

BUSINESS DETAILS

Trading Name: _____

Principal Place of Business: _____

Current Registered Office: _____

Postal Address: _____

ABN: _____

ACN: _____

Phone: _____

Email: _____

Date Business Began: _____

Credit limit: _____

Ownership structure:

SOLE TRADER

PARTNERSHIP

COMPANY - LTD

COMPANY - PTY LTD

DIRECTOR / OWNER / PARTNER DETAILS

1. Director / Owner / Partner: _____ DOB: _____

Address: _____

2. Director / Owner / Partner: _____ DOB: _____

Address: _____

3. Director / Owner / Partner: _____ DOB: _____

Address: _____

ACCOUNTS DEPARTMENT CONTACT DETAILS

Name: _____ Phone: _____ Email: _____

TRADE REFERENCES

1. Company _____

Address: _____

Phone: _____ Email: _____

2. Company _____

Address: _____

Phone: _____ Email: _____

TERMS AND CONDITIONS OF APPLICATION

- In consideration of The Gemstone Trading Company accepting this application and providing the goods and services, the person who has signed this application unconditionally and irrevocably guarantees to The Gemstone Trading Company the due payment of all monies payable by the purchaser for the price of the goods and services that The Gemstone Trading Company may supply.
- The person who has signed this application warrants to The Gemstone Trading Company that all employees who place an order with The Gemstone Trading Company have authority to enter into a purchase order with The Gemstone Trading Company.

I/ We accept the Conditions above as well as the Conditions overleaf and confirm that the information in this application is true and correct and acknowledge that it will be relied on by The Gemstone Trading Company in deciding this application.

Name: _____

Name: _____

Address: _____

Address: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

TERMS AND CONDITIONS OF SALE

These terms and conditions of sale (the "Conditions") shall apply to and form part of the contract, including the Consignment/Invoice and the Account Application Form attached to these Conditions, for the supply of goods, products, and materials, and any related services ("Goods") between The Gemstone Trading Company Pty Ltd (ACN: 167954912) ("TGTC") and the person or entity acquiring the Goods from TGTC nominated in the signature section the Consignment/Invoice and/or the Account Application Form ("Purchaser"), (collectively, the "Agreement").

CONTRACT AND PRICE

1. In consideration of the payment of the amount specified in an invoice issued by TGTC in relation to each of the Goods, TGTC sells, and the Purchaser buys the Goods on the terms and conditions of the Agreement.
2. An order or an offer to purchase can be made by the Purchaser in writing or verbally. TGTC shall deliver the Goods in the time and manner specified by TGTC.
3. Unless stated otherwise, the price is exclusive of GST. The Purchaser must pay the price, plus the requisite GST, or any other tax charge or government imposed fee in relation to each order to TGTC at the same time as payment for Goods is made in accordance with clause 4 of the Conditions.

PAYMENT

4. Payment for Goods purchased from TGTC must be made by the Purchaser within 30 days of the invoice being issued unless otherwise indicated by TGTC.
5. In the event Purchaser has not made payment for Goods after 30 days from the date that the applicable invoice is issued for Goods, TGTC may charge interest on any amount overdue from the date it becomes due and payable to the date payment is received in full at a rate of 15% compounded daily. TGTC shall apply any payments made by the Purchaser to the accrued interest.
6. Payments made by credit card may be subject to a surcharge.
7. In the event that Purchaser fails to make payment for Goods, including any accrued interest owing after 60 days from the date that the applicable invoice is issued, in accordance with the Agreement, TGTC shall have the right to refer the outstanding debt owing to a third-party collections agency. Purchaser shall be responsible for any and all costs and fees associated with such debt collection, including but not limited to collection agency fees, reasonable attorney's fees, court costs, stamp duty and any other expenses incurred by TGTC in the process of recovering the outstanding debt. TGTC shall make commercially reasonable efforts to notify Purchaser in writing of its intent to refer the debt to a collections agency before taking such action, providing the Purchaser with an opportunity to remedy the outstanding payment within a specified period agreed between the parties. However, TGTC is under no obligation to provide such notice, and the absence of notification shall not waive the TGTC's right to engage a collections agency. Purchaser acknowledges and agrees that TGTC's right to refer the debt to a collections agency is in addition to, and not in lieu of, any other remedies available to TGTC under applicable law or the terms of the Agreement.

RETENTION OF TITLE

8. The Purchaser agrees that legal and equitable title to the Goods is retained by TGTC until TGTC receives payment in full from the Purchaser for the Goods and all other monies, including late payment interest, owing by the Purchaser to TGTC at any time.
9. Prior to the title in the Goods passing to the Purchaser, the Purchaser:
 - (a) must hold the Goods as bailee and fiduciary agent of TGTC;
 - (b) where the Purchaser processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with any other goods, must hold such part of the new goods ("Processed Goods") on trust for TGTC as bailee and fiduciary agent of TGTC;
 - (c) must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party so that they are readily identifiable as the property of TGTC;
 - (d) must keep the Goods in good and merchantable condition;
 - (e) purchase and maintain appropriate insurance so as to fully insure the Goods against loss, theft, or damage however caused;
 - (f) must not sell the Goods except with the prior written consent (email acceptable) of TGTC or in the ordinary course of the Purchaser's business, provided that any such sale is at arm's length and on market terms;
 - (g) any proceeds of resale, insofar as they relate to the Goods, shall be held on trust for TGTC in a separate account; and
 - (h) must not create any encumbrance over the Goods which is inconsistent with TGTC's title and ownership of the Goods. For the purpose of this clause 9, "such part" means an amount equal in dollar terms to the amount owing by the Purchaser to TGTC at the time the Goods are used in the manufacture of, or incorporated into, the Processed Goods.
10. If the Purchaser is in breach of the Agreement, including, without limitation, failure by the Purchaser to make payment for the Goods, the Purchaser must return the Goods to TGTC immediately upon demand.
11. If the Purchaser does not return the Goods to TGTC upon demand in accordance with clause 10 of the Conditions, the Purchaser irrevocably authorizes representatives of TGTC to enter upon any site where the Goods are located to take possession of the Goods without prior notice, and the Purchaser indemnifies and holds harmless TGTC for all fees (including legal fees on a full indemnity basis), costs, and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims, or proceedings brought by or against TGTC in connection with the retaking possession of the Goods or the exercise by TGTC of its rights under this clause 11, and the Purchaser agrees to repay all such fees, costs, losses, damages, expenses, or any other sums of money on demand.
12. The Purchaser (and if incorporated, its directors) agrees to charge all its right, title, and interest in any or all property owned or partly owned solely or jointly by the Purchaser (including that of its directors, if incorporated) in favour of TGTC with the direct and punctual observance and performance of all obligations of the Purchaser under this Agreement. In the event of a breach by the Purchaser of this Agreement, the Purchaser agrees that TGTC may, at its discretion register a caveat on any such property and the Purchaser grants to TGTC the right to appoint a receiver to sell such property to recover such costs and damages associated with a breach of this Agreement. The Purchaser will remain liable for all outstanding amounts until such outstanding amounts are recovered by TGTC in full.

PERSONAL PROPERTY SECURITIES ACT

13. Any term used in the following clauses 13-19 of the Conditions that has a particular meaning defined or referenced in the Personal Property Securities Act 2009 (Cth) ("PPSA") has the same meaning in these clauses 13-19. Clauses 13-19 of the Conditions apply to the extent that TGTC's interest in any Goods is a security interest.
14. The Purchaser acknowledges and agrees that TGTC may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Purchaser hereby waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
15. TGTC can apply amounts it receives from the Purchaser towards amounts owing to it in such order as TGTC chooses.
16. If the Purchaser defaults in the performance of any obligation owed to TGTC under this Agreement or any other agreement for TGTC to supply Goods to the Purchaser, TGTC may enforce its security interest in any Goods by exercising all or any of its rights under this Agreement or the PPSA. To the maximum extent permitted by law, the Purchaser and TGTC agree that the following provisions of the PPSA do not apply to the enforcement by TGTC of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142, and 143.
17. The parties agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
18. The Purchaser must promptly do anything required by TGTC to ensure that TGTC's security interest is a perfected security interest and has priority over all other security interests in the Goods.
19. Nothing in this section is limited by any other provision of the Conditions or any other agreement between the parties.

RISK

20. Risk in each of the Goods passes to the Purchaser upon delivery of the Goods to the Purchaser or collection of the Goods

RETURN OF GOODS

21. TGTC may accept Goods to be returned by the Purchaser provided that (a) TGTC provides prior consent to the return of Goods; (b) the Purchaser notifies the intention to return Goods within thirty (30) days of delivery of the Goods; and (c) the Goods are, upon inspection by TGTC, in the same state as they were when delivered to the Purchaser.

LIMITATION OF LIABILITY

22. Except as required by law, TGTC does not give any warranty in respect of Goods supplied by but not manufactured by TGTC, or any part of Goods supplied by but not manufactured by TGTC.
23. Subject to the above clause 22, TGTC's liability to the Purchaser for any claim for loss or damages (including legal expenses) made in connection with this Agreement, whether in contract, tort (including negligence), under statute, in equity, or otherwise (including any liability pursuant to or by reason of terms implied into this Agreement by the Trade Practices Act 1974 (Cth) (as amended) or relevant State or Territory legislation) shall be strictly limited as follows (except to the extent that the law prohibits such a limitation):
 - (a) for any liability arising from Goods not meeting the specification supplied by TGTC or which are reasonably said to be otherwise defective or deficient, TGTC's liability is limited to:
 - (i) the cost of replacement of those Goods as soon as reasonably practicable;
 - (ii) the repair of such Goods; or
 - (iii) the repayment (or allowance) of the invoice price of those Goods (at the option of TGTC);
 - (b) for any liability arising from the services not meeting the scope of specification, or which are said to be otherwise defective or deficient, TGTC's liability is limited to the provision of the services again or payment of the cost of having the relevant services provided (at the option of TGTC);
 - (c) for any liability that does not fall within the scope of subclauses (a) and (b) above, TGTC's liability for any loss or damage arising from or caused in any way by TGTC, the Goods or services it supplies, or breach of the Agreement, is excluded (to the maximum extent permitted by law).
24. In addition to the conditions set out in clause 23, TGTC shall not be liable for any indirect, special, or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods or services it supplies, where "indirect, special, or consequential loss or damage" includes:
 - (a) any loss of income, profit, production, contract, customers, business opportunity, or business;
 - (b) any loss of goodwill or reputation;
 - (c) any loss of value of intellectual property;
 - (d) any loss or damage resulting from the loss or damage to goods other than the Goods.
25. Any claim by the Purchaser in respect of defective Goods or damaged Goods must be made in writing within 14 days of the delivery of the Goods, unless a longer period is expressly agreed to by TGTC in writing.

CONFIDENTIALITY

26. Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each party includes the terms and conditions of this Agreement. Confidential information of TGTC includes pricing of the Goods. However, Confidential Information does not include any information that
 - (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party,
 - (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, or
 - (iii) is received from a third party without knowledge of any breach of any obligation owed to the Disclosing Party.
27. Protection of Confidential Information. As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to
 - (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and
 - (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need that access for purposes consistent with this Agreement and who have signed agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein.Neither party will disclose the terms of this Agreement to any third party other than its affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section.
28. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

MISCELLANEOUS

29. The Purchaser agrees that TGTC may contact the persons (most likely but not limited to other suppliers) nominated as their referrers with respect to the Purchaser.
30. TGTC shall not be liable for failure to perform its obligations in this Agreement to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by TGTC because of circumstances outside TGTC's control.
31. The Agreement forms the entire agreement between the parties in relation to the subject matter herein.
32. The law applicable to the agreement between TGTC and the Purchaser is the law of the State or Territory in which the Goods are delivered. TGTC and the Purchaser submit to the jurisdiction of the applicable State or Territory courts.
33. Nothing in this Agreement shall constitute TGTC as a subcontractor of the Purchaser.
34. If a provision in this Agreement is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from this Agreement. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.
35. TGTC may assign or otherwise deal with the benefit of the Agreement without prior consent of the Purchaser.