

DALEKIT AWNINGS PTY LTD

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dalekitawnings.com.au

10 Aspinall Place
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Trading Terms and Conditions of Sale

1. Interpretation

In these terms and conditions:

- . 1.1 "Customer" means a person, firm or corporation who is the applicant in this credit application and includes its successors, permitted assigns, employees, agents, or any person claiming through, under or in trust for such a person, firm or corporation.
- . 1.2 "Dalekit Awnings" "Us" or "We" means Dalekit Awnings Pty Ltd [ABN 66 079 326 613] representatives or assigned persons or companies.
- . 1.3 "Goods" means any product, part of a product, component or any other item manufactured, distributed or sold by Dalekit Awnings.
- . 1.4 "Service" means any task, which attracts a charge performed by an employee or sub-contractor of Dalekit Awnings, which the customer has requested or required.

2. General

- . 2.1 No quotation given by Dalekit Awnings shall constitute an offer.
- . 2.2 All orders placed with Dalekit Awnings shall only be accepted subject to these terms and conditions of sale. Dalekit Awnings may at any time and from time to time alter these terms and conditions of sale and such altered terms and conditions of sale shall apply to the customer after notification to the customer by Dalekit Awnings.
- . 2.3 If a customer cancels or alters any order or part order for special products or standard products with special materials, paints, or finishes at any time after Dalekit Awnings has received the order, then Dalekit Awnings reserves the right to charge to the customer the costs of any special products, materials, paints or finishes already acquired for the order together with the cost of any labour and tooling expended to the date of such cancellation or alterations.
- . 2.4 Any addition to, or subtraction from these terms and conditions by you, will not be binding on Dalekit Awnings unless agreed upon in writing previous to any request of change.

3. Price

- . 3.1 The price of goods or services supplied by Dalekit Awnings are valid only for a maximum period of 30 days and is not binding
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- . 3.2 Prices are subject to change without notice. Any variation to the price list is liable to occur at any time and without written or prior notice periods given.
- . 3.3 The price is the net price of the goods free on board (prepared and ready for pickup) at the manufacturing premises of Dalekit Awnings, and will exclude any and all costs to Dalekit Awnings for the costs of freight and GST. When applicable such costs are payable by the customer in addition to the price. We do not attempt to profit from freight costs at any point. Prices charged are to cover expenses of freight and additional packaging materials where required.

4. Terms of Payment

- . 4.1 Unless otherwise stated the granting of credit to a customer shall be at the absolute discretion of Dalekit Awnings and unless otherwise demanded by Dalekit Awnings, the customer shall make payment within thirty (30) days of the date of the invoice.
 - . 4.2 If required by Dalekit Awnings, the customer shall provide or cause persons acceptable to Dalekit Awnings to provide security or collateral which may include but is not limited to a bank guarantee to secure:
 - . The total amount of the order; or
 - . The amount the customer's credit limit will reach above and beyond their current available limit with an additional purchase to Dalekit Awnings if there is a credit limit in place.
 - . 4.3 If the customer fails to make payment in accordance with clause 4, Dalekit Awnings shall be entitled to –
 - . (a) Require the payment of cash upon delivery of any further products ordered, plus 20% of remaining amount outstanding;
 - . (b) Charge interest on amounts outstanding calculated at a rate equal to three (3) percentage points above the Commonwealth Bank of Australia's base commercial borrowing rate and shall be compounding and calculated on a daily basis and you, the customer agree that such default interest is not a penalty but a true measure of damages incurred by Dalekit Awnings. Payments received from the customer will be credited first against any default interest and all such charges shall be payable on demand;
 - . (c) Claim from the customer all costs relating to any action taken by Dalekit Awnings to recover monies or goods due from the customer including any mercantile agents costs and legal costs and disbursements on a solicitor/client basis.
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- . (d) Cease any further deliveries to the customer and to terminate any agreement in relation to products that have not been delivered;
- . 4.4 Notwithstanding the above, Dalekit Awnings reserves its rights to commence legal proceedings against the customer for the recovery of any outstanding amounts owing to Dalekit Awnings and clause 4.1 does not act as a waiver of Dalekit Awnings's rights to pursue the customer for all money outstanding to Dalekit Awnings.

5. Delivery

- . 5.1 Any date or time quoted for delivery is an *estimate only* and Dalekit Awnings shall endeavour to deliver at the time requested by the customer but failure to do so shall not confer any right of cancellation or refusal of delivery (or pickup) on the customer or render Dalekit Awnings liable for any loss or damages directly or indirectly sustained by the customer as a result thereof.
- . 5.2 The customer shall not be relieved of any obligation to accept or pay for goods or services by reason of any delay in delivery caused outside the reasonable control of Dalekit Awnings including but not limited to; war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions, or accidents of any kind.
- . 5.3 Dalekit Awnings's obligation to deliver shall be discharged on arrival of the goods at the customer's nominated delivery destination, despatch of good to the nominated transport company or the address appearing on the invoice. The customer shall unload the goods upon delivery.

If the customer is unable or unwilling to accept physical delivery of the goods;

- . (a) on the designated delivery date (provided Dalekit Awnings is ready to deliver), then Dalekit Awnings shall be entitled to invoice the customer and to arrange for the storage of the goods at the risk and reasonable cost of the customer including all transportation, storage and other consequential costs or;
 - . (b) when the goods are ready for delivery (if there is no designated delivery date).
 - . (c) Any goods remaining 'en premises' must allow for the potential risk of accidental damage, loss, or other unforeseen event, post completion.
 - . (d) At the discretion of Dalekit Awnings, there shall always remain the potential need to apply cost against goods not taken within a
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period of 10 working days from date of completion and the goods or parts thereof after being assigned the status of 'ready for pickup/delivery'. Dalekit Awnings may also back-date any goods not taken beyond the aforementioned period at its discretion.

Charter of storage costs for goods not picked up.

10 - 19 working days = \$1.00 per line item +GST per day

20 - 29 working days = \$1.50 +GST per line item per day

30+ working days = \$3.00 +GST per line item per day

- . 5.4 Dalekit Awnings may at its discretion, invoice partial deliveries and each partial delivery shall be a separate sale according to these terms and conditions of sale.

6. Property and Risk – Retention of Title

- . 6.1 Notwithstanding delivery of the goods or their installation, property in the goods shall remain with Dalekit Awnings until the customer has paid and discharged any and all other indebtedness to Dalekit Awnings on any account whatsoever (including all applicable GST and other taxes). Any payment made by or on behalf of a customer which is later avoided by the application of any statutory provision(s) shall be deemed not to discharge the customer's indebtedness and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made and no subsequent conduct will effect such title, ownership or property. Basically, Dalekit own it until you have paid for it in full, including all associated charges and taxes.
 - . 6.2 The risk in the products shall pass to the customer upon delivery to the customer or his agent.
 - . 6.3 The customer acknowledges that it is in possession of the goods solely as a bailee for Dalekit Awnings until payment as defined in clause 6.1 has been made in full to Dalekit Awnings and until such payment:
 - . (a) the customer shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following delivery; and
 - . (b) the customer shall store the goods separately from its own goods and those of any other party and in a manner which clearly identifies the goods of Dalekit Awnings, whether as separate packages or as components, as the property of Dalekit Awnings.
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- . 6.4 The customer hereby irrevocably grants to Dalekit Awnings, its agents and servants, an unrestricted right and licence, without notice, to enter premises occupied by the customer to identify and remove any of the goods the property of Dalekit Awnings in accordance with these terms and conditions of sale without in any way being liable to the customer or any person claiming through the customer. Dalekit Awnings shall have the right to sell or dispose of any such goods removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.
- . 6.5 Notwithstanding clause 6.1 of these terms and conditions of sale, the customer may, prior to payment in full as defined in clause 6.1 and as agent for Dalekit Awnings, sell the goods under a bona fide transaction not intended simply to deprive Dalekit Awnings of the benefit of its right title and interest. The customer acknowledges and agrees that in the event of a sale of the goods or any of them prior to payment in full the customer shall as trustee for Dalekit Awnings:
 - . (a) hold all monies including any applicable GST received by the customer from any such sale of the goods on trust for Dalekit Awnings; and
 - . (b) hold all monies received by the customer from any such sale of the goods separate from the customer's own money and in the name of and to the credit of Dalekit Awnings; and
 - . (c) the customer will on request from Dalekit Awnings pay such proceeds including any applicable GST to Dalekit Awnings.
- . 6.6 The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade may be revoked at any time by Dalekit Awnings and shall automatically cease if a Receiver and or Manager and or Administrator or Liquidator is appointed over any of the assets of the customer or if a winding up order is made against the customer or if the customer goes into voluntary liquidation or calls a meeting of creditors or makes any arrangement or composition with creditors or commits any act of bankruptcy or where the customer is in default of any of its obligations to Dalekit Awnings.

7. General Warranty

- . 7.1 Dalekit Awnings will provide a parts only warranty on its goods for twenty four (12) months from the date of supply. The warranty shall extend to goods used in accordance with the recommendations of Dalekit Awnings and the acceptance of any claim under the warranty shall be at the discretion of Dalekit Awnings.
 - . 7.2 The customer shall indemnify Dalekit Awnings against all costs of demounting, reinstalling, transporting, insuring or any other cost other than the replacement of goods or parts of goods, which have failed under ordinary use within a normal and proper installation and under normal conditions.
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8. Limited Warranty

- . 8.1 The customer shall ensure that the goods ordered are fit and suitable for the purpose for which they are required and Dalekit Awnings is under no liability if they are not. Dalekit Awnings' price list indicates 'grey area' awning sizes, these are deemed possible but not absolutely practical or advisable. This 'grey area' is not covered under the full extent of the general warranty as mentioned in clause 7.1.
- . 8.2 In the case of goods not of Dalekit Awnings's own manufacture, the customer is entitled to only such benefits as Dalekit Awnings may receive under any guarantee given to Dalekit Awnings by the manufacturers in respect thereof. Dalekit Awnings shall not be liable for consequential or special damages under any circumstances whatsoever.
- . 8.3 In lieu of any warranty, condition, or liability implied by law, Dalekit Awnings's liability in respect of any defect in or failure of the goods supplied, or for any loss, injury or damage attributable thereto, is limited to making good the replacement or repair or defects arising under normal proper use and maintenance arising solely from faulty design, materials, or workmanship within the warranty period stated in clause 7.1 provided always that such defective parts and or goods are promptly returned to Dalekit Awnings. At the termination of the warranty period stated in clause 7.1 Dalekit Awnings's liability ceases.
- . 8.4 The warranty and limited warranty stated in clauses 7 and 8 herein does not cover damage for misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment. This includes the 'grey area' as mentioned in 8.1
- . 8.5 Dalekit Awnings's liability under these terms and conditions of sale and the warranties in clauses 7 and 8 is confined to the customer named in this contract it being agreed that Dalekit Awnings has no liability to any purchaser of the goods from the customer and the customer's rights under this contract and terms and conditions of sale are not assignable to any third parties, unless otherwise agreed to in writing with Dalekit Awnings.
- . 8.6 The Trade Practices Act (Clth) (1974) will NOT apply if the customer acquired, or held himself or herself or themselves out as acquiring the goods for the purpose of a business and the customer agrees to include provision in its conditions of sale to the effect that the Trade Practices Act (Clth) (1974) shall not apply where a purchaser is acquiring the goods for a business. The customer agrees to indemnify Dalekit Awnings for any liabilities, losses, damages, claims, costs or expenses of whatever kind or nature incurred by Dalekit Awnings if the customer fails to do so.

9. Termination

- . 9.1 If the customer fails to comply with any of these terms and conditions of sale or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for winding up or
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liquidation or enters into any composition or arrangement with creditors or if a receiver and or manager or administrator or liquidator is appointed for any property or assets of the customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator is appointed, Dalekit Awnings may, in addition to exercising all or any of its rights against the customer, suspend any further deliveries and immediately recover possession of any products not paid for in accordance with these terms and conditions of sale and cancel any delivery of goods not delivered, whereupon Dalekit Awnings may then declare without demand or notice of any kind, the entire amount outstanding by the customer for goods already delivered pursuant to these terms and conditions of sale to be immediately due and payable and the same shall become immediately due and payable.

- . 9.2 The customer acknowledges that Dalekit Awnings is entitled to recover damages from the customer arising from its default of these terms and conditions of sale, including without limitation, costs and loss of profits associated with goods not yet delivered, and recover all costs of collection including reasonable legal costs.

10. Returns

- . 10.1 Other than in respect of Dalekit Awnings's obligations pursuant to clauses 7 and 8 herein, Dalekit Awnings shall not be liable to accept any returned goods, but may in its absolute discretion accept the return of goods provided that such returns are accepted:
 - (a) for credit;
 - (b) with the prior written approval of duly authorised officer of Dalekit Awnings;
 - (c) only if approval is sought within seven (7) days of delivery of the goods to the customer and the invoice number, date of supply and the reason for the return is stated; and
 - (d) only if the goods are found to be in "as new" condition and in unsoiled packaging ready for immediate resale when examined on their return by Dalekit Awnings.
- . 10.2 No returns of special goods, custom made, cut-to-measure or made-to-measure goods will be accepted by Dalekit Awnings.
- . 10.3 Except where the goods have been wrongly or oversupplied, Dalekit Awnings may apply a 30% charge on the list price of the goods to be applied to the customer's account for the purposes of covering handling and storage, testing and restocking costs.

11. Change of ownership

11.1 The customer shall notify Dalekit Awnings in writing:

- . (a) where there is any change of ownership of the customer or its business, or of directorships in the case of a corporate customer;
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- . (b) in the case of a public company, where there is any change in the effective control of the company; or
- . (c) of any change whatsoever affecting this contract within seven (7) days from the date of such change and the customer will indemnify Dalekit Awnings against any loss or damage incurred by it as a result of the customer's failure to notify it of any such change.

12. Governing Law

12.1 The credit application to which these terms and conditions form a part shall be governed and construed in accordance with the laws for the time being in force in the State of New South Wales and the parties agree to the exclusive jurisdiction of the Courts and Tribunals of that State.

13. Severability

13.1 Wherever possible each of the terms and conditions of this agreement are to be interpreted in such manner as to be effective and valid under applicable law, but if any such term or condition is prohibited or invalid under such law, then it is to be ineffective only to the extent of such prohibition and invalidity.

14. Miscellaneous

14.1 No delay or omission by Dalekit Awnings in exercising any right or remedy shall be a waiver thereof or of any other right or remedy, and no single or partial waiver thereof shall preclude any other or further exercise thereof, or the exercise of any other right or remedy.
