
The Almar Group Pty Ltd T/A Duracube – Terms & Conditions of Trade

1. Definitions

- 1.1 "Supplier" means The Almar Group Pty Ltd T/A Duracube, its successors and assigns or any person acting on behalf of and with the authority of The Almar Group Pty Ltd T/A Duracube.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Duracube to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between Duracube and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with Duracube's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Duracube.

3. Change in Control

- 3.1 The Client shall give Duracube not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Duracube as a result of the Client's failure to comply with this clause.

4. Price and Payment

- 4.1 At Duracube's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Duracube to the Client; or
 - (b) Duracube's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 Duracube reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, change of design, obscured building defects etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Duracube in the cost of labour or materials which are beyond Duracube's control.
- 4.3 Where site work is included, an allowance of thirty (30) minutes has been included in Duracube's quotation for completion of a WHS induction. In the event that the induction exceeds thirty (30) minutes in time, then Duracube shall be entitled to charge the Client for any additional time spent, at Duracube's usual hourly rate in accordance with clause 4.2.
- 4.4 At Duracube's sole discretion a non-refundable deposit may be required.
- 4.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Duracube, which may be:
 - (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with Duracube's payment schedule;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Duracube.
- 4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Price), or by any other method as agreed to between the Client and Duracube.
- 4.7 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, Duracube reserves the right to treat all retentions as placing the Client's account into default.
- 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Duracube an amount equal to any GST Duracube must pay for any supply by Duracube under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

- 5.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Goods at Duracube's address; or
 - (b) Duracube (or Duracube's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 5.2 At Duracube's sole discretion the cost of delivery is included in the Price.
- 5.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Duracube shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 Duracube may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 All lead times stated by Duracube apply from the date that the signed drawings and/or payment of the deposit is received by Duracube.
- 5.6 Subject to clause 5.7 it is Duracube's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 5.7 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Duracube claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Duracube's control, including but not limited to any failure by the Client to:

The Almar Group Pty Ltd T/A Duracube – Terms & Conditions of Trade

- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Duracube that the site is ready.
- 5.8 In the event that Duracube is unable to complete a measurement check and/or installation at the arranged time due to the site not being ready (at Duracube's sole discretion), and/or due to any action or inaction of the Client and/or third party then Duracube shall be entitled to charge the Client any additional costs incurred by Duracube as a direct consequence of any resultant delay or rescheduling of such measurement check and/or installation.
- 5.9 Any time or date given by Duracube to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Duracube will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 6. Risk**
- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Duracube is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Duracube is sufficient evidence of Duracube's rights to receive the insurance proceeds without the need for any person dealing with Duracube to make further enquiries.
- 6.3 The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. Duracube will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 6.4 All specifications of the Goods are as per Duracube's standard specifications, unless otherwise stated.
- 6.5 Where Duracube is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Duracube shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 6.6 Where the contract does not include installation of Goods by Duracube, Duracube shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 6.7 The Client shall provide Duracube with use of a suitable free 240V power source on site.
- 6.8 Any advice, recommendation, information, assistance or service provided by Duracube in relation to Goods or Services supplied is given in good faith, is based on Duracube's own knowledge and experience and shall be accepted without liability on the part of Duracube and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
- 7. Access**
- 7.1 The Client shall ensure that Duracube has clear and free access to the work site at all times to enable them to undertake the Services. Duracube shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Duracube.
- 8. Title**
- 8.1 Duracube and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Duracube all amounts owing to Duracube; and
 - (b) the Client has met all of its other obligations to Duracube.
- 8.2 Receipt by Duracube of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to Duracube on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Duracube and must pay to Duracube the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Duracube and must pay or deliver the proceeds to Duracube on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Duracube and must sell, dispose of or return the resulting product to Duracube as it so directs.
 - (e) the Client irrevocably authorises Duracube to enter any premises where Duracube believes the Goods are kept and recover possession of the Goods.
 - (f) Duracube may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Duracube.
 - (h) Duracube may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 9. Personal Property Securities Act 2009 ("PPSA")**
- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Duracube to the Client.
- 9.3 The Client undertakes to:

The Almar Group Pty Ltd T/A Duracube – Terms & Conditions of Trade

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Duracube may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Duracube for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Duracube;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Duracube;
 - (e) immediately advise Duracube of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 Duracube and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by Duracube, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client must unconditionally ratify any actions taken by Duracube under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 10. Security and Charge**
- 10.1 In consideration of Duracube agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies Duracube from and against all Duracube's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Duracube's rights under this clause.
- 10.3 The Client irrevocably appoints Duracube and each director of Duracube as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.
- 11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 11.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify Duracube in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Duracube to inspect the Goods.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.3 Duracube acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Duracube makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Duracube's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, Duracube's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If Duracube is required to replace the Goods under this clause or the CCA, but is unable to do so, Duracube may refund any money the Client has paid for the Goods.
- 11.7 If the Client is not a consumer within the meaning of the CCA, Duracube's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by Duracube at Duracube's sole discretion;
 - (b) limited to any warranty to which Duracube is entitled, if Duracube did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 11.1; and
 - (b) Duracube has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Duracube shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by Duracube;
 - (e) fair wear and tear, any accident, or act of God.
- 11.10 Duracube may in its absolute discretion accept non-defective Goods for return in which case Duracube may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

The Almar Group Pty Ltd T/A Duracube – Terms & Conditions of Trade

11.11 Notwithstanding anything contained in this clause if Duracube is required by a law to accept a return then Duracube will only accept a return on the conditions imposed by that law.

12. Intellectual Property

12.1 Where Duracube has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Duracube.

12.2 The Client warrants that all designs, specifications or instructions given to Duracube will not cause Duracube to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Duracube against any action taken by a third party against Duracube in respect of any such infringement.

12.3 The Client agrees that Duracube may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Duracube has created for the Client.

13. Default and Consequences of Default

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Duracube's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 If the Client owes Duracube any money the Client shall indemnify Duracube from and against all costs and disbursements incurred by Duracube in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Duracube's contract default fee, and bank dishonour fees).

13.3 Without prejudice to any other remedies Duracube may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Duracube may suspend or terminate the supply of Goods to the Client. Duracube will not be liable to the Client for any loss or damage the Client suffers because Duracube has exercised its rights under this clause.

13.4 Without prejudice to Duracube's other remedies at law Duracube shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Duracube shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Duracube becomes overdue, or in Duracube's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Compliance with Laws

14.1 The Client and Duracube shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

14.2 Unless otherwise agreed in writing, it is the Client's responsibility to ensure that the design of the Goods meets the required Australian Standards.

14.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

14.4 The Client agrees that the site will comply with any work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

15. Cancellation

15.1 Duracube may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Duracube shall repay to the Client any money paid by the Client for the Goods. Duracube shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Duracube as a direct result of the cancellation (including, but not limited to, any loss of profits).

15.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

16. Privacy Act 1988

16.1 The Client agrees for Duracube to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Duracube.

16.2 The Client agrees that Duracube may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.

16.3 The Client consents to Duracube being given a consumer credit report to collect overdue payment on commercial credit.

16.4 The Client agrees that personal credit information provided may be used and retained by Duracube for the following purposes (and for other agreed purposes or required by):

- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.

16.5 Duracube may give information about the Client to a CRB for the following purposes:

- (a) to obtain a consumer credit report;

The Almar Group Pty Ltd T/A Duracube – Terms & Conditions of Trade

- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
 - (b) name of the credit provider and that Duracube is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Duracube has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Duracube, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.7 The Client shall have the right to request (by e-mail) from Duracube:
- (a) a copy of the information about the Client retained by Duracube and the right to request that Duracube correct any incorrect information; and
 - (b) that Duracube does not disclose any personal information about the Client for the purpose of direct marketing.
- 16.8 Duracube will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 16.9 The Client can make a privacy complaint by contacting Duracube via e-mail. Duracube will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 17. Building and Construction Industry Security of Payments Act 1999**
- 17.1 At Duracube's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 17.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- 18. General**
- 18.1 The failure by Duracube to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Duracube's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Duracube has its principal place of business, and are subject to the jurisdiction of the Katoomba Courts in that state.
- 18.3 Subject to clause 11 Duracube shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Duracube of these terms and conditions (alternatively Duracube's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 18.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Duracube nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.5 Duracube may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.6 The Client agrees that Duracube may amend these terms and conditions at any time. If Duracube makes a change to these terms and conditions, then that change will take effect from the date on which Duracube notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Duracube to provide Goods to the Client.
- 18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.