

Terms & Conditions of Sale

1. DEFINITIONS

DARCO is the trading name of James Dar Holdings (ACN 615 574 859)

- **Contract** means the contract for supply of Goods including any credit application, **Purchase Contract** and these terms and conditions.
- **Customer** means the entity set out in the credit application form or the Purchase Contract or their agents and includes a bailee or consignee.
- **Default** has the meaning set out in clause 6.
- **Goods** mean all goods and equipment that DARCO supplies to the Customer on a sale, bailment, consignment or any other basis.
- **Guarantor** means the guarantor set out in the credit application or Contract.
- **Invoice Due Date** means the latest date for which payment of an invoice can be made by a Customer, being 30 days from the end of the month the invoice is issued.
- **Purchase Contract** means a purchase order for Goods entered into by the parties setting out the details of a purchase transaction.
- **Purchase Price** means the aggregate price for the Goods set out in the Purchase Contract.
- The word include is construed without limitation.
- **Pre-order Products** means any product specially imported both locally, nationally or internationally for a business or individual
- **Standard Products** means any textile or accessories product that is readily available within Darco Industries Fabrics Catalogue

2. DELIVERY AND PAYMENT

2.1 DARCO will not be liable for any delay or non-delivery of any Goods ordered.

2.2 The Customer may be liable for freight costs for Goods.

2.3 The Customer may be liable for Small Handling charge of \$25 AUD on orders below \$250 AUD.

2.4 The Customer will pay to DARCO all of the Purchase Price, which may include cost of delivery of the Goods, by the Invoice Due Date.

2.5 If DARCO notifies the Customer in writing that it will provide a credit facility then the Customer must pay DARCO for each Purchase Contract by the Invoice Due Date.

2.6 DARCO may:

- a) Withdraw the facility at any time without notice; or
- b) From time to time or at any time increase or decrease the limit of the facility provided without notice to the Customer.

2.7 If the Customer fails to pay in accordance with these terms then all outstanding amounts become immediately payable and DARCO may:

- a) Immediately suspend all further credit;
- b) Charge interest on all outstanding amounts at fifteen percent (15%) per annum calculated daily.

2.8 DARCO may vary the interest rate charged on outstanding amounts by 1 weeks' notice to the Customer.

2.9 Payment by cheque will be deemed to have occurred when the cheque has been honoured. Payment by credit card may incur a surcharge.

2.10 Any expenses, costs (including full legal and collection costs) or duties incurred by DARCO in relation to the supply of Goods to the Customer in accordance with these terms and conditions or the enforcement of any rights contained in this Contract will be added to the amount outstanding and paid by the Customer.

2.11 DARCO may apply any amounts received from a Customer to particular amounts outstanding at its sole discretion.

2.12 In the case of dispute regarding payment the Customer must pay all undisputed amounts without delay.

2.13 The Customer agrees that the statement provided by an authorised representative of DARCO shall be conclusive evidence as to the amount owing to DARCO by the Customer.

2.14 DARCO reserves the right to change the Purchase Price at any time prior to acceptance of a Purchase Contract.

3. RETURNS

3.1 DARCO will credit the Customer in full or replace all Standard Products if:

a) The Goods are returned in their original condition and packaging and in full package quantities within 30 days of dispatch;

b) A copy of the corresponding tax invoice or delivery docket supplied with the Goods;

c) The Customer bears all freight charges incurred in returning the Goods (unless agreed otherwise).

3.2 Any credit granted by DARCO to the Customer will expire twelve months after the date of the granted.

3.3 DARCO Supply credit notes shall not be redeemable for cash.

3.4 Customer will have up to 90 days from date of purchase to return Goods

3.5 A 20% restocking fee will be issued on all standard products returned within 30 days

3.6 Pre-order products are non-refundable.

4. TITLE, RISK AND INSURANCE

4.1 DARCO retains ownership of the Goods until the full Purchase Price has been received by DARCO in cleared funds.

4.2 All risk in the Goods and the responsibility to insure the Goods will pass from DARCO to the Customer when the Goods leave DARCO's possession for delivery to the Customer.

4.3 The Customer must effect, maintain and provide evidence to DARCO of:

a) Sufficient insurance cover for loss or Damage to any Goods; and

b) Where DARCO has supplied Goods on hire or consignment, third party insurance which covers the public liability risk of DARCO to a minimum amount of \$20 million.

5. CONSIGNMENT AND BAILMENT

5.1 A consignment Customer must comply with the provisions of this clause in addition to all other terms and conditions.

5.2 DARCO may by written agreement choose to supply Goods to Customer's on consignment. DARCO will use reasonable endeavours to supply all Goods ordered under a consignment agreement.

5.3 DARCO may charge the Customer freight and shipping charges for Goods supplied on consignment, payable by the Invoice Due Date. .

5.4 As soon as practicable after the end of each calendar month DARCO shall render a statement to the Customer showing sales during the preceding month the amount of which is payable under clause 2.4.

5.5 DARCO bears no liability whatsoever for the nature or operation of a consignment Customer's business or employees.

5.6 A consignment Customer is solely responsible for all Goods supplied, mobilisation and demobilisation of Goods, damage to the Goods and all associated costs.

5.7 If DARCO supplies Goods including containers or other items under a bailment type arrangement, the title to any such items will remain with DARCO and clause 6 will apply. The Customer will not charge or allow any other party to use the bailed Goods.

6. DEFAULT AND TERMINATION

6.1 DARCO may immediately terminate this Contract and treat as discharged all or any obligation arising from any agreement if the Customer:

a) has breached any of its obligations under this Contract and the breach remains un-remedied for seven (7) days after being notified of the breach (Default); or

b) Being a person, dies, commits an act of bankruptcy; or

c) Being a company, takes or shall have taken against it any action for its winding up placement under management, administration or receivership; or

d) Being a company has a change in effective control not approved in writing by DARCO.

6.2 Following termination DARCO may:

- a) retain any security given or monies paid by the Customer or available through the enforcement of any guarantee, security or bond and apply this in reduction of any sum which may be lawfully recovered by the Customer; and
- b) Enter with all lawful force upon the Customer's premises or elsewhere to take possession of and remove the Goods.

6.3 If this Contract is validly terminated by DARCO, the Customer must immediately return the Goods that remain unpaid for.

6.4 The Customer will indemnify and hold DARCO harmless against all claims, costs loss or damage in connection with the Contract including for indirect or consequential damages.

7. SECURITY

7.1 If the Purchase Price is not paid in full on delivery then the Customer grants DARCO a security interest and DARCO may register a purchase money security interest over the Goods in accordance with the Personal Property Securities Act 2009 (PPSA) to secure all amounts owed to it.

7.2 The Customer will provide all information and do all things necessary to facilitate such registration. If any of the details of the Customer supplied to DARCO change, the Customer will immediately notify DARCO of these changes.

7.3 The Customer waives its rights to receive notices under clause 157 of the PPSA and confirms that sections 125, 130, 132(3) (d), 132(4), 135 and 143 of the PPSA are excluded.

7.4 If the Customer Defaults DARCO may enforce its security interest and use all lawful means and enter any property without notice to recover the Goods.

7.5 Any contract or arrangement between the Customer and a financier to finance the acquisition of Goods from DARCO shall not:

- a) Alter or affect the nature of the Contract as one of sale and purchase;
- b) Create any liability between DARCO and the financier in relation to the Goods; or
- c) Affect, discharge or in any way limit or subordinate DARCO's security interest in or title to any unpaid Goods.

8. TRUST CUSTOMERS

8.1 Where the Customer is a Trust it must produce a stamped copy of the trust deed (with all amendments) if requested by DARCO.

8.2 The Customer confirms that the trustees shall be liable for any amounts due to DARCO and that the assets of the trust shall be available to meet payment.

9. GUARANTEE

9.1 The Guarantor (where relevant) personally guarantees payment of all amounts including interest and costs owing by the Customer to DARCO from time to time and acknowledges that no indulgence, granting of time, waiver of forbearance to sue, winding-up or bankruptcy whereby the Guarantor would be released as a surety in any way, releases the Guarantor from liability under these terms and conditions.

9.2 The Guarantor must immediately pay such outstanding amounts to DARCO upon demand regardless of whether Default has occurred.

10. GENERAL

10.1 The Customer signatory warrants that it has full power and authority to bind the Customer to the obligations under the Contract.

10.2 All notices required by this Contract may be given by direct communication, either by telephone, electronically, fax or post to the addresses and numbers included in this Contract. If sent by post, a Notice will be considered to have been received, unless the contrary is shown, at the time when the Notice would have been delivered in the ordinary course of the post.

10.3 Each clause in these Terms is severable and if any clause is held to be illegal, unenforceable, or in breach of any provision of Australian law, then that clause alone will be severed to the extent of the breach and all other clauses will remain effective.

10.4 DARCO shall not be deemed to have waived any of the Customer's obligations under these terms and conditions or agreed to any variation of them unless it has done so expressly in writing.

10.5 In case of dispute the parties shall use their best endeavours to negotiate an agreement and will enter formal mediation prior to bringing any Court proceedings. Any Customer claim is limited to the value of the Goods.

10.6 These Terms will be interpreted in accordance with and governed by the laws of Western Australia and the Western Australian courts will have non-exclusive jurisdiction in respect of all matters between DARCO and Customer.

10.7 DARCO will comply with the National Privacy Principles and the Privacy Act 1988. The Customer consents to DARCO, at its discretion, obtaining, using and disclosing Customer personal information for the purpose of:

- a) Checking the Customer's credit history; or
- b) Checking the Customer's continued credit worthiness and history; or
- c) Using a third party to pursue or collect any amount outstanding.

10.8 In the case of inconsistency between these terms and conditions and any subsequent agreement for the supply of Goods by DARCO including any Purchase Contract these terms and conditions shall take precedence unless expressly excluded.