

# ABSOLUTE

**DIAMOND BLADES LIMITED**

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## CREDIT ACCOUNT APPLICATION AND AGREEMENT FOR SUPPLY OF ABSOLUTE DIAMOND TOOL PRODUCTS

Customer Name:			
Postal address:			
Physical address:			
Telephone: Business		Fax:	
Mobile		Home:	
Type of Business:		Email	
Directors/Shareholders		Address and Phone Numbers:	
Trading References:			
1.		Phone:	
2.		Phone:	
<i>Office Use Only</i>			
Admin:		Sales:	
Customer Code:		Discount:	
Special rates:		Credit Reference:	

- The undersigned, for and on behalf of the Customer, hereby makes this application to open an account with Absolute Diamond Tools Limited ("Absolute").
- The undersigned has read the terms and conditions of trade contained in this document and agrees that those terms form the contract between Absolute and the Customer.
- The undersigned represents and warrants that the undersigned is duly authorised to execute this application on behalf of the Customer and that when so executed the agreement for supply shall be legally binding upon the Customer in respect of each and every supply of Tools. If the Customer is a limited liability Company, the undersigned agrees that the agreement for supply shall also be binding upon the undersigned personally.
- The undersigned hereby authorises all individuals and firms mentioned in this credit application to respond fully and generally to all requests by Absolute for credit information about the Customer and the undersigned. The undersigned expressly waives any claims under the Privacy Act against any such individuals for providing such credit information to Counties.
- The undersigned hereby authorises Absolute to respond fully and generally to all requests by third parties for credit information about the Customer and the undersigned. The undersigned expressly waives any claims under the Privacy Act against Absolute for providing such credit information to third parties.
- The undersigned represents and warrants to Absolute that the information provided herein is true and correct to the undersigned's best knowledge, information and belief.
- The Customer acknowledges and agrees that this contract is and constitutes a security agreement providing for both future advances and a security interest in favour of Absolute in all the Customer's present, personal property and after acquired property but this security agreement does not apply to property not supplied by Absolute. Each purchase will create or creates in favour of Absolute a security interest in the goods which are the subject of the purchase, and the security interest granted by the Customer to Absolute secures payment by the Customer to Absolute of all amounts which the Customer may owe to Absolute from time to time and at any time.
- The undersigned declares that the credit applied for is to be used primary for business and therefore will not be bound by the Credit Contracts and Consumer Finance Act 2003.

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Position with Customer

\_\_\_\_\_  
Witness: :

\_\_\_\_\_  
Witness full name

## TERMS AND CONDITIONS OF TRADE

### 1. Definitions

- |      |             |  |
|------|-------------|--|
| 1.1. | "Agreement" | These Terms and Conditions of Trade  |
| 1.2  | "Absolute"  | Absolute Diamond Blades Limited  |
| 1.3  | "Customer"  | The person so named in the above credit account application and agreement for supply   |
| 1.4  | "PPSA"      | The Personal Properties Securities Act 1999  |
| 1.5  | "PMSI"      | Purchase Money Security Interest   |
| 1.6  | "GCA"       | Consumer Guarantees Act 1993   |
| 1.7  | "Quote"     | A written offer from Absolute to the Customer to supply Tools for a specified price subject to these terms and conditions of such offer. |
| 1.8  | "Order"     | An agreement between Absolute and the Customer for Absolute to supply Tools to the Customer.   |
| 1.9  | "Tools"     | Absolute's products identified in the written notification by Absolute to the Customer of acceptance of an order placed by the Customer. |

### 2. Terms of Agreement

Unless otherwise agreed in writing to the contrary by the Manager of Absolute, all Tools supplied by Absolute to the Customer will be subject to this Agreement. Notwithstanding anything contained in or accompanying any order submitted by the Customer to Absolute, the Customer shall be deemed to have accepted the terms and conditions contained in this Agreement in respect of each and every supply.

### 3. Orders

Absolute reserve the right to accept in whole or in part or reject any order submitted by the Customer.

### 4. Formation of Contract

A contract upon the Terms and Conditions contained in this Agreement shall be formed upon Absolute sending to the Customer an acknowledgement of acceptance by Absolute of the Customer's order.

### 5. Price

- 5.1 The specified price is for the Tools identified in the Quote.
- 5.2 Unless otherwise stated, the specified price does not include GST.
- 5.3 All specified prices are based on rates and charges in effect at the date of the relevant Quote. Any increase in rates or charges, (including, without limitation, materials and fuel) shall result in an increase in the specified price.
- 5.4 An estimate as to price or quantity is not binding on Absolute.

### 6. Terms of Payment

- 6.1 Unless otherwise agreed by Absolute, payment for all Tools is due in cash on or before the 20<sup>th</sup> of the month following delivery.
- 6.2 Should payment in full not be received by Absolute by the due date, the Customer shall pay interest on the outstanding moneys at the flat rate of 10% p.a. calculated per number of days overdue.
- 6.3 The failure by the Customer to pay Absolute by the due date shall entitle Absolute or their nominated collections agent to charge the Customer any additional costs incurred to recover the money owing including commissions to agents and legal costs.
- 6.4 The failure by the Customer to pay Absolute by the due date shall entitle Absolute to review the availability and terms of credit.
- 6.5 Payments made by the Customer will be credited against the oldest outstanding balances in the Customer's account.

### 7. Credit Rating

Should Absolute become dissatisfied with the Customer's credit rating, Absolute may suspend deliveries indefinitely or until such time as the Customer's credit rating has been established to Absolute's satisfaction.

### 8. Delivery and Risk

- 8.1 The Customer is responsible for the payment of all freight and delivery charges unless otherwise specified in writing.
- 8.2 Absolute will make every effort to ensure delivery is on time but will not be liable for any loss or damage arising in anyway from delays in delivery.
- 8.3 Risk in the Tools supplied by Absolute shall pass to the Customer upon the Tools leaving Absolute's premises.
- 8.4 Absolute will not in any circumstances be liable for any loss, damage or deterioration occurring after the Tools have been delivered to the Customer.

### 9. Ownership:

- 9.1 Property in the Tools shall remain with Absolute until payment in full of the purchase price of the Tools and all other amounts owing to Absolute by the Customer have been received by Absolute.
- 9.2 Until property in the Tools passes to the Customer:
  - 9.2.1 The Customer shall store the Tools separately and in a manner which enables them to be identified and cross referenced to particular invoices issued by Absolute.
  - 9.2.2 Unless otherwise notified in writing by Absolute, the Customer is authorized to sell the Tools in the ordinary course of business.
  - 9.2.3 The Customer authorizes Absolute or its agents to enter the Customer's premises to remove any Tools which are the property of Absolute.
- 9.3. The right to on sell, deal or otherwise dispose of the Tools in the normal course of trade may be revoked at any time by Absolute and shall automatically cease on the occurrence of any of the events set out in clause 16 hereof or where the Customer is in default of any of its obligations to Absolute.

### 10. Purchase Money Security Interest

- 10.1 The Customer acknowledges and agrees that Absolute may register any security interest that Absolute has in respect of the Tools and their proceeds on the Personal Property Securities Register and that such security interest survives until the Tools have been paid for in full.
- 10.2 Until Absolute has received payment in full for the Tools, the Customer acknowledges and agrees that:
  - 10.2.1 Absolute supply the Tools to the Customer on condition that Absolute has a PMSI in the Tools;
  - 10.2.2 The Customer will not permit the Tools to become accessions to or co-mingled with other Product or mass if Absolute has not perfected any security interest that Absolute has in relation the Tools.
  - 10.2.3 If the Customer, notwithstanding clause 10.1 of this Agreement, sells the Tools before paying Absolute for it, the Customer will pay the proceeds arising from such sale into a separate account with separate records so that those proceeds remain identifiable and traceable to that sale and the Tools. The Customer agrees that there will be no other funds in the account. If the Customer further deals with such proceeds, the Customer will manage those

- dealings in a manner so that the proceeds remain identifiable or traceable to the original Tools. If the Customer sells the Tools before paying the Company for them, all claims which the Customer holds against third parties shall be handed over to Absolute.
- 10.3 If Absolute perfects any security interest that it has in relation to the Tools, the customer will not do anything that results in Absolute having less than the security or priority position in respect of the PPSA that Absolute assumed at the time of perfection.
- 10.4 If Absolute is a secured party under the PPSA:
- 10.4.1 So far as permitted by Section 107 of the PPSA the Customer will have no rights under Sections, 114, 117, 120, 133 and 134 of the PPSA.
- 10.4.2 The Customer agrees that its rights as a Debtor pursuant to Sections 116, 119, 120(2), 121, 125,126,127,129,131 and 132 of the PPSA do not apply to the security interest granted by Absolute.
- 10.4.3 In accordance with Section 148 of the PPSA, the Customer waives its rights to receive any financing statement or financing charge statement from Absolute.
- 10.5 The Customer will assist Absolute by completing any formalities or providing any information required by Absolute to establish and maintain the best security position that it is entitled to under the PPSA.
- 11. Exclusion of Implied Terms**  
Except as expressly provided herein and to the extent permitted by law, all implied conditions, warranties, guarantees, representations, undertakings, rights, duties or liabilities whether arising by implication of law, by statute or otherwise, are hereby expressly excluded.
- 12. Extent of Absolute's Liability**
- 12.1 The extent of Absolutes' liability under this Agreement shall be limited to repair or replacement or credit (in each case as Absolute shall elect) in respect of any Tools which are defective in materials.
- 12.2 Absolute shall have no liability in any case where the Tools have been used otherwise than in accordance with their use specifications.
- 13. Business Purposes**
- 13.1 If the Customer acquires the Tools from Absolute for the purposes of a business in any way, or the Customer holds itself out as acquiring the Tools for the purposes of a business in any way, the Customer agrees to the following terms:
- 13.1.1 the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 and the Consumer Guarantees Act 1993 will not apply and are excluded from this agreement;
- 13.1.2 the Customer may not claim any of the remedies set out in the CGA from Absolute or from any supplier of any materials or components of the Tools;
- 13.1.3 neither Absolute, nor the supplier/s of any of the materials used in manufacture of the Tools will be liable to the Customer for any consequential loss or damage however that loss or damage is caused or arises. The exclusion of liability includes, but is not limited to, consequential loss or damage caused by or arising from faulty delivering, and faulty material used in the Tools.
- 14. Customer Warranties**
- 14.1 The Customer warrants that if the Customer purchases any Tools for re-supply:
- 14.1.1 if it supplies the Tools for further re-supply it will ensure that its terms and conditions of supply require its customer and each person in the distribution chain to include in its supply agreements or conditions of sale, obligations requiring its customer to exclude liability for any claims under the CGA but only where the end user/consumer acquires the Tools for business purposes;
- 14.1.2 if it supplies the Tools directly to an end user/consumer it will do so using terms and conditions of supply which exclude liability for any claims under the CGA; but only where the end user/consumer acquires the Tools for business purposes.
- 14.2 The Customer warrants that it will indemnify Absolute against any failure by the Customer or its customers to properly contract out of liability to business and users/consumers under the CGA.
- 15. Force Majeure**  
Absolute shall not be liable for any delay in complying with its obligations to the Customer caused in whole or in part by force majeure which shall include (but not limited to) an act of God, natural disasters, strike lockouts, fire, war, civil commotion, inability to obtain materials or supplies including the imposition of any export or import banks or any other cause beyond the reasonable control of Absolute.
- 16. Termination**
- 16.1 Absolute may terminate any contract for the supply of Tools where:
- 16.1.1 the Customer commits a breach of any term or condition of this Agreement; or
- 16.1.2 the Customer becomes insolvent (within the meaning of the Insolvency Act 1967 or the Companies Act 1993) or ceases or threatens to cease to carry on its business.
- 16.1.3 any distress is levied upon the Customer's property or assets; or
- 16.1.4 the Customer makes or offers to make any arrangement or composition with its creditors or commits any act of bankruptcy or if any one or more individuals comprising the Customer is adjudicated bankrupt; or
- 16.1.5 any resolution or petition to wind up the Customer is passed (other than for the purpose of reconstruction or amalgamation), or if a receiver is appointed.
- 17. Variations**  
This Agreement shall be governed by the Laws of New Zealand and shall constitute the entire contract between the Customer and Absolute with respect to the supply of Tools.
- 18. Invalidity**  
If any provision of this Agreement is held to be invalid or unenforceable for whatever reason, the remaining provisions shall remain in full force and effect.
- 19. Non-waiver**  
Where Absolute fails to enforce any terms and conditions in this Agreement or fails in any way to exercise its rights under this Agreement, Absolute shall not be deemed to have waived those rights with respect to any subsequent breach of any term or condition or right.