

Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Supplier" means Woodys Timber & Hardware Pty Ltd T/A Benalla Mire 10 & Bi-Rite Electrical, its successors or assigns or any person acting on behalf of and with the authority of Woodys Timber & Hardware Pty Ltd T/A Benalla Mire 10 & Bi-Rite Electrical.</p> <p>1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the content of the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Supplier and the Client in accordance with clause 4 below.</p> <p>1.5 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p> <p>2. Acceptance</p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.</p> <p>2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Supplier.</p> <p>2.3 These terms and conditions may be meant to be read in conjunction with the Supplier's Hire Form, and:</p> <p>(a) where the context so permits, the terms "Goods" or "Services" shall include any supply of Equipment, as defined therein; and</p> <p>(b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.</p> <p>2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>3. Change in Control</p> <p>3.1 The Client shall give the Supplier not less than fourteen (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 practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.</p> <p>4. Price and Payment</p> <p>4.1 At the Supplier's sole discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Supplier to the Client; or</p> <p>(b) the Price as at the date of delivery of the Goods according to the Supplier's current price list; or</p> <p>(c) the Supplier's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>4.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services or specifications of Goods (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as limitations to accessing the site to effect delivery, availability of stock, etc) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>4.3 At the Supplier's sole discretion, a non-refundable deposit may be required.</p> <p>4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:</p> <p>(a) on delivery of the Goods;</p> <p>(b) before delivery of the Goods;</p> <p>(c) by way of instalment payments in accordance with the Supplier's payment schedule;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.</p> <p>4.5 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), BPoint, or by any other method as agreed between the Client and the Supplier.</p> <p>4.6 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 the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>4.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off 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.</p> <p>5. Delivery of Goods</p> <p>5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Goods at the Supplier's address; or</p> <p>(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.</p> <p>5.2 At the Supplier's sole discretion, the cost of delivery is in addition to the Price.</p> <p>5.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this contract. Any time specified by the Supplier for delivery of the Goods is an estimate only. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. The Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late. In the event that the Client is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>5.4 The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>5.5 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:</p> <p>(a) such discrepancy in quantity shall not exceed five percent (5%) and</p> <p>(b) the Price shall be adjusted pro rata to the discrepancy.</p> <p>6. Risk</p> <p>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. Any of the Goods are damaged or destroyed following delivery but prior to receipt by the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.</p> <p>6.2 The Client requests the Supplier to leave Goods outside the Supplier'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.</p> <p>6.3 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Supplier's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Supplier.</p>	<p>6.5 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.</p> <p>6.6 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst the Supplier will make every effort to match sales samples to the finished Goods the Supplier accepts no liability whatsoever where such samples differ to the finished Goods supplied.</p> <p>6.7 Timber is a hygroscopic material subject to expansion and contraction, therefore the Supplier will accept no responsibility for texture, shade, colour, surface, finish, markings, veining, and indentations. The Client acknowledges that Goods supplied may:</p> <p>(a) fade or change colour over time; and</p> <p>(b) expand, contract or distort as a result of exposure to heat, cold, weather; and</p> <p>(c) mark or stain if exposed to certain substances; and</p> <p>(d) be damaged or disfigured by impact or scratching.</p> <p>7. Dimensions, Plans and Specifications</p> <p>7.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless the Supplier and the Client agree otherwise in writing.</p> <p>7.2 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.</p> <p>7.3 If the Client requires an estimate for the supply of Goods involving the Supplier estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of the Supplier's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.</p> <p>7.4 Should the Client require any changes to the Supplier's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.</p> <p>8. Access</p> <p>8.1 The Client shall ensure that the Supplier has clear and easy access to the site and to enable them to undertake delivery of the Goods. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Supplier.</p> <p>8.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, unloading or other lifting equipment as may be deemed necessary by the Supplier.</p> <p>9. Title</p> <p>9.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid the Supplier all amounts owing to the Supplier; and</p> <p>(b) the Client has met all of its other obligations to the Supplier. Receipt by the Supplier of any form of payment, whether in cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>9.2 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 9.1:</p> <p>(a) the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;</p> <p>(b) the Client shall be liable for the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</p> <p>(c) 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 sale. If the Client sells, disposes or otherwise part with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.</p> <p>(d) 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 the Supplier and must sell, dispose of or return the resulting product to the Supplier as if so directed.</p> <p>(e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and immediately recover possession of the Goods.</p> <p>(f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.</p> <p>(g) the Client shall not charge or grant an encumbrance over the Goods with the possible exception of a security interest in the Goods while they remain the property of the Supplier.</p> <p>(h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p>	<p>11.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.</p> <p>11.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.</p> <p>12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>12.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify the Supplier 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 the Supplier to inspect the Goods.</p> <p>12.2 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).</p> <p>12.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>12.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>12.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money that has been paid for the Goods.</p> <p>12.7 The Supplier's liability in respect of the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;</p> <p>(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>12.8 Subject to this clause 12, returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 12.1; and</p> <p>(b) the Supplier has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned as close a condition to that in which they were delivered as is possible.</p> <p>12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Client failing to properly maintain or store any Goods;</p> <p>(b) the Client using the Goods for any purpose other than that for which the Goods are designed;</p> <p>(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Client failing to follow any instructions or guidelines provided by the Supplier;</p> <p>(e) fair wear and tear, any accident, or act of God.</p> <p>12.10 The Client waives its absolute, discretion accept non-defective Goods for return in which case the Supplier may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.</p> <p>12.11 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.</p>	<p>16. Privacy Act 1988</p> <p>16.1 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B., occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.</p> <p>16.2 The Client agrees that the Supplier may exchange information about the Client with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess the creditworthiness of the Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(c) 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</p> <p>(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.</p> <p>16.3 The Client consents that the Supplier being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>16.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Goods; and/or</p> <p>(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Goods.</p> <p>16.5 The Supplier may give information about the Client to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Client including credit history.</p> <p>16.6 The information given to the CRB may include:</p> <p>(a) personal information as outlined in 16.1 above;</p> <p>(b) name of the credit provider and that the Supplier is a current credit provider of the Client;</p> <p>(c) whether the Client is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (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 the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of the Supplier, the Client has failed to meet a privacy complaint by contacting the Supplier via e-mail. The Supplier 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 thirty (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.</p>
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