



SUPPLY & INSTALLATION TERMS & CONDITIONS

1. DEFINITIONS AND INTERPRETATION

In these Terms & Conditions:

ACL means The Australian Consumer Law, set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

Company means Barwon Timber & Hardware Pty Ltd (ABN: 39 006 592 525) and its related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth));

Consequential Loss means any consequential, indirect or special Loss and includes loss of profits and loss of business opportunity;

Consumer has the meaning prescribed to it in the ACL;

Contract Price means the price for the provision of the Goods and Services as stipulated in a Quote and confirmed in an Order;

Credit Customer means a Customer that has been authorised in writing by the Company to purchase Goods and Services on credit;

Customer means the person identified in the Quote or Order as the customer and includes the Customer's subsidiaries, affiliates, associated companies, agents and assigns;

Deposit means any required part payment of the Contract Price specified in an Order;

Dispute means a dispute, disagreement or argument arising out of or in connection with the Goods and/or Services and/or these Terms & Conditions between the Company and the Customer;

Force Majeure Event means an unforeseen circumstance which is beyond the reasonable control of the parties;

Goods means any goods supplied by the Company, including those supplied in the course of providing Services;

GST has the meaning prescribed to it in the A New Tax System (Goods and Services and Services Tax) Act 1999 (Cth) (as amended);

Law means any relevant federal, state or local statute, ordinance, rule, regulation or standard, and includes the ACL, as amended from time to time;

Loss means any liability, including any loss, claim, damage, demand, injury or death, and any penalty imposed by a statutory or other authority;

Notice of Verification Statement, Proceeds, Personal Property, Purchase Money Security Interest, Register, Security Agreement and Security Interest each have the meaning given to them in the PPSA;

Order means a written purchase order for Goods and Services placed by a Customer in response to a Quote;

PPSA means the *Personal Property Securities Act 2009 (Cth)*;

Quote means a written description of, and price for, the Goods and Services to be provided;

Services means the installation of the Goods by the Company and any other services agreed in writing by the parties to be provided by the Company in accordance with these Terms & Conditions;

Site means the place specified in the Order where the Services will be provided;

Terms & Conditions means these Supply & Installation Terms & Conditions;

Warranty Document means any document referred to in an Order or provided with the Goods and/or Services in which the Company gives a warranty in relation to the Goods and/or Services.

2. GOVERNING LAW AND AUSTRALIAN CONSUMER LAW

- 2.1. These Terms & Conditions are governed by and construed in accordance with the laws of Victoria, Australia and the parties submit to the jurisdiction of the Victorian courts.
- 2.2. Nothing in these Terms & Conditions is intended to exclude, restrict or modify rights which the Customer may have under the ACL or any other Law.
- 2.3. If any provision of these Terms & Conditions is invalid under the ACL or any other Law, that provision is enforceable to the extent that it is not invalid, and if it is not possible to give that provision any effect at all, then it is to be severed from these Terms & Conditions and the remainder of these Terms & Conditions will continue to have full force and effect.
- 2.4. These Terms & Conditions, together with any Order, constitute the entire agreement between the Customer and the Company relating to the provision of the Goods and Services and take precedence over any terms & conditions contained in any document provided by the Customer regardless of when that document was provided to the Customer.

3. QUOTATIONS

- 3.1. Unless otherwise expressly agreed in writing, a Quote.
 - 3.1.1. is subject to normal price rises;
 - 3.1.2. is valid for 30 days from the date of issue;
 - 3.1.3. includes delivery and installation costs;
 - 3.1.4. does not include the cost of preparation of the Site to enable the Services to be carried out.
- 3.2. Placement of an Order by the Customer will be construed as acceptance of the Company's offer made in a Quote, but until such time as the Order is placed, the Company will have no obligation to provide the Goods and Services.
- 3.3. The Customer must not place an Order unless it is solvent and able to pay all of its debts as and when they fall due.

4. INSTALLATION

- 4.1. The Company is not a registered building practitioner.
- 4.2. Where the Services to be provided involve cladding installation or other services that must be conducted by a registered building practitioner, the Customer engages the Company as a subcontractor to perform the Services and the Customer warrants that:
 - 4.2.1. it is a registered building practitioner; and
 - 4.2.2. it is not an owner-builder; and
 - 4.2.3. it has all necessary registrations and approvals to enable it to engage the Customer as a subcontractor to perform the Services.
- 4.3. The Company will deliver the Goods and carry out the Services at the Site and the Customer must give the Company clear and clean access to the Site, including ensuring the sub-floor meets the appropriate Australian Standards, and giving the Company access to internal mains power and lights.
- 4.4. If access is not provided at the Site on the date nominated for delivery of the Goods or performance of the Services, or the Site is otherwise not in a condition appropriate to commence the Services safely or at all, the Company may charge the Customer for all costs and expenses incurred:
 - 4.4.1. for storage and redelivery of the Goods;
 - 4.4.2. any additional work carried out by the Company so as to place the Site in a condition that enables the Company to carry out the Services.

- 4.5. The Company undertakes to carry out the Services it will use its reasonable endeavours to perform the Services:
 - 4.5.1. in a professional manner;
 - 4.5.2. with all due care, skill, judgement and diligence; and
 - 4.5.3. in compliance with all Law;
- 4.6. The Company warrants that it has the necessary skills, experience, qualifications, resources, technology and know-how to perform the Services in accordance with these Terms & Conditions and that such Services will be provided in a good and workmanlike manner by qualified personnel.

5. PAYMENT

- 5.1. Subject to clause 5.2, the Customer must pay the Deposit and Progress Payment by the time specified in the Order and the balance of the Contract Price must be paid immediately after the Services are completed.
- 5.2. A Credit Customer must pay the Contract Price in accordance with the terms of credit granted to them in writing by the Company.
- 5.3. All payments required to be made by the Customer under these Terms & Conditions will be made free of any set-off, or counterclaim and without deduction or withholding.
- 5.4. The Company may, at any time, set-off amounts owed by the Company to the Customer from the amounts owed by the Customer to the Company.
- 5.5. Should the Customer fail to pay the Contract Price in accordance with these Terms & Conditions, the Company may charge interest on overdue moneys owed at the annual rate of 2 percentage points above the annual rate of interest set out in the *Penalty Interest Rates Act 1983 (Vic)* from time to time. Interest will be calculated from the due date of the moneys owing to the date the Company receives payment in full.
- 5.6. All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees, collection costs, and internal costs and expenses of the Company, are to be paid by the Customer as a debt due and payable under these Terms & Conditions.
- 5.7. The Customer acknowledges and agrees that payments by the Customer will be applied by the Company as follows:
 - 5.7.1. First, in payment of any and all collection costs and legal costs in accordance with clause 5.6;
 - 5.7.2. Secondly, in payment of any interest incurred in accordance with clause 5.5;
 - 5.7.3. Thirdly, in payment of any internal costs in accordance with clause 5.6;
 - 5.7.4. Finally, in payment of the outstanding invoice(s).

6. TITLE AND RISK

- 6.1. Risk of loss or damage to the Goods passes to the Customer upon delivery of the Goods to the Site.
- 6.2. Ownership of the Goods shall not pass until:
 - 6.2.1. the Customer has paid the Company all amounts owing for the Goods and Services provided in respect of those Goods; and
 - 6.2.2. the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- 6.3. Receipt by the Company 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.
- 6.4. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms & Conditions by the Company is sufficient evidence of the Company's

rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

- 6.5. Until ownership in the Goods passes to the Customer:
 - 6.5.1. the Company shall have the right of stopping the Goods in transit whether or not delivery has been made;
 - 6.5.2. the Customer is only a bailee of the Goods and the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Company;
 - 6.5.3. the Customer shall not deal with the Goods of the Company in any way which may be adverse to the Company;
 - 6.5.4. the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company;

7. INSURANCE

From the date the Goods are delivered to the Site until title and ownership in the Goods passes to the Customer, the Customer must maintain, at its own expense, comprehensive insurance over the Goods for their full insurable value, in the name of the Company and the Customer.

8. PERSONAL PROPERTY SECURITIES ACT 2009

- 8.1. The Customer acknowledges and agrees that:
 - 8.1.1. these Terms & Conditions constitute a Security Agreement under the PPSA which creates a Security Interest in favour of the Company in the Goods and their Proceeds until the Contract Price has been paid for in full;
 - 8.1.2. the Company may, without notice to the Customer, register its Security Interest in the Goods and in their Proceeds as a Purchase Money Security Interest on the Register;
 - 8.1.3. the Security Interest is not discharged nor the Customer's obligations affected by the administration of the Customer.
- 8.2. The Customer agrees to provide all information and execute all documents necessary for the Company to register and perfect its Security Interest in the Goods under the PPSA and agrees that all fees in relation to registration including amendments to any registration are to be borne by the Customer.
- 8.3. For the purposes of sections 115(1) and 115(7) of the PPSA, where the Goods are not used predominantly for personal, domestic or household purposes, the Company need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA and sections 142 and 143 are excluded.
- 8.4. For the purposes of section 115(7) of the PPSA, the Company need not comply with sections 132 and 137(3).
- 8.5. To the extent the Law permits, the Customer waives its rights to receive any notice that is required by any provision of the PPSA (including a Notice of Verification Statement) or any other Law before the Company or a receiver exercises a right, power or remedy.

9. INDEMNITY AND LIABILITY

- 9.1. To the extent permitted by Law, and subject to clause 9.2, all guarantees, warranties, undertakings, or representations expressed or implied, whether arising by Law or otherwise, which are not given in these Terms & Conditions or any Warranty Document are expressly excluded.
- 9.2. If any Goods and Services supplied pursuant to these Terms & Conditions are supplied to the Customer as a Consumer, the Customer will have the benefit of certain non-excludable rights and remedies in respect of the Goods and Services and nothing in these Terms & Conditions exclude, restrict or modify any condition, warranty, right or remedy which pursuant to the ACL or any other

Law is so conferred. However, if the Goods and Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Company's liability is limited, at its option, to one or more of the following:

- 9.2.1. replacing or repairing the Goods; or
 - 9.2.2. reimbursing the Customer the cost of replacing or repairing the Goods; or
 - 9.2.3. re-supplying the Services again; or
 - 9.2.4. reimbursing the Customer the cost of having someone else supply the Services.
- 9.3. If the Customer is not a Consumer, to the full extent permitted by Law:
- 9.3.1. the Company will not be liable in any circumstances for any Loss (including Consequential Loss) to the Customer or any property or person whatsoever arising out of or connected with these Terms & Conditions, the provision of the Goods and Services, the delay in delivery or non-delivery of the Goods, or the delay in completing or the non-completion of the Services; and
 - 9.3.2. the Customer shall indemnify the Company against any claims arising out of or connected with these Terms & Conditions, the provision of the Goods and Services, the delay in delivery or non-delivery of the Goods, or the delay in completing or the non-completion of the Services.
- 9.4. Every exemption from liability to which the Company is entitled under these Terms & Conditions will extend to protect any subcontractor, employee or agent of the Company and for the benefit of such persons they shall be deemed to be parties to the contract between the Customer and the Company.
- 9.5. To the extent permitted by Law, the Company shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- 9.5.1. any drawing set, floor plan or site take off errors or omissions;
 - 9.5.2. the Customer failing to properly maintain the Goods;
 - 9.5.3. the Customer using the Goods for any purpose other than that for which they were designed;
 - 9.5.4. the Customer continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - 9.5.5. the Customer failing to follow any instructions or guidelines provided by the Company; or
 - 9.5.6. fair wear and tear, any accident, or a Force Majeure Event.

10. FORCE MAJEURE

Neither party will be liable for the consequences of a Force Majeure Event. However, nothing in this clause excuses payment of any money due or which becomes due under these Terms & Conditions.

11. VARIATIONS & CANCELLATIONS

- 11.1. The Customer acknowledges and agrees that:
- 11.1.1. any sample of the Goods that the Customer has been shown represents a timber species not a colour;
 - 11.1.2. there may be colour, grain and feature variations between the timber sample shown of the Goods and the actual Goods delivered and that such variations are inherent in timber products;
 - 11.1.3. colour variations within a panel, and from panel to panel can be extreme;
 - 11.1.4. the Goods are likely to change colour quite dramatically when exposed to UV light;
 - 11.1.5. shading is not a manufacturing fault and neither the manufacturer nor the Company will be liable for any Goods which may be affected by shading or colour variations.

- 11.2. If the Customer is a Consumer, the following provisions apply:
 - 11.2.1. If the Customer cancels an Order, the Company will refund any amount of the Contract Price already paid but may, before doing so, deduct from the deposit the reasonable costs the Company has incurred due to the cancellation or, if no amount of the Contract Price has been paid, the Customer shall be liable to pay the Company such reasonable costs.
 - 11.2.2. If the Company has reason to believe that it will be unable to supply the Goods to the Customer within a reasonable time or at all due to circumstances beyond its reasonable control, the Company may, without penalty or liability, cancel the Order, in which case the Company will refund the Customer any amount of the Contract Price already paid in respect of that Order.
- 11.3. If the Customer is not a Consumer, to the full extent permitted by Law, the Company may, at any time, without penalty or liability
 - 11.3.1. cancel an Order;
 - 11.3.2. alter specifications in respect of the Goods by giving written notice to the Customer in the interest of continued product improvement and such an alteration does not entitle the Customer to Goods, cancel an Order or otherwise avoid its obligations and liabilities pursuant to these Terms & Conditions.

12. DISPUTES

- 12.1. If a Dispute arises, the party claiming that a Dispute has arisen must give notice to the other party specifying the nature of the Dispute.
- 12.2. Once a notice is given in accordance with clause 12.1, the parties will attempt to negotiate a resolution in good faith.
- 12.3. If a Dispute persists for more than 14 calendar days, either party can:
 - 12.3.1. where the Dispute relates to the quality of workmanship used in providing the Services refer the Dispute to the Australian Timber Flooring Association to complete an independent assessment and report into the Dispute; and
 - 12.3.2. in all other cases, refer the Dispute to mediation before a mediator to be appointed by the Australian Commercial Disputes Centre.
- 12.4. The costs of the conduct of the independent assessment and report or the mediation, as the case may be, will be shared by the parties equally.
- 12.5. Save for seeking urgent interlocutory or injunctive relief, neither party may issue court proceedings in relation to a Dispute until resolution by assessment and report or mediation, as the case may be, has been attempted.

13. TAXES

- 13.1. The Customer must pay GST on any taxable supply made by the Company to the Customer under these Terms & Conditions. The payment of GST is in addition to any other consideration payable by the Customer.
- 13.2. If, as a result of:
 - 13.2.1. any Law becoming applicable to the subject matter of these Terms & Conditions; or
 - 13.2.2. any changes in Law or its interpretation by a court of competent jurisdiction or by any authority charged with its administration,the Company becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay the Company these additional amounts on demand.

14. MISCELLANEOUS

- 14.1. The Company may subcontract the whole or any part of the supply of the Goods and Services.
- 14.2. A waiver of any provision or breach of these Terms & Conditions by the Company must be made by an authorised officer of the Company in writing.
- 14.3. These Terms & Conditions may be amended from time to time by the Company for legitimate business reasons and the Company will give the Customer written notice of the amendment if the amendment applies to any current Order of the Customer.
- 14.4. The Customer may, without penalty, cancel any current Order if it does not accept any amendment made in accordance with clause 14.3, in which case, the Company will refund the Customer any amount of the Contract Price already paid in respect of that Order.
- 14.5. If the Customer fails to cancel current Orders within 7 calendar days of receipt of notification of amendment to these Terms & Conditions, the Customer will be deemed to have accepted the amendment, and the amended Terms & Conditions will apply to all current and future Orders.
- 14.6. If there is more than one Customer, then the liability of each Customer under these Terms & Conditions will be joint and several.
- 14.7. The Company's Privacy Policy and Credit Reporting Privacy Policy is available on its website and is to be read in conjunction with these Terms & Conditions.