

BAR-TRUSS TRADING TERMS & CONDITIONS

Interpretation

1. In these conditions:
 - (1) Bar-Truss means Bar-Truss Pty Ltd with ABN 87 103 238 295 of 50 Fellmongers Road which is the supplier of the Goods.
 - (2) 'Customer' means the purchaser or a purchaser's representative of the Goods.
 - (3) 'Goods' means any goods supplied by Bar-Truss to the Customer.
 - (4) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

General

2. These conditions (which shall only be modified, varied or waived by notice in writing signed by Bar-Truss shall prevail over all conditions of the Customer's order to the extent of any inconsistency. The Goods and all other products sold by Bar-Truss are sold on these terms and conditions.

Bar-Truss quotations

3. Unless previously withdrawn, Bar-Truss quotations are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date. Bar-Truss reserves the right to refuse any order based on any quotation within 7 days after the receipt of the order.

Barwon Timber and Hardware Pty Ltd quotations

4. All goods and services quoted by Barwon Timber and Hardware Pty Ltd are subject to its Terms and Conditions of Sale. These can be viewed at www.barwontimber.com.au or a copy can be e-mailed, faxed or posted to the Customer on request.

Prices

5.
 - (1) Unless otherwise stated all prices quoted by Bar-Truss are net, exclusive of Goods and Services Tax (GST). An amount equivalent to the prevailing rate of GST will be charged to the Customer and payable in addition to any price quoted.
 - (2) Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, cartage, cost of materials and any other charges affecting the cost of production ruling on the date is made.
 - (3) If Bar-Truss makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Customer's account.
 - (4) It is the responsibility of the Customer to inform itself of the current ruling price. However, all contracts exceeding 30 days duration are subject to rise and fall assessments on the material and labour rates prevailing at the time.
 - (5) Retention monies have not been allowed for and Bar-Truss will accept no claims.

Payment

- (1) Fifty (50) percent of the purchase price in relation to Goods is payable upon the Customer accepting the price quoted by Bar-Truss and is payable as a deposit due prior to manufacture of the Goods, SAVE AND EXCEPT for Customers having entered into a Credit Account pre-approved by Bar-Truss where the purchase price is payable strictly within agreed trading terms.
- (2) The balance of the purchase price is due strictly prior to delivery of the Goods, SAVE AND EXCEPT for Customers having entered into a Credit Account pre-approved by Bar-Truss where the purchase price is payable strictly within agreed trading terms.
- (3) Customers with Credit Accounts may be eligible for settlement discounts where accounts are paid within agreed trading terms. This will be indicated on Quotations.
- (4) If the Customer has not paid for any Goods by the due date, without prejudice to any other right or remedy:
 - (a) all outstanding money carries interest on daily balances until paid at a rate of interest per annum equal to 14% or other such rate as Bar-Truss notifies the Customer in writing from time to time; and
 - (b) Bar-Truss may recover the purchase price of the Goods together with all interest forthwith from the Customer as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim that the Customer may have against Bar-Truss for anything or matter related to the Goods delivered under this contract.

Customer's Order

6.
 - (1) The Customer warrants the accuracy of all plans, specifications, drawings or other particulars supplied by the Customer.
 - (2) The Customer acknowledges that the Bar-Truss price is quoted on and the wall frames, floor systems and trusses are manufactured reliant on the Customer's warranty in clause 6(1).
 - (3) If the Customer cancels an order for the Goods for any reason, Bar-Truss will only accept such cancellation by notice in writing to Bar-Truss and on the basis that all costs incurred by Bar-Truss up to receiving such notice from the Customer will be a debt due to the Customer in accordance with these Terms and Conditions.
 - (4) Any variation to the Goods ordered as required by the Customer will only be accepted by the Customer detailing such variation by notice in writing to Bar-Truss and by the Customer accepting any variation in the price of the Goods in writing.

Delivery

7. The delivery times made known to the Customer are estimates only and Bar-Truss is not to be liable for late delivery or non-delivery. In any event the Customer should check the estimated delivery time for the Goods at least 5 days prior to the date delivery is required.
 - (1) Bar-Truss is not liable for any loss, damage or delay occasioned to the Customer or its clients arising from late or non-delivery or late installation of the Goods.
 - (2) The Customer shall provide clear access on the delivery site so that the delivery vehicle can unload the Goods as close as practicable to the place the Goods are to be erected. Clear access areas are to comply with Work Safe guidelines, including *No go Zones for Overhead Electrical Powerlines*.
 - (3) The Customer Agrees that Bar-Truss may attend the delivery site at the completion of the Goods being installed to collect any surplus Goods or part thereof.
 - (4) The Customer is responsible for the payment of all costs incurred and associated with the delivery of the Goods, including the lifting of trusses to plate height. Lifting to plate may be completed at the discretion of Bar-Truss. The Customer or its representative must be present to complete lifting to plate and ensure it is safe to do so. This includes ensuring the building can take the weight of the lifted load. Note that portable crane hire is not included in any quotation provided to the Customer and must be paid in addition to any agreed price of the Goods.
 - (5) The Customer Agrees that Bar-Truss may attend the delivery site at the completion of the Goods being installed to collect any surplus Goods or part thereof.
 - (6) Bar-Truss will try best as possible to include costs in quotations for delivery escorts and permits required under Vic Roads guidelines for *Oversize Load Carrying Vehicles*. These costs are subject to Vic Roads guidelines and should extra costs be incurred owing to guideline changes, these will be passed on to the Customer.

Loss or damage in transit

8. Bar-Truss is not responsible to the Customer or any person claiming through the Customer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not Bar-Truss is legally responsible for the person who caused or contributed to that loss or damage).

Shortage

9. The Customer waives any claim for shortage of any goods delivered if a claim in respect for short delivery has not been lodged with Bar-Truss within seven (7) days from the date of receipt of goods by the Customer.

Performance

10. Bar-Truss will only accept liability for any failure of floor and roof trusses ('the trusses') supplied to comply with the Nail Plate Suppliers engineering requirements provided the following conditions have been met by the Customer:
 - (1) The trusses must be erected and braced to comply with Australian Standard "Installation of Nail Plate Timber Trusses" AS 4440 1997.
 - (2) The trusses shall be laden with covering as indicated in the quotation provided to the Customer (i.e. tiles, sheet, etc.)
 - (3) The trusses are to be spaced correctly and in accordance with Bar-Truss requirements and Local Council Ordinances.
 - (4) The lintels over all openings in external walls must comply with AS 1684 or Approved Engineer's Design.
 - (5) The trusses shall be slung by panel points only.
 - (6) The trusses must not under any circumstances be cut or altered without the prior written permission of Bar-Truss.
 - (7) All other materials and construction methods used as part of the roof's structure must accord with AS 4440 1997, Local Council Ordinances and accepted building standards.
 - (8) The Customer must check with the Fabricator as to any proposed method of construction of auxiliary roof timbers which could impair the structural efficiency of the roof trusses.
 - (9) Concrete slabs must be properly waterproofed.
 - (10) Bottom plates are to be blocked correctly where required on bearers.
 - (11) Wall connectors are to be used at all junctions on top plates.
 - (12) All junction studs are to be nailed at midpoint to blocks provided.
 - (13) All bracing elements are to be nailed finally after plumbing on site has occurred.
 - (14) Roof trusses and wall frames must be effectively clad and weather protected at all times.
 - (15) Bar-Truss will not accept liability for tradesmen employed by the Customer.

Guarantee

11. (1) Further and in addition to clause 10, Bar-Truss' liability for any Goods manufactured by it is limited to making good any defects by repairing the defects or at Bar-Truss' option by replacement, within a period not exceeding twelve (12) calendar months after the goods have been dispatched so long as:
- (a) defects have arisen solely from faulty materials or workmanship;
 - (b) the Goods have not received maltreatment, inattention or interference; and
 - (c) the Goods have not been incorrectly installed by the Customer.
- (2) If the Goods are not manufactured by Bar-Truss the guarantee of the manufacturer of those Goods is accepted by the Customer and is the only guarantee given to the Customer in respect of the Goods. Bar-Truss agrees to assign to the Customer on request made by the Customer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to Bar-Truss under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- (3) Bar-Truss is not liable for and the Customer releases Bar-Truss from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by Bar-Truss and the responsibility for any claim has been specifically accepted by Bar-Truss in writing. In any event Bar-Truss' liability under this paragraph is limited strictly to the replacement of defective Goods in accordance with clause 11(1) of these terms and conditions.
- (4) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded Bar-Truss is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of Bar-Truss negligence or in any way whatsoever.

Claims

12. Bar-Truss will not be under any duty to accept any claim made by the Customer in relation to the Goods unless such claim is received within 7 days of the delivery date and on terms to be agreed in writing in each individual case. All claims must accompany a request for credit quoting Bar-Truss' invoice number on which the goods were supplied.

Rights in relation to goods

13. (1) Bar-Truss reserves the following rights in relation to the goods until all accounts owed by the Customer to Bar-Truss are fully paid:
- (a) ownership of the Goods;
 - (b) to enter the Customer's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
 - (c) to keep or resell any Goods repossessed pursuant under paragraph (b) of this clause 13(1). If the goods are resold, or products manufactured using the Goods are sold, by the Customer, the Customer shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of Bar-Truss and shall pay such amount to Bar-Truss upon request. Notwithstanding the provisions above Bar-Truss shall be entitled to maintain an action against the Customer for the purchase price and the risk of the Goods shall pass to the Customer upon delivery.
- (2) Bar-Truss and the Customer agree:
- (a) that the Customer is bailee of the goods until such time as property in them passes to the Customer and that this bailment continues in relation to each of the goods until the purchase price has been paid in full;
 - (b) that pending payment in full for the goods, the Customer must insure the goods for their full insurable or replacement value (whichever is the higher) with a reputable and competent insurer;
 - (c) that the Customer will not supply any of the goods to any person outside its ordinary or usual course of business;
 - (d) that the Customer will not allow any person to have or acquire any security or interest in the goods;
 - (e) that the Customer grants to Bar-Truss a security interest in respect of all goods supplied by Bar-Truss pending payment by the Customer being a security interest under the Personal Properties Securities Act 2009. This security interest constitutes security for payment of all of the Customer's indebtedness to Bar-Truss under these Terms and Conditions or otherwise;
 - (f) the Customer agrees to Bar-Truss may require to ensure that Bar-Truss has an enforceable, perfected, maintained an otherwise effective purchase monies security interest in the Goods; and
 - (g) the Customer must reimburse Bar-Truss for all costs and/or expenses incurred or payable by Bar-Truss in relation to the registration of any notice of Bar-Truss interest.
- (3) In the event that the Customer fails to pay for the Goods by the due date; commits an act of bankruptcy or becomes insolvent or bankrupt; or is placed in receivership or voluntary administration; enters into any type of arrangement with creditors; is the subject of a petition for winding up or is wound up; or otherwise fails to observe its obligations under these conditions, Bar-Truss may exercise its rights under clauses 13(1)(b) and 13(1)(c) and terminate the further supply of goods.
- (4) The Customer hereby charges in favour of Bar-Truss all its respective right, title and interest in any land owned by the Customer, including any land the Customer may acquire in the future, ('the land') to better secure all amounts owing by the Customer to Bar-Truss and the performance of the Customer's obligations under these conditions and the Customer agrees that Bar-Truss may register a caveat over the land in relation to this charge.

Indemnity and Interest

14. The Customer agrees, in the event of the Customer defaulting under its obligations expressed in these Terms and Conditions, to:
- (a) pay interest on all money due by the Customer to Bar-Truss at the rate of 2% per month, compounding monthly; and
 - (b) pay all recovery and enforcement costs incurred by Bar-Truss, on an indemnity basis, such enforcement costs include, but are not limited to, legal costs and disbursements and mercantile agent costs and charges.

Customer's property

15. Any property of the Customer under Bar-Truss possession, custody or control is completely at the Customer's risk as regards loss or damage caused to the property or by it.

Storage

16. Bar-Truss reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within fourteen days of a request by Bar-Truss for such instructions. The parties agree that Bar-Truss may charge for storage from the first day after Bar-Truss requests the Customer to provide delivery instructions.

Place of contract

17. (1) The contract for sale of the goods is made in the State of Victoria.
(2) The parties irrevocably submit all disputes arising between them to the courts of such State and any court competent to hear appeals from those courts of first instance.

Customer's Warranties

18. The Customer warrants:
- (a) that it is solvent and creditworthy;
 - (b) that it is authorised under its constitution or charter to enter into this supply contract;
 - (c) that, where it is the trustee of any trust or trusts, it is entering into this supply contract both in its capacity as trustee of that trust or trusts and in its own beneficial capacity; and
 - (d) that it or its directors have had the opportunity to review and consider these Terms and Conditions and to seek legal advice as to their implications.

I have read and understood this document. I have not relied on anything said to me by the Customer or the Company as to what it means or what its effect may be.

DATE THIS DAY: _____

PRINT SIGNATORY'S NAME: _____

SIGNATORY'S CAPACITY: _____

SIGNED: _____

PRINT NAME OF WITNESS: _____

WITNESSED: _____