



AM360 Terms and Conditions

Special Notes:

- All quotes are subject to the standard terms and conditions set out in this document.
- Elbon Consulting Services Pty Ltd trading as AM360 (hereinafter referred to as AM360) does not agree to liquidation damages for works valued at less than \$50,000.00.
- No retention agreements will be entered into for projects valued at less than \$50,000.00.

1.0 – Definitions

1.1 – “AM360” means Elbon Consulting Services Pty Ltd trading as AM360, its successors and assigns, or any person acting on behalf of and with the full authority of Elbon Consulting Services Pty Ltd trading as AM360.

1.2 – “Client” means the person/s buying the goods as specified in any invoice, document or purchase order, and if there is more than one client is a reference to each client jointly and severally.

1.3 – “Goods” means all goods or services supplied by AM360 to the client at the client’s request from time to time (where the context so permits the terms “goods” and “services” shall be interchangeable for the other).

1.4 – “Price” means the amount payable for the goods as agreed between the client and AM360 in accordance with Clause 4, below.

2.0 – Acceptance

2.1 – The client is taken to have exclusively accepted, and is immediately bound, jointly and/or severally, by these terms and conditions if the client places an order for, or accepts delivery of, the goods or services.

2.2 – The placement of an order, or the acceptance of any goods, will be taken as confirmation that the client has checked, approved, and accepted any related material layout designs as correct at the time of AM360’s proposal submission, and/or the suitability of the goods, which are the subject of any order placed by the client. AM360 reserves the right to charge for any subsequent design changes at AM360’s current hourly rate, for all revised drawings and estimation purposes.

2.3 – These terms and conditions may only be amended with AM360’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the client and AM360.

3.0 – Change in Control

3.1 – The client shall give AM360 not less than 14 days prior written notice of any proposed change of ownership of the client and/or any other change in the client’s details (including but not limited to changes in the client’s name, address, contact phone or fax number/s or business practise). The client shall be liable for any loss incurred by AM360 as a result of the client’s failure to comply with this clause.

4.0 – Price and Payment

4.1 – At AM360’s sole discretion, the price shall be either:

- as indicated on any invoice provided by AM360 to the client; or
- AM360's quoted price (subject to Clause 4.2) which will be valid for the period stated in the quotation or otherwise a period of 30 days.

4.2 – AM360 reserves the right to change the price:

- if a variation to the goods which are to be supplied is requested; or
- if a variation to the services originally scheduled (including any applicable plans or specifications) is requested; or
- where additional services are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, hidden pipes and wiring in walls, etc) which are only discovered on commencement of the services; or
- in the event of increases to AM360's cost of materials and/or labour due to suppliers increases, logistical and/or freight charges which are due to the influence of a pandemic, a war, a natural disaster, or any other circumstances which are reasonably beyond AM360's control.

4.3 – At AM360's sole discretion a deposit of up to 100 per cent of the price may be required.

4.4 – Time for payment of the goods being of the essence, the price will be payable by the client on the date/s determined by AM360 which may be:

- before or upon delivery of the goods to the client;
- by way of instalments/progress payments in accordance with AM360's payment schedule;
- 30 days following the date an invoice is issued to the client;
- the date specified on any invoice or other form as being the date for payment; or
- failing any prior notice to the contrary, the date which is seven (7) days following the date of any invoice given to the client by AM360.

4.5 – Payment may be made by cash, cheque, bank cheque, electronic/online banking, credit card (plus a surcharge of up to 2.5% of the price when paid by credit card), or by any method as agreed between the client and AM360.

4.6 – Unless otherwise stated the price does not include goods and services tax (GST). In addition to the price, the client must pay to AM360 an amount equal to any GST AM360 must pay for any supply by AM360 under this or any other agreement of sale of the goods. The client must pay GST, without any deduction or offset of any other amounts, at the same time and on the same basis as the client pays the price. In addition, the client must pay any other taxes and duties that may be applicable in addition to the price except where they are expressly included in the price.

5.0 – Delivery of Goods

5.1 – Delivery of the goods is taken to occur at the time that:

- the client or the client's nominated carrier takes possession of the goods at AM360's address; or
- AM360 (or AM360's nominated carrier) delivers the goods to the client's nominated address even if the client is not present at the address.

5.2 – At AM360's sole discretion the cost of delivery is excluded from the price.

5.3 – AM360 may deliver the goods in separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

5.4 – Subject to Clause 5.5 it is AM360's responsibility to ensure that the services start as soon as it is reasonably possible.

5.5 – The service's commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that AM360 claims an extension of time (by giving the client written notice) where completion is delayed by an event beyond AM360's control, including but not limited to, failure by the client to:

- make a selection; or
- have the site ready for services; or
- notify AM360 the site is ready; or
- Any of the events outlined in clause 4.2 occur.

5.6 – Any time or date for delivery of goods provided by AM360 to the client is an estimate only. The client must still accept delivery of the goods even if late and AM360 will not be liable for any loss or damage incurred by the client as a result of the delivery being late.

6.0 – Risk

6.1 – Risk of damage to, or loss of, the goods passes to the client on delivery and the client must insure the goods on or before delivery.

6.2 – If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the client, AM360 is entitled to receive all insurance proceeds payable for the goods. The production of these terms and conditions by AM360 is sufficient evidence of AM360's right to receive the insurance proceeds

without the need for any person dealing with AM360 to make further inquiries.

6.3 – If the client requests AM360 to leave goods outside AM360's premises for collection, or to deliver the goods to an unattended location, then such goods shall be left at the client's sole risk.

6.4 – The client warrants that any structures to which the goods are to be affixed are able to withstand the installation of the goods and that any electrical connections (including but not limited to meter boxes, main switches, circuit breakers and electrical cables) are of suitable capacity to handle the goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to the site) that AM360, its employees or contractors reasonably form the opinion that the client's premises are not safe for the installation of the goods to proceed, then AM360 shall be entitled to delay the installation of the goods (in accordance with Clause 5.5 above) until AM360 is satisfied that the premises are safe for the installation to proceed.

6.5 – Where AM360 gives advice or recommendations to the client, or the client's agent, with specific instructions regarding the use of the goods, and such advice or recommendations are not acted upon then, AM360 shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the services.

6.6 – The client agrees to indemnify AM360 against any liability whatsoever arising out of the performance of the works/services, or supply of the goods, ordered by the client and supplied under this or any other contractual agreement.

7.0 – Access

7.1 – The client shall ensure that AM360 has clear and free access to the work site at all times to enable them to undertake the services. AM360 shall not be liable for any loss or damage to the site (including without limitation damage to pathways, driveways and concreted or paved or grassed areas) unless solely due to the direct negligence of AM360.

8.0 – Title

8.1 – AM360 and the client agree that ownership of the goods shall not pass from AM360 to the client until:

- the client has paid AM360 all amounts owing to AM360; and
- the client has met all its other obligations to AM360.

8.2 – Receipt by AM360 of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised by AM360 and its banking institution/s.

8.3 – It is further agreed that:

- until ownership of the goods passes to the client in accordance with Clause 8.1 that the client is only a bailee of the goods and must return the goods to AM360 on request.
- the client holds the benefit of the client's insurance of the goods on trust for AM360 and must pay to AM360 the proceeds of any insurance in the event of the goods being lost, damaged, or destroyed.
- the client must not sell, dispose, or otherwise part with possession of the goods other than in the ordinary course

of business and for market value. If the client sells, disposes, or parts with possession of the goods then the client must hold the proceeds of any such act on trust for AM360 and must pay or deliver the proceeds to AM360 on demand.

- the client should not convert or process the goods or intermix them with other goods but if the client does so then the client holds the resulting product on trust for the benefit of AM360 and must sell, dispose of or return the resulting product to AM360 as it so directs.
- the client irrevocably authorises AM360 to enter any premises where AM360 believes the goods are kept and recover possession of the goods.
- AM360 may recover possession of any goods in transit whether or not delivery has occurred.
- The client shall not charge or grant an encumbrance over the goods nor grant nor otherwise give away any interest in the goods while they remain the property of AM360.
- AM360 may commence proceedings to recover the price of the goods sold notwithstanding that ownership of the goods has not passed to the client.

9.0 – Personal Property Securities Act, 2009 (“PPSA”)

9.1 – In this clause, financing statement, financing change statement, security agreement and security interest has the meaning given to it by the PPSA.

9.2 – Upon assenting to these terms and conditions in writing, or by the placement of an order, the client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all goods that have previously been supplied and that will be supplied in the future by AM360 to the client.

9.3 – The client undertakes to:

- promptly sign any further documents and/or provide any further information (such as information to be complete, accurate and up to date in all respects) which AM360 may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct any defect in a statement referred to in the above.
- indemnify, and upon demand reimburse, AM360 for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any goods charged thereby;
- not register a financing change statement in respect of a security interest without the prior written consent of AM360;
- not register, or permit to be registered, a financing statement or financing change statement in relation to the goods in favour of a third party without the prior written consent of AM360;
- immediately advise AM360 of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.

9.4 – AM360 and the client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

9.5 – The client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

9.6 – The client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

9.7 – Unless otherwise agreed to in writing by AM360, the client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

9.8 – The client must unconditionally ratify any actions taken by AM360 under the clauses 9.3 to 9.5.

9.9 – Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10.0 – Security and Charge

10.1 – In consideration of AM360 agreeing to supply the goods, the client charges all of its rights, title, and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the client either now or in the future to secure the performance by the client of its obligations under these terms and conditions (including but not limited to the payment of any monies owed).

10.2 – The client indemnifies AM360 from and against all AM360's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising AM360's rights under this clause.

10.3 – The client irrevocably appoints AM360 and each director of AM360 as the client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this Clause 10, including but not limited to, signing any document on the client’s behalf.

11.0 – Defects, Warranties and Returns, Competition and Consumer Act, 2010 (CCA)

11.1 – The client must inspect the goods on delivery and must within 7 days of delivery notify AM360 in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The client must notify any other alleged defect in the goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the client must allow AM360 to inspect the goods.

11.2 – Under applicable state, territory, and commonwealth law (including without limitation the CCA), certain statutory implied guarantees and warranties (including without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

11.3 – AM360 acknowledges that nothing in these terms and conditions purports to modify or exclude Non-Excluded Guarantees.

11.4 – Except as expressly set out in these terms and conditions or in respect of Non-Excluded Guarantees, AM360 makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the goods.

11.5 AM360’s liability in respect of these warranties is limited to the fullest extent permitted by law.

11.6 – If the client is a consumer within the meaning of the CCA, AM360's liability is limited to the extent permitted by section 64A of Schedule 2.

11.7 – If AM360 is required to replace the goods under this clause or the CCA, but is unable to do so, AM360 may refund any money the client has paid for the goods in lieu of replacement.

11.8 – If the client is not a consumer within the meaning of the CCA, AM360's liability for any defect or damage in the goods is:

- limited to the value of any expressed warranty or warranty card provided to the client by AM360 at AM360's sole discretion;
- limited to any warranty to which AM360 is entitled, if AM360 did not manufacture the goods;
- otherwise negated absolutely.

11.9 – Subject to Clause 11, returns will only be accepted provided that:

- the client has complied with the provisions of Clause 11.1; and
- AM360 has agreed that the goods are defective; and
- the goods are returned within a reasonable time at the client's cost (if that cost is not significant); and
- the goods are returned in as close a condition to that in which they were delivered as possible.

11.10 – Notwithstanding Clauses 11.1 to 11.9 but subject to the CCA, AM360 shall not be liable for any defect or damage which may be caused, or partly caused by, or arise as a result of:

- the client failing to properly maintain or store any goods;

- the client using the goods for any purpose other than that for which they were designed;
- the client continuing the use of any goods after any defect became apparent, or should have become apparent, to a reasonably prudent/competent operator or user;
- the client failing to follow any instructions or guidelines provided by AM360 or the manufacturer of the goods/services;
- fair wear and tear, any accident, or an act of God.

11.11 – Notwithstanding anything contained in this clause, if AM360 is required by law to accept a return, then AM360 will only accept a return on the conditions imposed by that law.

12.0 – Intellectual Property

12.1 – Where AM360 has designed, drawn, or developed goods for the client, then the copyright in any designs and drawings and documents shall remain the property of AM360.

12.2 – The client warrants that all designs, specifications, or instructions given to AM360 will not cause AM360 to infringe any patent, registered design or trademark in the execution of the client's order and the client agrees to indemnify AM360 against any action taken by a third party against AM360 in respect of any such infringement.

12.3 – The placement of an order, or the acceptance of any goods, will be taken as confirmation that the client has checked, approved, and accepted any related architectural or engineering layout and/or designs, and/or the suitability of the goods, which are the subject of any order placed by the client.

13.0 – Default and Consequences of Default

13.1 – Interest on overdue invoices shall accrue daily from the date when payment becomes due until the date of payment, at a rate of 6.5% per calendar month (and at AM360's sole discretion such interest shall compound monthly at such a rate) as well as before any judgement.

13.2 – If the client owes AM360 any money the client shall indemnify AM360 from and against all costs and disbursements incurred by AM360 in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, AM360's contract default fee and bank dishonour fees).

13.3 – Without prejudice to any other remedies AM360 may have, if at any time the client is in breach of any obligation (including those relating to payment) under these terms and conditions, AM360 may suspend or terminate the supply of goods to the client without notice.

13.4 – AM360 will not be liable to the client for any loss or damage the client suffers because AM360 has exercised its rights under this clause.

13.5 – Without prejudice to AM360's other remedies at law, AM360 shall be entitled to cancel all or any part of any order of the client which remains unfulfilled and all amounts owing to AM360 shall, whether or not due for payment, become immediately payable if:

- any money payable to AM360 becomes overdue, or in AM360's opinion the client will be unable to make payment when it falls due;
- the client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with

creditors or makes an assignment for the benefit of its creditors; or

- a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the client or any asset of the client.

14.0 – Compliance with Laws

14.1 – The client and AM360 shall comply with all provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the services.

14.2 – The client shall obtain (at the expense of the client) all licences and approvals that may be required for the services.

14.3 – The client agrees that the site will comply with any work health and safety laws (WHS) relating to building/construction sites and any other relevant safety standards or legislation, particularly those in relation to asbestos/hazardous materials and the safe removal and disposal of the same.

15.0 – Cancellation

15.1 – AM360 may cancel any contract to which these terms and conditions apply or cancel delivery of goods at any time before the goods are delivered by giving written notice to the client. On giving such notice AM360 shall repay to the client any money paid by the client for the goods. AM360 shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.2 – In the event the clients cancels delivery of goods the client shall be liable for any and all loss incurred (whether direct or indirect) by AM360 as a direct result of the cancellation (including but not limited to any loss off profits).

15.3 – Cancellation of orders for goods made to the client's specifications, or non-stock list items, will definitely not be accepted once production has commenced or an order has been placed.

16.0 – Privacy Act, 1988

16.1 – The client agrees for AM360 to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g., name, address, date of birth, occupation, previous credit applications, credit history) about the client in relation to credit provided by AM360.

16.2 – The client agrees that AM360 may exchange information about the client with those credit reporting providers and with related body corporates for the following purposes:

- to assess a credit application by the client; and/or
- to notify other credit providers of a default by the client; and/or
- to exchange information with other credit providers as to the status of this credit account where the client is in default with other credit providers; and/or
- to assess the creditworthiness of the client including the client's repayment history in the preceding two (2) years.

16.3 – The client consents to AM360 being given a consumer credit report to collect overdue payment on commercial credit.

16.4 – The client agrees that personal credit information provided may be used and retained by AM360 for the following purposes of (and for other agreed purposes or required by):

- the provision of goods; and/or

- analysing, verifying and/or checking the client's credit, payment and/or status in relation to the provision of goods; and/or
- enabling the collection of amounts outstanding in relation to the goods.

16.5 – AM360 may give information about the client to a CRB for the following purposes:

- to obtain a consumer credit report;
- allow the CRB to create or maintain a credit information file about the client including credit history.

16.6 – The information given to the CRB may include:

- personal information as outlined in 16.1 above;
- name of the credit provider and that AM360 is a current credit provider to the client;
- whether the credit provider is a licensee;
- type of consumer credit;
- details concerning the client's application for credit or commercial credit (e.g., date of commencement or termination of the credit account and the amount requested);
- advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than 60 days, and for which written notice for request of payment has been made and debt recovery action commenced, or alternatively that the client no longer has any overdue accounts and AM360 has been paid or otherwise discharged and all details of that discharge (e.g., dates of payments);

- information that in the opinion of AM360 the client has committed a serious credit infringement.
- advice that the amount of the client's overdue payment is equal to or more than \$150.00.

16.7 – The client shall have the right to request (by email) from AM360:

- a copy of the information about the client retained by AM360 and the right to request that AM360 correct any incorrect information; and
- that AM360 does not disclose any personal information about the client for the purpose of direct marketing.

16.8 – AM360 will destroy person information upon the client's request (by email) if it is no longer required, unless it is required in order to fulfill the obligations of this agreement, or is required to be maintained and/or stored in accordance with the law.

16.9 – The client can make a privacy complaint by contacting AM360 by email. AM360 will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within 30 days of receipt of the complaint. In the event that the client is not satisfied with the resolution provided the client can make a complaint to the Information Commissioner at www.oaic.gov.au.

17.0 – Other Applicable Legislation

17.1 – At AM360's sole discretion if there are any disputes or claims for unpaid goods and/or services then the provisions of the Building and Construction Industry Security of Payments Act, 2002 (Victoria), Building and Construction Industry Security of Payments Act, 1999 (New South Wales), Construction Contracts Act, 2004 (Western Australia), Building and Construction Industry Payments Act, 2004

(Queensland), Construction Contracts (Security of Payments) Act (Northern Territory), Building and Construction Industry Security of Payments Act, 2009 (Tasmania), Building and Construction Industry Security of Payments Act, 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act, 2009 (Australian Capital Territory) may apply.

17.2 – Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of any of the Acts listed in Clause 17.1 each as applicable, except to the extent permitted by the Act where applicable.

18.0 – General

18.1 – The failure by AM360 to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision nor shall it affect AM360's right to subsequently enforce that provision. If any provision/s of these terms and conditions shall be invalid, void, illegal or unenforceable, the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 – These terms and conditions and any contract to which they apply shall be governed by the laws of the state of New South Wales and/or Victoria in which AM360 has its principal places of business, and are subject to the jurisdiction of the Campbelltown Courts in New South Wales.

18.3 – Subject to Clause 11 AM360 shall be under no liability whatsoever to the client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the client arising out of a breach by AM360 of these terms and conditions (alternatively AM360's liability shall be limited to damages which under no circumstance shall exceed the price of the goods).

18.4 – The client shall not be entitled to set off against, or deduct from the price, any sums owed or claimed to be owed to the client by AM360 nor to withhold any payment of any invoice because part of that invoice is in dispute.

18.5 – AM360 may license or sub-contract all, or any part of, its rights and obligations without the client's consent.

18.6 – The client agrees that AM360 may amend these terms and conditions at any time. If AM360 makes a change to these terms and conditions then that change will take effect from the date on which AM360 notifies the client of such change. The client will then be taken to have accepted such changes if the client makes a further request for AM360 to provide goods to the client.

18.7 – Neither party shall be liable for any default due to an act of God, pandemic, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, or any other event beyond the reasonable control of either party.

18.8 – The client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and legal obligations on it.

18.8 – Unless expressly agreed to by AM360, nothing in these terms and conditions, or any other contractual agreement, can be taken to mean that AM360 is liable for the costs of any legislative compliance annual or biannual inspections relating to the subject goods or services now or in the future. This clause extends to include during any defects liability period. AM360's liability is expressly limited to defects and maintenance issues, as determined by the conditions of the performance of any defects liability period, in any relevant contract, and does not extend to include any legislative compliance requirements.