



A Division of Black Diamond Vic Pty Ltd
 ABN 39 081 442 131

PO Box 465, Braeside, VIC 3195
 Ph: (03) 9588 1550
 Fax: (03) 9588 1551
sales@titantrading.com.au

Issued By:

Braeside Dandenong Richmond Springvale

30 DAY COMMERCIAL CREDIT APPLICATION

PLEASE COMPLETE FORM IN BLOCK LETTERS

PLEASE TICK Public Company Private Company Trust Type of Trust.....

Business Name			
Trading Name			
Business Address			
Postal Address			
Registered Office			
ABN		Date Incorporated	

IF APPLICANT HAS SHAREHOLDERS THE FOLLOWING MUST BE COMPLETED.

Business Premises	Authorised Capital	\$	Paid up Capital	\$
Asset Particulars	Are you the(PLEASE TICK ONE) Owner Landlord Tenant Other			
Telephone	Contact Details(if not owner of premises):			
Electronic Mail	If owned, are they subject to a mortgage or other charge? Yes No			
Type of Business	Business	Mobile	Facsimile	
Directors/Guarantors	Accounts Payable Email Address:			
For Directors/Guarantors	Type of Business	How Long Established	Under Present Ownership	
Name of Accountant	Full Name	Address	License No.	
Address				
Financial Institution	Name:		Address:	
	Account Name:		BSB No	
	Is there a bank draft facility ?		A/c No	
Registered Trust Name	Have you ever been the director of a company that has whilst you were a director, or has within two years of you ceasing to be a director, entered into a deed of company arrangement, had a receiver and a manager appointed to its affairs or been wound up. If so, state name of company			
Trustees of Trust				YES:
Beneficiaries of Trust				NO:
Parent or Associated Company				
Credit Requested	Monthly anticipated purchases	\$	Total credit limit requested	\$
Trade/Credit Reference	Name of reference	Telephone	Facsimile	
	1.			
	2.			
	3.			

IF APPLICANT IS A TRUST - THE FOLLOWING MUST BE COMPLETED

Registered Trust Name				
Trustees of Trust				
Beneficiaries of Trust				
Parent or Associated Company				
Credit Requested	Monthly anticipated purchases	\$	Total credit limit requested	\$
Trade/Credit Reference	Name of reference	Telephone	Facsimile	
	1.			
	2.			
	3.			

IT IS AGREED:

1. The applicant(s) and the directors of the applicant(s) warrant that all information given is true and correct.
2. That the terms of payment are strictly nett 30 days from the end of invoice month and thereafter are and remain immediately due and payable.
3. That should any changes take place affecting the legal entity, structure, management or control of the applicant(s) company then Black Diamond Victoria Pty Ltd will be notified in writing and a new application form will need to be completed to reflect these changes.
4. That the applicant(s) will pay interest at the rate of 2% per month on the amount overdue from the date of invoice to the date of payment.
5. That the applicant(s) will pay any expense incurred by Black Diamond Victoria Pty Ltd in recovering any amount owed by the applicant(s) or in recovering any goods in the possession of the applicant(s) in respect of which Black Diamond Victoria Pty Ltd has legal or equitable title including but not limited to legal fees(on a full indemnity basis) and any debt collection fees which expenses are deemed to form part of the balance of the account which is overdue.
6. That Black Diamond Victoria Pty Ltd may withdraw credit facilities at their discretion without prior notice.
7. That, unless otherwise stated in this application, the applicant(s) does not trade as the trustee of a Trust of any description.
8. If the applicant(s) is a trustee, the applicant(s) undertakes liability to Black Diamond Victoria Pty Ltd both in its personal capacity and in its capacity as trustee.
9. That Black Diamond Victoria Pty Ltd is authorised to obtain trading information from the references supplied and to disclose trading information with other entities.

PERSONAL GUARANTEE FORM

TO: **Black Diamond Victoria Pty Ltd**
2 Tarnard Drive, Braeside VIC 3195
ABN 39 081 442 131

IN CONSIDERATION OF the Creditor having agreed at the request of the Guarantor to supply and/or continue to supply goods to _____ having its registered office at _____

"The Customer", the Guarrantor HEREBY GUARANTEES the due payment to the Creditor af all monies which may now or from time to time hereafter become payment by the Customer to the creditor for or in consequence of the supply of goods by the Creditor to the Customer ("the guaranteed monies") . The terms of the guarantee are:

1. Where there is more than one (1) Guarantor, the obligations of each shall be joint and several.
2. The guaranteed monies include all interest costs and damages lost, incurred or suffered in consequence of the customer's failure to duly pay the guaranteed monies which shall include but not limit, legal cost debt collection costs, solicitor-client costs and any such expenses incurrerd of to be incurred by the creditor in the course of obtaining payment from the Customer or Guarantor(ees)
3. This Guarantee shall continue be a continuing guarantee for the whole of the Guaranteed monies and shall not be terminated without the consent of the Creditor or such terms as it thinks fit.
4. This Guarantee shall continue in effect and the rights of the Creditor shall in no way be adversely affected notwithstanding:
 - the failure of any person intended to be a guarantor to execute this Guarantee
 - any change whatsoever in the terms of the trading account between the Customer and the Creditor whether or not notice thereof is given to the Guarantor
 - any failure by the Creditor before or after the giving of this guarantee to notify the Guarantor of any matter which may indicate alack of capacity of the Customer to pay the trading account
 - the granting of time or any other indulgence to the Customer or any Guarantor or the termination of this Guarantor
 - the failure of the Creditor to preserve or transfer to the Guarantor any security held by the Creditor with respect to the guaranteed monies
 - all monies received by the Creditor shall be treated as payments in gross
5. Any monies received by the Creditor the payment of which is or is liable to be avoided under any law having application to the insolvency of the any person shall be deemed never to have paid.
6. In the event of the insolvency of the Customer or any Guarantor the Guarantor shall hold in trust for the Creditor any debt owed to the Guarantor by that insolvent person and all right of action in relation thereto.
7. Upon default by the Customer the Guarantor shall be liable for the guaranteed monies as a principal debtor and hereby waives all rights inconsistent therewith
8. This Guarantee is made subject to the laws of the State of Victoria and the Guarantor acknowledges the Creditors rights to enforce this guarantee within the confines of the State of Victoria, however the Creditor reserves the right to take action pursuant to this guarantee within any State or Territory of the Commonwealth of Australia in its discretion.

Dated the _____ day of _____ 20_____

Signed in the presence of

Witness:	_____	Director:	_____
Name :	_____	(Print Name)	_____
Address:	_____	Director:	_____
	_____	(Print Name)	_____

Black Diamond Victoria Pty Ltd
Trading as Titan Trading
ABN 39 081 442 131

TERMS AND CONDITIONS OF SALE

INTERPRETATION:

"GST" means the Goods and Services Tax assessable under the GST Law;
"GST Law" means A New Tax System (Goods and Services Tax) Act 1999 and all associated legislation, subordinate legislation and administrative rulings; "*the parties*" means both you and us;
"the goods" means the goods, merchandise and other items the subject of the sale transaction and, where the context permits or requires, includes services; "*these conditions*" means all the terms and conditions of sale that comprise this document;
"we", "us", "our" each mean the supplier of goods, Black Diamond Victoria Pty Ltd of ABN 39 081 442 131; and "*you*", "*your*" means the person or company to whom the goods are sold or supplied.

1. GENERAL

- 1.1 Unless otherwise agreed in writing by the parties, and subject always to the requirements of relevant legislation, these conditions apply to all contracts of sale between you and us.
- 1.2 Your acceptance of the goods will be conclusive evidence that these conditions bind the parties.
- 1.3 Where the document is a quotation, these conditions apply, so far as the context permits, to any transaction conducted following acceptance of the quotation or negotiated variation to the quotation.
- 1.4 We may assign our rights under these conditions without your consent.
- 1.5 A waiver by us of any of our rights under these conditions must be in writing and does not prejudice our rights in respect of any subsequent breach of these conditions by you. A failure or delay in enforcing a right under these conditions does not constitute a waiver.
- 1.6 Any provision of, or the application of any provision to, these conditions or a right, power, authority, discretion or remedy of a party under these conditions that is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 1.7 If any part of these conditions is or becomes void, illegal or unenforceable, that part will be served from these conditions and does not affect the validity of the remaining provisions of these conditions.
- 1.8 We may vary these conditions at any time. You will be notified of any variations by notice in writing.

2. PRECEDENCE

These conditions, to the extent of any inconsistency, prevail over the provisions contained in any other agreement between the parties.

3. GOVERNING LAW

- 3.1 These conditions are governed by, and are to be construed in accordance with, the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts in that State.
- 3.2 The United Nations Convention on Agreements for the International Sale of Goods ("the Vienna convention") does not apply to these conditions or any agreement between the parties.
- 3.3 Each and every contract of sale between the parties to which these conditions apply is made in the State of Victoria.

4. YOUR ACCOUNTABILITY

- 4.1 If you are a company, we reserve the right to request an indemnity or personal guarantee from your Directors.
- 4.2 If there is, or it is reasonably expected there will be, a substantive change in your ownership, management, or legal entity, you must notify us immediately in writing and complete a new application form. Until such notification is received, we reserve the right to maintain any liability against you.

5. VALIDITY

- Where these conditions form part of a quotation:
- 5.1 Our quotation is not an offer. A contract of sale arises out of our acceptance of your order, and we reserve the right to reject any orders received.
 - 5.2 Any delivery time quoted is an estimate only.
 - 5.3 The quotation is, prior to receipt of acceptance, subject to alteration or withdrawal at any time by us in writing.
 - 5.4 The quotation will only be valid for 30 days from its date.
 - 5.5 The prices quoted do not include GST or any other Government imposts and charges which will be payable by you.

6. INFORMATION AND DRAWINGS

- 6.1 All descriptive specifications, illustrations, drawings, data, dimensions and weights given to you are approximate only, and are intended to be general descriptions only, and do not form grounds for any claim against us.
- 6.2 Descriptions, illustrations and performances contained in catalogues, price lists, and other advertising matter do not form part of the contract of sale.
- 6.3 Where you supply specifications, drawings or other particulars, our quotation is calculated on estimates of quantities required. If adjustments to this estimate are necessary, the quotation will be adjusted proportionally.

7. DELIVERY

- 7.1 We accept no responsibility either to deliver or to load goods at the point of dispatch, and the cost of transport to your premises is at your expense.
- 7.2 We are deemed to have delivered the goods as soon as you are notified they are ready for delivery, at which point risk, and liability for loss and damage, is deemed to have passed to you, and payment is due accordingly.
- 7.3 If we elect to arrange delivery, it is at your cost and risk. However, if we elect in writing to assume responsibility for the transport of the goods, we shall at our option repair or replace free of charge any of the goods lost or damaged in transit to the agreed point of delivery, provided we are given written notice of such loss or damage within 3 days of delivery or within such shorter time as to enable us to comply with the carrier's conditions of carriage.
- 7.4 We are not responsible for unloading the goods at the point of delivery.
- 7.5 Any delivery or completion dates or times stated are estimates only and we shall not be held liable for any consequences whatsoever, including loss and damage, for any delay, suspension or extension to such times.
- 7.6 Where applicable, delivery will be made in accordance with a written delivery schedule, mutually agreed with you at the time of placing the order.
- 7.7 Unless amendments to the delivery schedule are given by you in sufficient time to alter the production program and we have agreed such amendments in writing we reserve the right to continue to deliver according to schedule.
- 7.8 We are deemed to have delivered the goods if we obtain a receipt or signed delivery docket for the goods from any person at the nominated address for delivery and payment is due accordingly.
- 7.9 You are deemed to have waived any claim for shortage of any goods delivered if a claim in respect thereof has not been lodged with us within three (3) days from the date of delivery of the goods to you.
- 7.10 If you are unable to accept deliveries on site, at your risk and expense, we may elect to either deliver to your store or place the goods in storage. In either event, delivery is deemed to have occurred on site and payment is due accordingly.
- 7.11 All charges relating to storage, insurance, handling, and subsequent delivery to the site will be charged directly to your account.
- 7.12 We may elect to supply goods in installments and these conditions shall apply to each supply of goods by installments as if each installment constituted supply under a separate agreement, and in particular, you will pay us for each installment of goods so supplied irrespective of any failure or delay in the supply of any other installment of goods.
- 7.13 We reserve the right to refuse to deliver any goods if you have any monies outstanding beyond the date for payment on any account with us.

8. PRICES

With the exception of quoted prices, all prices and price lists are subject to change without notice and goods will be sold at prices applying on the date of invoice. Prices include packing in accordance with our standard practice. Any additional packing or packing material requested by you or deemed necessary by us will be charged for in addition to the price quoted.

9. GST AND GOVERNMENT IMPOSTS

- 9.1 Any government imposts and charges which may be incurred, become payable or are claimed against us in respect of the goods or a transaction between us relating to the goods will be charged to your account and we are able to recover the amount from you on demand.
- 9.2 If the supply of any goods or services by us to you is a taxable supply for the purposes of the GST Law, then:
 - (i) you must pay to us the amount of GST payable in respect of those goods or services in addition to any amount or consideration otherwise payable for the goods or services;
 - (ii) provided we deliver a tax invoice to you in respect of the supply of the goods or services by us the amount of GST payable in respect of the goods or services is payable by you to us on demand.

10. TERMS OF PAYMENT

- 10.1 All prices quoted are strictly net and the purchase price of the goods shall be payable on or before the thirtieth (30th) day of the calendar month following the delivery of goods unless other terms of payment are expressly stated on the Invoice for the Goods to be supplied and delivered.
- 10.2 If we do not receive payment within 30 days as outlined in 10.1 we may charge interest on the overdue amount at the rate of 1 per cent per month, calculated from the date of the invoice to the actual date of full and final payment. Any payment made by you will be credited first against interest accrued.
- 10.3 We may at any time in our sole discretion combine the amount payable to us for the goods with any other account between you and us or otherwise effect any set off without notice and no agreement to the contrary shall arise by implication.
- 10.4 You may pay by cash, cheque, credit card, BPAY, EFTPOS, Internet banking, direct deposit or direct debit.
- 10.5 You are deemed to have paid only when your payment is fully available for us to use at our discretion.

11. LIMITATION OF LIABILITY

- 11.1 These conditions do not, and no provision of these conditions will or purports to exclude, restrict or modify or have the effect of restricting, excluding or modifying:
- (i) the application in relation to the supply of goods and/or services under the Trade Practices Act 1974 ("TPA");
 - (ii) the exercise of any right conferred by any such provision; or
 - (iii) any liability of us for breach of conditions or warranty implied by any such provision.
- 11.2 To the extent permitted by law, all express or implied conditions, warranties, representations or remedies relating to the provision of goods or services pursuant to these conditions are excluded.
- 11.3 If a law implies or imposes a condition or warranty which cannot be excluded but in respect of which liability can be limited, our liability to you for breach of that condition or warranty is limited to, at our option:
- (a) in the case of goods:
 - (i) replacing the goods or supplying equivalent goods;
 - (ii) repairing the goods;
 - (iii) paying for the cost of replacing the goods or buying equivalent goods; or
 - (iv) paying for the cost of repairing the goods, and
 - (b) in the case of services:
 - (i) supplying the services again;
 - (ii) paying for the cost of supplying the services again.

12. TERMINATION OF CONTRACT

- 12.1 We are entitled to immediately terminate this contract if:
- (i) you are in breach of any of these conditions;
 - (ii) execution is levied on your property; or
 - (iii) you are declared bankrupt, resolve to go into liquidation or have a petition for bankruptcy or winding up presented against you or you enter into a scheme of arrangement with your creditors, or if any liquidator, provisional liquidator, administrator, receiver, receiver and manager or official manager is appointed in respect of you or if anything analogous occurs.
- 12.2 On termination of this agreement, any and all amounts owed by you to us become immediately due and payable.
- 12.3 If you have purchased goods from us and have not paid for them in full, you must pay all amounts due to us in respect of those goods or return the goods to us in satisfaction of the unpaid amount you still owe us.

13. GOODS RETURNED FOR CREDIT

- 13.1 We will not consider a claim in relation to damaged goods or shortage of length, quantity or weight unless notified in writing within three days of delivery.
- 13.2 We may allow credit at our sole discretion, but in any event we will not accept goods for credit after 7 days from the date of original invoice.
- 13.3 "Special buy-ins" will be subject to the Manufacturers and or Suppliers conditions and fee structure.
- 13.4 We reserve the right to charge a restocking fee on goods accepted for credit.
- 13.5 In all cases, you must quote the original invoice or delivery docket and you must prepay return freight.
- 13.6 Goods returned for credit must be accompanied by the original invoice or delivery docket and must be in the original pack and in a completely re-saleable condition.

14. RETENTION OF TITLE

- 14.1 Notwithstanding that you have possession of the goods, title to the goods remains with us, and no legal or equitable interests or property in the goods whatsoever will pass to you, until the full amount for the goods has been paid in accordance with these conditions and you do not owe us money for any other goods delivered by us or on any account whatsoever.
- 14.2 Until title and property in the goods pass:
- (i) you retain the goods you have custody of as our bailee and fiduciary agent;
 - (ii) notwithstanding (i), the goods will be at your risk in all respects, and in particular, any right to bind us to any liability to any third party by contract or otherwise is expressly negated;
 - (iii) you will not mortgage or pledge the goods to any person or company; and
 - (iv) you will mark or store the goods separately from your own, keep all necessary records so that the goods can at all times be identified and distinguished as our property, and further ensure that they are properly stored, protected, and insured.
- 14.3 Where title and property in any particular goods has not passed, you may nevertheless dispose of those goods to a bona fide purchaser provided that:
- (i) such disposals are in the ordinary course of your business; and
 - (ii) no event as specified in Clause 12 has occurred.
- It is agreed that by the disposal of such goods, you assign to us (the assignment being absolute and not by way of security) all monetary proceeds received by or on your behalf in respect of the goods.
- 14.4 You must observe the following fiduciary obligations with respect to any disposal of goods to a purchaser authorised by clause 14.3:
- (i) you must maintain records of all disposals of the goods and must permit our inspection of these records promptly upon request; and
 - (ii) you must hold the assigned proceeds on trust for us and separate from your own monies, and must account to us for those proceeds. The total debts owing by you to us will be reduced by the proceeds of sales for which you have accounted to us in accordance with this clause 14.4. If these proceeds exceed the total debts owing by you to us at any time, you are entitled to receive an amount equivalent to the amount of this excess as commission.
- 14.5 If you produce a product ("the Product") that utilises or incorporates any of the goods as a component of the Product, the terms of this clause pertaining to title and proceeds apply in the following manner:
- (i) in the case of goods that can be removed from the Product without destroying or seriously injuring the goods or other components of the Product, the terms of clause 14 apply to the relevant goods without modification except for the references in clause 14.3 and 14.4 to proceeds, which are to be read as if this reference were to the portion of each Product's proceeds attributable to the value of the incorporated good;
 - (ii) in the case of goods that cannot be removed from the Product without destroying or seriously injuring the goods or other components of the Product, the terms of this clause 14 apply subject to the modification that we become a co-owner of the Product at the time the relevant goods are incorporated into the Product, and our co-ownership share being in the proportion that the value of the goods are incorporated into the Product, and our co-ownership share being in the proportion that the value of the goods bear to the value of the other components of the Product.
- 14.6 In the case of default in your obligations under these conditions or if any event occurs by which we will be entitled to determine this contract, then without prejudice to any rights which we may have at law or under these conditions:
- (i) we or our agents may without notice to you enter your premises, by force if necessary, for the purpose of recovering our goods;
 - (ii) we may recover and resell our goods and apply the proceeds in reduction of any indebtedness you may owe to us;
 - (iii) if the goods cannot be distinguished from similar goods which you have, or claim to have title to, we may in our absolute discretion take all goods matching the description of the goods and hold same for a reasonable period so that the respective claims to the goods may be determined whereupon we shall promptly return to you any goods which are your property, and you acknowledge that provided we have taken or shall take reasonable care in the seizure and storage of such goods we shall be in no way liable or responsible for any loss or damage to any goods or for any loss or damage to your business howsoever arising from our taking of any goods;
- 14.7 You indemnify us against any claim, action, damage, loss, liability, cost, expense, outgoing or payment which we suffer, incur or are liable for in respect of our exercise of our rights under this clause 14.

15. FORCE MAJEURE

We are deemed not to be in default or breach of any contract as a result of Force Majeure. Force Majeure includes any cause beyond our reasonable control, including strikes and lockouts.