

TW Woods Construction Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting TWW to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.2 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, each party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, electronic information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.</p> <p>1.3 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using TWW's website, then the Client shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to making enquiries via the website.</p> <p>1.4 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.</p> <p>1.5 "Equipment" means all Equipment including any accessories supplied on hire by TWW to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by TWW to the Client.</p> <p>1.6 "Goods" means all Goods or Services supplied by TWW to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>1.7 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p> <p>1.8 "Minimum Hire Period" means the Minimum Hire Period as described on the invoice, quotation, authority to hire, or any other forms as provided by TWW to the Client.</p> <p>1.9 "Price" means the Price payable (plus any GST where applicable) for the Goods and/or Equipment hire as agreed between TWW and the Client in accordance with clause 5 below.</p> <p>1.10 "TWW" means TW Woods Construction Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of TW Woods Construction Pty Ltd.</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/Equipment.</p> <p>2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.</p> <p>2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.</p> <p>2.4 The Client acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Client has completed a credit application with TWW and it has been approved with a credit limit established for the account.</p> <p>2.5 In the event that the supply of Goods/Equipment requested exceeds the Client's credit limit and/or the account exceeds the payment terms, TWW reserves the right to refuse Delivery.</p> <p>2.6 Any advice, recommendation, information, assistance or service provided by TWW in relation to Goods or Services supplied is given in good faith to the Client or the Client's agent and is based on TWW's own knowledge and experience and shall be accepted without liability on the part of TWW. Where such advice or recommendations are not acted upon then TWW shall require the Client or their agent to authorise commencement of the Services in writing. TWW shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.</p> <p>2.7 Electronic signatures shall be deemed to be accepted by either party providing that the signatory has signed under Section 7 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>3. Errors and Omissions</p> <p>3.1 The Client acknowledges and accepts that TWW shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by TWW in the formation and/or administration of this Contract; and</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by TWW in respect of the Services.</p> <p>3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of TWW, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.</p> <p>3.3 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not). ("Client Error"). The Client must pay for all Goods it orders from TWW notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Goods. TWW is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.</p> <p>4. Change in Contract</p> <p>4.1 The Client shall give TWW 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by TWW as a result of the Client's failure to comply with this clause.</p> <p>5. Price and Payment</p> <p>5.1 At TWW's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by TWW to the Client; or</p> <p>(b) TWW's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 TWW reserves the right to change the Price:</p> <p>(a) if a variation to the Goods which are to be supplied is requested; or</p> <p>(b) if a variation to the Services originally scheduled (including any applicable plans or specifications, change to scope of the Services) is requested; or</p> <p>(c) where additional Services are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, availability of machinery, safety considerations, prerequisite work by a third party not being completed, change of design, etc.) which are only discovered on commencement of the Services; or</p> <p>(d) in the event of increases to TWW in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond TWW's control.</p> <p>5.3 Variations will be charged for on the basis of TWW's quotation, and will be detailed in writing, and shown as variations on TWW's invoice. The Client shall be required to respond to any variation submitted by TWW within ten (10) working days. Failure to do so will entitle TWW 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>5.4 At TWW's sole discretion a non-refundable deposit may be required.</p> <p>5.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by TWW, which may be:</p> <p>(a) on or before Delivery of the Goods/Equipment;</p> <p>(b) on or before the date of completion of the Services in accordance with TWW's payment schedule;</p> <p>(c) 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>(d) the date specified on any invoice or other form as being the date for payment; or</p>	<p>(e) falling any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by TWW.</p> <p>5.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and TWW.</p> <p>5.7 TWW may in its discretion allocate any payment received from the Client towards any invoice that TWW determines and may do so at the time of receipt or at any time afterwards. On any default by the Client TWW may re-allocate any payments previously received and allocated. In the absence of any payment allocation by TWW, payment will be deemed to be allocated in such manner as preserves the maximum value of TWW's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment. 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 TWW nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify TWW in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as TWW investigates the dispute claim. Credit shall be passed for refund until the review is completed. Failure to make payment may result in TWW placing the Client's account into default and subject to default interest in accordance with clause 15.1.</p> <p>5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to TWW an amount equal to any GST TWW must pay for the Client under this or any other agreement for the sale of the Goods/hire of the Equipment. 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>6. Delivery of Goods/Equipment</p> <p>6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at TWW's address; or</p> <p>(b) TWW (or TWW's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.</p> <p>6.2 At TWW's sole discretion the cost of Delivery is either included or is in addition to the Price.</p> <p>6.3 TWW may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>6.4 Any time specified by TWW for Delivery of the Goods/Equipment is an estimate only and TWW will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that TWW is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Client, then TWW shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>7. Risk to Goods</p> <p>7.1 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.</p> <p>7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, TWW is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by TWW is sufficient evidence of TWW's rights to receive the insurance proceeds without the need for any person dealing with TWW to make further enquiries.</p> <p>7.3 If the Client requests TWW to leave Goods outside TWW'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>7.4 TWW shall be entitled to rely on the accuracy of any plans, design specifications (including, but not limited to CAD drawings) and other information/data provided by the Client. The Client acknowledges and agrees that in the event that any of this information/data provided by the Client is inaccurate, TWW accepts no responsibility for any loss, damages, or costs incurred by the Client resulting from these inaccurate plans, design specifications or other information/data.</p> <p>7.5 Detailed drawings of any services that will be embedded in the Goods are to be provided to TWW prior to commencement of any Services. Whilst all due care will be taken no liability will be accepted by TWW for damage to the services or any other element embedded in the Goods.</p> <p>7.6 The Client acknowledges and accepts that:</p> <p>(a) sand blasting is a potentially destructive process and may result in the exposure of filler or badly repaired surfaces that will require remediation before painting can commence and as a result will incur an additional cost;</p> <p>(b) TWW shall be under no liability for inferior existing paintwork where TWW's paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish;</p> <p>(c) where an inferior finish has been selected, slight colour variations may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not have deemed to be a defect in the Goods;</p> <p>(d) Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, which may:</p> <p>(i) fade or change colour over time;</p> <p>(ii) expand, contract or distort as a result of exposure to heat, cold, weather;</p> <p>(iii) mark or stain if exposed to certain substances; and</p> <p>(iv) be damaged or disfigured by impact or scratching.</p> <p>7.7 TWW will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.</p> <p>8. Specifications</p> <p>8.1 The Client acknowledges and accepts that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in TWW's or the 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 TWW.</p> <p>9. Compliance with Laws</p> <p>9.1 The Client and TWW shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Services.</p> <p>9.2 Both parties acknowledge and agree:</p> <p>(a) to comply with the National Construction Code of Australia (NCC) and the Building Products (Safety) Act 2017, in respect of all workmanship and building products to be supplied during the course of the Services; and</p> <p>(b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.</p> <p>9.3 Where the Client has supplied products for TWW to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use of their products for the intended use and any factors inherent in those products. However, if in TWW's opinion, it is believed that the materials supplied are non-conforming products and will not conform with state and/or territory regulations, then TWW shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause Error! Reference source not found.</p> <p>9.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.</p> <p>9.5 Modern Slavery</p> <p>9.6 For the purposes of this clause:</p> <p>(a) "Act" means the <i>Modern Slavery Act 2018 (Cth)</i>;</p> <p>(b) "Modern Slavery", "Modern Slavery Statement" and "Reporting Entity" have the meanings given by the Act.</p> <p>9.7 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.</p> <p>9.8 Whether the Client is a Reporting Entity or not, the Client shall:</p> <p>(a) use reasonable endeavours to identify, assess and address risks of modern slavery practices in its operations and supply chains;</p> <p>(b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;</p> <p>(c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and</p>	<p>supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;</p> <p>(d) provide to TWW a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and</p> <p>(e) within seven (7) days of TWW's request (or such longer period as TWW agrees), provide to TWW any information or assistance reasonable requested by TWW:</p> <p>(i) concerning the Client's compliance with the Act;</p> <p>(ii) concerning the Client's operations and supply chains; or</p> <p>(iii) to enable TWW to prepare a Modern Slavery Statement or otherwise comply with the Act; or</p> <p>(iv) to enable TWW to assess and address risks of Modern Slavery practices in its operations and supply chains.</p> <p>9.9 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and TWW will be able to terminate the Contract for any breach by the Client.</p> <p>9.10 The Client warrants that any information supplied to TWW is true and accurate and may be relied upon for the purposes of the Act.</p> <p>9.11 The Client shall indemnify TWW against any loss or liability suffered by TWW as a result of the Client's breach of this clause 9.</p> <p>10. Title to Goods</p> <p>10.1 TWW and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client pays the Price in full; and</p> <p>(b) the Client has met all of its other obligations to TWW.</p> <p>10.2 Receipt by TWW 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.</p> <p>10.3 If it is further agreed that until ownership of the Goods passes to the Client in accordance with clause 10.1:</p> <p>(a) TWW on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for TWW and must pay to TWW 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 the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client shall hold the proceeds of any such act on trust for TWW and must pay or deliver the proceeds to TWW 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 TWW and must sell, dispose of or return the resulting product to TWW as it so directs;</p> <p>(e) the Client irrevocably authorises TWW to enter any premises where TWW believes the Goods are kept and recover possession of the Goods;</p> <p>(f) TWW 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 nor grant nor otherwise give away any interest in the Goods while they remain the property of TWW;</p> <p>(h) TWW 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. Personal Property Securities Act 2009 ("PPSA")</p> <p>11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>11.2 Upon assenting to these terms and conditions in writing 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 the Goods (including any collateral (account) – being a monetary obligation of the Client to TWW for Services – that have previously been supplied and that will be supplied in the future by TWW to the Client. The Client undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in accordance with the PPSA) that TWW may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 11.3(a)(i)</p> <p>(b) indemnify, and upon demand reimburse, TWW 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/Equipment charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of TWW;</p> <p>(d) not register a security interest in a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of TWW;</p> <p>(e) immediately advise TWW of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>11.4 TWW 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.</p> <p>11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>11.7 Unless otherwise agreed to in writing by TWW, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>11.8 The Client must unconditionally ratify any actions taken by TWW under clauses 11.3 to 11.5.</p> <p>11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>11.10 Only to the extent that the hire of the Equipment exceeds a 2 (two) year hire period with the right of renewal shall clause 11 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 11 will apply generally for the purposes of the PPSA.</p> <p>12. Security and Charge</p> <p>12.1 In consideration of TWW agreeing to supply the Goods/Equipment, 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 money).</p> <p>12.2 The Client indemnifies TWW from and against all TWW's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TWW's rights under this clause.</p> <p>12.3 The Client irrevocably appoints TWW and each director of TWW as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.</p> <p>13. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")</p> <p>13.1 The Client must inspect the Goods/Equipment on Delivery and must within seven (7) days of Delivery notify TWW in writing of any evident defect/damage to the Goods in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow TWW to inspect the Goods/Equipment.</p> <p>13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation, the CCA), TWW makes no warranties or 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>13.3 TWW acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, TWW makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. TWW's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>13.5 If the Client is a consumer within the meaning of the CCA, TWW's liability is limited to the extent permitted by section 64A of Schedule 2.</p>
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