify the Company for any additional costs, losses or damage, liability or penalties if the completion of the work or delivery (as applicable) is delayed due to interrupted or obstructed site or delivery location access.
- 13.3 It is the responsibility of the Customer to ensure that all necessary permits, permissions or authorisations are obtained for any works or services carried out by the Company on the Customer's behalf or at the Customer's site or premises.

14. PERSONAL PROPERTY SECURITIES ACT 2009 (Cth) ("PPSA")

- 14.1 The Customer grants to the Company a security interest over the Products and their proceeds (by virtue of the retention of title in these terms).
- 14.2 The Customer:
 - a) Waives its right to receive a verification statement in respect of any financing statement or financing charge statement relating to the security interest;
 - b) Agrees that where the Company has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.
 - c) The Customer must pay the costs, charges and expenses of an incidental to the need for or desirability of registration of a financing statement or financing charge statement or any action taken by the Company to comply with the PPSA (including complying with a demand given under section 178 of the PPSA) or to protect its position under the PPSA. The Customer must pay any costs incurred by the Company including all reasonable legal costs arising from any disputes or negotiations with third parties claiming an interest in any Products and Services supplied to the Customer.
 - d) The Customer will do all things requested by the Company to enable the Company to register or enforce any security interest pursuant to these terms.

15. ELECTRONIC COMMUNICATIONS

- 15.1 The Customer agrees that email communications from the Company to the Customer constitutes an 'electronic communication' within the meaning of the Electronic Transactions Act 1999 (Cth).
- 15.2 The Customer agrees that in agreeing to receive invoices via email, and the service of notices under the Electronic Transactions Act 1999 (Cth) the Customer is designating an information system for the purpose of receiving electronic communications within the meaning of the Electronic Transactions Act 1999 (Cth).

16. PRIVACY

- 16.1 The Customer and any guarantor under any credit arrangement (if any) hereby authorises Durham to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the Privacy Act 1988 and subsequent amendments, to persons and/or legal entities who are a Solicitor or any other consultant engaged by Durham, a mercantile agency, credit reporting agency and/or any other individual or organization which maintains credit references and/or default listings.

17. WARRANTY & LIMITATION OF LIABILITY

- 17.1 Except to the extent required by law or otherwise as expressly provided in these terms or any quotation, no guarantees, representations, warranties, undertakings, terms and conditions in relation to any Products or Services (whether implied or otherwise) or their conformance to any specification, order, merchantability or fitness for purpose are made or assumed by the Company. All such guarantees, representations, warranties and conditions are hereby expressly excluded.
- 17.2 To the maximum extent permitted by law:
 - a) The Company shall not be liable to the Customer or any third party in respect of any alleged defects or non-compliances in any Products or Services unless the Customer notifies Durham in writing of its claim within 7 days from the date of delivery and gives the Company a reasonable opportunity to investigate the claim, together with access to the Products and/or Services which are alleged to be defective. Failure to so notify Durham in this timeframe shall be deemed to be unqualified acceptance of the Products and/or Services as defect free and in compliance with these terms and all applicable laws.
 - b) the Company shall in no circumstances be responsible or liable for any damage, loss or non-compliance caused directly or indirectly by the Customer or any handling, storage, transport, modification, alteration or installation or removal from packaging after delivery to the Customer or installation by the Company, or any use, installation or operation outside of the Company's instructions or any Product information.
- 17.3 To the maximum extent permitted by law, the Company's liability under any condition or warranty which cannot be legally excluded is limited as set out below:
 - a) in the case of Products, the lesser of replacement, repair (if applicable) or the payment of the cost of replacing or repairing the Product (as applicable); or
 - b) in the case of Services, the lesser of the re-performance of the Services or the payment of the cost of re-performance of the Services.
- 17.4 The Customer warrants that it has selected the Company's Products and/or Services at their own free will and agrees that it is the Customer's responsibility to be aware of the product and/or services intended use before submitting the order and/or request with the Company.



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17.5 Durham is not liable and/or responsible for any mistake and/or incorrect order and/or request made by the Customer and is entitled to payment for the order and/or request put forth by the Customer. In addition and to the maximum extent permitted by law, and subject to clause 17.3, the Company will not be liable to the Customer for any indirect or consequential loss suffered by the Customer in connection with the supply of the Products, including but not limited to loss of use, loss of business, loss of goodwill, capital costs, or loss of actual or anticipated savings.

18. DESIGNS AT CUSTOMER'S OWN RISK

18.1 When the Customer asks the Company to follow any designs or instructions, THE Customer hereby indemnifies the Company against all damages, penalties, costs and expenses arising from any infringement of a patent, trademark, registered design, copyright or common law right with respect to those designs or instructions. The Customer warrants that any designs or instructions given to the Company will not cause the Company to infringe any patent, copy right or common law right.

19. INTELLECTUAL PROPERTY

19.1 The Customer acknowledges and agrees that the Company is the owner and holds all rights, title and interest in the various patents, inventions, designs, copyright, trade mark, trade names, business names, corporate names, logo, get up, circuit layouts, know-how, trade secrets and confidential information which relate to the Products and Services. The Customer will not attempt to seek or claim any interest in, or use any of the Company's intellectual property, or assist any other party to assert any interest in or use the Company's intellectual property without the Company's prior written approval and subject to terms which may be determined by the Company. The Customer acknowledges that any improvement or enhancement of the Company's intellectual property which may result from work for Services performed in connection with the supply of Products and/or Services shall vest in and remain the exclusive property of the Company. The Customer must not hinder the Company in any application, prosecution or other measure taken by the Company to protect or exploit improvements to its intellectual property in the Products and/or Services.

20. SEVERABILITY

20.1 If any provision of these terms shall be determined to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall to be maximum extent not be affected, prejudiced or impaired.

21. INTERNATIONAL ORDERS

21.1 All jobs, orders, requests are quoted in Australian dollars (\$).

21.2 Customer invoices will be determined by the exchange rate applied by the Customer's payment services provider at the time the charge is recorded, plus any fees applied by the payment services provider all of which are solely for the Customer's account.

21.3 All jobs, orders, and requests for works to be carried out outside of Australia will have a minimum of three-(3) months wait for works to be commenced and/or Product/s to be delivered from the later of the date of the order or the date the request is submitted in writing to the Company.

21.4 In the event that a Customer offer or request is accepted by the Company in accordance with these terms, the Customer acknowledges and agrees that it will be the importer of record in respect of those products.

21.5 In respect of international order, taxes may be levied with respect to the goods by the destination country to which the Products and/or Services will be delivered and/or the country from which the Products are shipped.

21.6 In the event that you are the importer of any Products, you acknowledge and agree that you will pay all taxes, duties and other amounts which may be applied, charged or levied by any authority and indemnify the Company against any obligation or demand for payment of such amounts in addition to your payment to the Company of the price for the Products and/or Services.

22. GENERAL

22.1 Durham reserves the right to amend these terms at any time either by publishing the updated terms on its website or by written notification to the Customer.

23. LAW & JURISDICTION

23.1 This Agreement and its terms and conditions shall be governed by the laws of New South Wales, and the parties consent to the non-exclusive jurisdiction of the Courts of New South Wales.



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CONFIRMATION OF AGREEMENT BY CUSTOMER (OFF-LINE USE ONLY)

I/We _____ [name]

on behalf of _____ [customer name]

have read and confirm we agree that these terms shall apply exclusively to the supply of products and services by the Company (to the exclusion of all other terms) and agree to be bound by them.

Customer's Signature: _____

Title/Position: _____

Date: