

NEW CUSTOMER ENGAGEMENT FORM

Thank you for your interest in becoming a customer of Diagrind NSW. This form sets out our terms of engagement and we require all new customers to sign it before commencing work on their projects. Please read this form carefully and then e-sign, date and return it to us via email to confirm your booking of our services. Please note that once signed, this document forms a binding agreement between us. If any of the terms are unclear, please contact our office.

1. Parties:

This agreement is between IWANNAGOFAST Pty Ltd (ABN 42 613 118 924) trading as Diagrind NSW (“Diagrind”, “we”, “us”) and

Customer Name: _____ ABN/ACN: _____

Address: _____ Website: _____

Email: _____

(“the Customer”, “you”, “your”).

2. Content of this Agreement

This agreement includes the terms contained in this form and incorporates by reference the scope of services, pricing and other details of our engagement as provided to you in Quote [quote number] dated [quote date] (“Quote”).

If the Quote provides different service options, please confirm via email which option you have selected. The details provided in the Quote relating to your chosen option are then incorporated into this agreement to the exclusion of the other options contained in the Quote.

Any future engagements of Diagrind by the Customer will be governed by the terms contained in this form (unless new terms are provided by Diagrind) as well as the terms of the quote provided by Diagrind for that future engagement.

3. Engagement, Term and Start Date

The Customer hereby engages Diagrind to perform the services described in the Quote. This agreement commences on acceptance, which occurs when the Customer:

- a) signs this form;
- b) provides Diagrind with verbal or written acceptance of the Quote (including via email);
- c) pays the deposit specified in the Quote (if any); or
- d) pays an invoice issued to the Customer by Diagrind,

whichever occurs first. The services will commence on [start date] unless otherwise agreed by the parties. Please note that Diagrind will be under no obligation to commence delivery of the services until acceptance has been received in such form it requires.

4. Customer Responsibilities

The Customer must:

- a) ensure that the work site is ready for the delivery of services to commence on the date set out above and is safe and secure, including by cautioning all persons (including by use of appropriate signage) that mechanically polished or sealed floors may be slippery, particularly when wet;
- b) for demolition work, provide Diagrind with a skip bin;
- c) unless otherwise arranged with Diagrind, dispose of any bagged grinding dust;
- d) supply Diagrind with three-phase power (failing which generator fees will be charged);
- e) supply Diagrind’s personnel with safe and secure parking close to the site;
- f) arrange for automatic and back-to-base smoke/fire alarms to be isolated prior to Diagrind commencing work and remain isolated for the duration of our work on site (failing which the Client will be responsible for any call out and associated fees charged by emergency responders);
- g) in the case of new builds, provide Diagrind with access to the building site at the very beginning of the project;
- h) in the case of jobs in commercial buildings and/or for renovation jobs, ensure that Diagrind is the only trade onsite and that Diagrind’s services are provided at the beginning (and not the end) of the Customer’s building project;
- i) where other building works will commence directly following Diagrind’s work, provide floor protection to cover the floors serviced by Diagrind to ensure the floor’s protection (please note that plastic sheeting is NOT to be used as floor protection as plastic causes the concrete to sweat and will damage the floor. Layers of carpet may be placed as doormats OUTSIDE an open cut slab not inside, as dye from the carpet may penetrate the slab if wet) and a finished slab. Please refer to our website (www.digrind.com.au/) for more information on protecting your floors or contact us for further information); and
- j) in the case where a concrete slab is to be poured, contact Diagrind before the slab is poured so we can ensure it is done in a way that supports Diagrind’s services.

If any of the above items is not provided or complied with by the Customer, Diagrind may (in its sole discretion) elect to delay delivery of the services until this clause has been complied with, in which case the Customer will be liable to pay Diagrind's fees and expenses incurred in relation to the delay) or terminate this agreement, in which case the Customer will be liable to pay Diagrind's fees and expenses incurred in relation to the Customer's project up to and including the date of termination. Failure to comply with the responsibilities set out in this agreement may also impact on any warranty or guarantee to which the Customer may be entitled.

5. Diagrind's Responsibilities

Diagrind will deliver its services to the Customer in a professional manner, by competent tradespersons, in good faith and with all requisite care and skill.

Diamond polished concrete customers are provided with a warranty given by the manufacturer of the application, Crete Colors International, LLC, and Diagrind, that the surface will remain hardened and dustproof for 10 years, which is subject to conditions (including that the Customer follow the manufacturer's maintenance schedule) and limitations as set out in Schedule 1.

Aside from that and any other guarantees the Customer may be entitled to pursuant to the Australian Consumer Law, all other guarantees in relation to our services are specifically excluded.

Except as set out above, we make no warranty or guarantee as to the specific outcomes of our services. Any indications given are examples and are based on experience. These must not be relied on to predict future results. The Customer warrants that they have not relied on any warranty, guarantee or representation given by Diagrind in entering into this agreement.

6. Fees

In exchange for Diagrind's services, the Customer will pay to Diagrind the fees as set out in the Quote.

If you wish to vary the scope of the project after the Quote has been accepted, we will ask you to send us the variation request via email. We will then prepare a new quote to reflect the changed scope and fees. Commercial clients will be asked to send us a variation purchase order.

Please note that any verbal fee estimates provided (whether in relation to variations of scope or new projects) are only indicative and not binding on us.

7. Expenses

Anticipated expenses are included in the Quote. Any additional expenses (for example that arise due to Customer requested changes) or reasonable unforeseen expenses, must be reimbursed to Diagrind by the Customer upon invoice.

8. Payment Terms

The Quote will specify whether a deposit is payable prior to Diagrind commencing work on your project or not. If a deposit is specified in the Quote, it must be paid before work will commence.

The timing of Diagrind's invoicing depends on the scale and timeframe of the project. Please contact us for details of when we will invoice you should you require this information.

As a general guide, for smaller residential projects we usually invoice a portion of the total fees after the demonstration, and the remainder of the fees on completion of the project. For commercial customers and large projects, we usually invoice on a progressive basis (1-4 progress payments) with the remainder of the fees invoiced on completion of the project.

An itemised account of all charges, costs and disbursements will be provided on the invoice. All invoices are payable within 14 days of invoice date. The terms in this form also include the terms of any invoice issued by Diagrind.

Accounts overdue by 30 days from invoice date incur late payment interest at the rate of 6% per annum. If an account remains overdue for more than 60 days, we may refer the matter to a debt collection agency or solicitor and the Customer will be liable to pay any costs Diagrind incurs or becomes liable to pay for the collection of such unpaid amounts, including but not limited to debt collection fees, charges and commissions and legal fees and costs on a full indemnity basis.

Please note that should you pay our invoices by credit or debit card, merchant fees are payable on amounts over \$2,000 and are charged at 1.5%.

9. Promotion

The Customer consents to Diagrind using the Customer's name, trade marks and general details of the engagement, including photographs of results, to promote its business.

10. Confidentiality

In conducting this engagement, information acquired by us in the course of the engagement is subject to strict confidentiality requirements. Any information that could reasonably be deemed to be confidential in nature will not be disclosed by us to any third parties unless we are required to do so by law, or you have given us your express consent.

11. Limitation of liability and indemnity

Nothing in this agreement is intended to exclude any right or guarantee to which the Customer is entitled under the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010*.

Where the Services fall within the scope of the Australian Consumer Law, Diagrind's liability to the Customer is limited to the fullest extent permissible by law, including by limiting liability under section 64A of the Australian Consumer Law to providing the services again or payment of the cost of providing the services again. To the maximum extent permissible by law, Diagrind specifically excludes liability for negligence and excludes liability for consequential loss or damage, including loss of business profits or reputational damage.

Where the Services do not fall within the scope of the Australian Consumer Law, Diagrind limits all liability to the Customer (including for negligence and consequential loss or damage, including loss of business profits or reputational damage) to the maximum value of the contract between the Customer and Diagrind.

12. Disclaimer

Advice and Information

We may give you advice, recommendations, information or assistance in relation to our services, as well as after-care, such as providing you with a the manufacturer's Technical Data Sheet for the application of sealer. We give that information to you in good faith, believing it to be accurate, appropriate and reliable at the time but we don't give any warranty of accuracy, appropriateness, reliability or fitness for purpose. Information and advice we give is general in nature and is not intended to constitute or substitute for professional advice. We don't take responsibility for the accurateness or reliability of the manufacturer's information provided in the Technical Data Sheet. You should seek appropriate professional advice if required. We won't accept any liability or responsibility (including liability for negligence) for any loss suffered because of your or any other person's reliance on information or advice we provide to you.

Determination of state of concrete

You acknowledge and agree that we cannot determine the state of the concrete beneath tiles or other floor coverings and whether it will be appropriate for finishing until we have removed a section of the floor covering to expose and undertake an inspection of the concrete. If, once the tiles or other flooring coverings have been removed, we determine that the floor is unsuitable for finish, you understand that you will be charged for the work done and we will be unable to finish the concrete for you. We may also issue you with a revised Quote to finish the floor, if further, additional or different work will be required to finish the floor.

No liability for damage to walls, doors, joinery etc

We will endeavour to be as careful as possible when working in the vicinity of plaster walls, doors and joinery, window frames, cabinetry and fixed appliances, however, unless otherwise required by law, we take no responsibility for damage caused to these items as a result of our services.

No liability for damage to floor by other contractors after our services have been completed

You acknowledge and agree that it is your responsibility to protect the floors we have worked on for you, including if you engage builders or other tradespersons after our engagement ends. We will not be held responsible for any damage to the floors after our engagement due to your failure to properly protect the floors. Please refer to clause 4(i) of this agreement for guidance on how to properly protect the floors. We are of course available to fix the floors if they damaged, but this will incur additional fees.

No liability for damage due to incorrect maintenance

It is your responsibility to clean and maintain your floors once we have completed our work. We will supply you with a recommended low-PH cleaning solution to use on your floors once they have been completed, as well as a maintenance schedule provided by the manufacturer (included in Schedule 1 of this agreement). You should follow the manufacturer's maintenance schedule using the recommended cleaning products to maintain your floors in good condition and to ensure their longevity. Should you fail to follow our and/or the manufacturer's maintenance recommendations (including, but not limited to, regular cleaning of the floors as specified in the manufacturer's maintenance schedule), we will not be liable to you for any staining or other damage to the floors as a result.

13. Non-Disparagement

The Customer acknowledges that Diagrind has established a valuable reputation and goodwill in Australia in the area of concrete grinding and polishing. Subject to law and the rights of the Customer in connection with the enforcement of this agreement, the Customer may not at any time:

- a) disparage, permit or authorise the disparagement of Diagrind, any of its related entities or any director, officer, employee, agent, consultant or adviser of Diagrind or of its related entities; or
- b) otherwise make, permit or authorise the making of any statement in anyway relating to or connected with any matters in dispute which is calculated or is reasonably likely to cause damage to Diagrind, any of its related entities or any director, officer, employee, agent, consultant or adviser of Diagrind or its related entities (including damage to their respective reputations).

This clause survives termination of this agreement.

14. Termination

Diagrind may terminate this agreement:

- a) immediately on written notice to the Customer, if the Customer engages in conduct which reasonably considers to be illegal, immoral, unfair or deceptive, or which may otherwise jeopardise Diagrind's name, reputation or business;
- b) on expiry of notice given, if the Customer breaches a term of this agreement and fails to remedy the breach within 14 days after having received notice in writing of the breach;
- c) immediately on written notice to the Customer, if an Insolvency Event occurs in relation to the Customer; or
- d) in its absolute discretion, on 14 days' written notice to the Customer.

If termination is disputed, it will be dealt with in accordance with the dispute resolution provisions of this agreement.

If this agreement is terminated, all rights and obligations accrued up to the date of the termination (including, in particular, the Customer's obligation to pay Diagrind's fees and expenses) are not affected.

This clause and any other clause which by its nature is intended to survive termination, will survive termination of this agreement.

15. Dispute Resolution

If a dispute arises between the parties, the party claiming the dispute must not commence any court or arbitration proceedings (except where they seek urgent interlocutory relief), unless they have first complied with this clause.

The party claiming the dispute must first inform the other party in writing of the following:

- a) the nature of the dispute;
- b) the outcome they desire to resolve the dispute, and
- c) the action they believe will settle the dispute.

On receipt of the notice by the other party, both parties will make every effort to resolve the dispute by mutual negotiation within 20 Business Days.

If the parties are unable to resolve the dispute in that time, the parties must agree on selection of a mediator (if the parties are unable to agree, they agree to request that the President of the Law Society of New South Wales appoint a mediator) and will be equally liable for the fees and reasonable expenses of the mediator and the cost of the venue of the mediation (to be paid in advance). The parties must each pay their own costs associated with the mediation, which must be held in Sydney, Australia, unless otherwise agreed in writing.

All communications made by the parties arising out of this dispute resolution clause are confidential and to the maximum extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

This clause survives termination of this agreement.

16. General

The following additional terms and conditions apply to this agreement:

- a) The parties acknowledge that this agreement is intended as an agreement for the provision of services and creates the relationship of principal and contractor and not any other relationship and, in particular, not the relationship of employer and employee, principal and agent or the relationship of partnership.
- b) This agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this agreement, and supersedes any prior understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this agreement.
- c) If anything in this agreement is unenforceable, illegal or void, it is severed, and the rest of the agreement remains in force.
- d) Any waiver by any party to a breach of this agreement will not be deemed to be a waiver of a subsequent breach of the same or of a different kind.
- e) Neither party will be liable to the other party for any loss caused by any failure to observe the terms and conditions of this agreement where such failure is occasioned by causes beyond its reasonable control including, but not limited to, by fire, flood, riot, strike, war, restrictions and prohibitions or any other actions by any government or semi government authorities, theft, cyber theft or major injury or illness of key personnel.
- f) Any amendment or variation to this agreement (such as a change to the services to be provided) is not effective unless it is agreed in writing by both parties, unless otherwise set out in this agreement.
- g) The law of New South Wales governs this agreement and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- h) A notice required to be given to a party under this agreement must be in writing and delivered to that party in one of the following ways:
 - i. delivered personally;
 - ii. posted to their address, when it will be treated as having been received on the second Business Day after posting; or

- iii. sent by email to their last-notified email address, when it will be treated as received when it enters the recipient's information system or otherwise when the recipient confirms receipt, whichever occurs first.

Signed as an agreement:

By the **Customer**:

_____ (Signature of Customer's authorised representative)

_____ (Printed name and position of Customer's authorised representative)

_____ (Date)

By IWANNAGOFAST Pty Ltd (ABN 42 613 118 924) trading as **Diagrind NSW**:

_____ (Signature of Diagrind's authorised representative)

_____ (Printed name and position of Diagrind's authorised representative)

_____ (Date)

Schedule 1: Crete Colours Warranty and Maintenance Schedule