
TERMS AND CONDITIONS

1. Definitions

- a) "Customer" means the person and or persons buying the Product(s) or Service(s) as specified in any quote/invoice provided by the Seller. If there is more than one Customer, it is in reference to each Customer both jointly and severally.
- b) "GST" has the same meaning as given to it in [A New Tax System \(Goods and Services Tax\) Act 1999 Cth.](#)
- c) "Price" has the meaning given to it in 3.1 below.
- d) "Product(s) or Service(s)" means all Product(s) and/or Service(s) supplied by the Seller to the Customer at the Customer's request.
- e) "Seller" means Brenbell Pty Ltd as Trustee for BBNTJ Family Trust trading as Bell's Shutters, Awnings and Blinds its successors and assigns or any person acting on behalf of and with the authority of Brenbell Pty Ltd As Trustee For BBNTJ Family Trust.

2. Acknowledgment

These terms and conditions form a contract between the Seller and the Customer for all Product(s)and/or Service(s) provided by the Seller. The Seller has the right to change these terms and conditions at any time.

3. Price and Payment

- 3.1 The Price is indicated on the quote/invoice provided by the Seller to the Customer in reference to the Product(s) or Service(s) being supplied.
- 3.2 A deposit payment of fifty percent (50%) is required at time of acceptance of quote/invoice prior to the Product(s) being ordered or at the Seller's discretion.
- 3.3 The remaining balance payment of the invoice/quote is required at the time of (or prior to) installation/supply of Product(s) or Service(s) or at the Seller's discretion. The Seller has the right to refuse installation/delivery of Product(s)until payment has been made.
- 3.4 Once Product(s) or Service(s) have been installed/delivered, the Seller reserves the right to collect payment of said installed Product(s) or Service(s). If the Customer owes the Seller money, the Customer will be responsible for any costs incurred by the Seller to obtain or to recover the owed amounts, including but not limited to internal administration fees, legal fees on solicitor and own Customer basis and any related bank fees.
- 3.5 The Customer is not entitled to deduct, or offset any sums claimed or owed to the Customer from the Seller OR withhold any payment due to any dispute with their invoice/quote from the Seller.
- 3.6 Unless otherwise stated in the invoice/quote the Price does not include GST. In addition to the Price, the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this contract or any other agreement for the sale of the Product(s). The Customer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.

4. Delivery/Installation

- 4.1 A Customer may be notified of an ETA ("Estimated Time of Delivery") for the Product(s). This is the advised time that the Seller will receive the Product(s) NOT the Customer.
- 4.2 It is the Seller's responsibility to ensure all Product(s) and Service(s) are installed/delivered in a reasonable time and in good faith. However, sometimes circumstances fall outside the Seller's control to the arranged date agreed upon, all measures will be taken to have a new installation/delivery date confirmed at the earliest convenience.
- 4.3 The Customer will be contacted for an agreed time for the installation/delivery to be made. The agreed time is an estimate only, and the Seller will not be liable should they be late for the installation/delivery appointment.
- 4.4 The Customer must ensure that an adult is present at the time of installation/delivery and that the site/premises are ready for installation/delivery.
- 4.5 Please note that if a Customer (or a third party) is installing the Products(s) themselves, they will do so at own risk and agree to hereby release the Seller from any damages or costs incurred in the act.
- 4.6 In the event the Customer requires the Service (s) of the Seller outside of normal trading hours (included but not limited to) the Customer may be subject to a call-out fee at the discretion of the Seller.

5. Errors and Omissions

The Customer acknowledges and accepts that the Seller shall, without prejudice, assume no liability in respect of any alleged or actual error(s) and/or omission(s):

- a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this contract; and/or
- b) contained in or omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Product(s) or Service(s).

6. Customer responsibilities

6.1 The Customer will:

- a) Notify in writing anything that may interrupt the installation/delivery process of the Seller.
- b) Have the site clear and ready for installation/delivery to minimise the risk of injury or damage.
- c) Remove all existing window coverings unless arrangements with the Seller have been made prior to installation/delivery. The Customer is responsible for the disposal of said window coverings unless arrangements with the Seller have been made prior.
- d) Notify Seller and mark any hidden services which may impede installation – including but not limited to Mains/Services in wall cavities (electrical, telephone/internet, water, plumbing, gas, fibre optics or any other services but not limited to be on-site).

6.2 Whilst the Seller will take care to avoid damage to any/all aspects of any services in the Customers property, the Customer agrees to indemnify the Seller in respect all and any liability, claims, loss, damage, costs, and fines because of damage to Services not located or notified/marked correctly in clause 6.1.

6.3 Accuracy of site plans/customer measurements falls on the Customer, and the Seller bears no responsibility for mistakes.

7. Customer acknowledgments

7.1 Fabric - colour and shade variations are inherent in dyes. Whilst every effort the Seller makes to colour match, the Seller is not liable for any costs, damage or loss incurred/resulting in any variation.

7.2 Timber - whilst the Seller will make every effort to match Product(s), timber is a natural product displaying natural effects (veining and knots and colour variations). Therefore, the Customer accepts variations in Product(s) from the sample shown and agreed on at the time of order, and the Seller will not be liable for any costs, damage or loss resulting from said Product(s).

7.3 Custom measurements – whilst all care is taken during site measurements, sometimes between the time the Product(s) is ordered, deductions are made, and all due care is considered prior to ordering. When Product(s) are manufactured square, the Seller bears no responsibility for the Customer openings that are not square.

7.4 Should Product(s) be damaged/destroyed before delivery to the Customer, the Seller is responsible for rectifying the Product(s) before installing. The risk of damage/loss of Product(s) passes to the Customer on delivery and therefore, the Customer must insure said Product(s) on or before the delivery of the Product(s).

7.5 Should the Customer make modifications to the opening (installing tiles, skirting, or flooring) after Product(s) have been ordered all efforts will be made to fit with slight modifications to ordered Product(s), however, should it be deemed not possible to fit, then new products will need to be ordered at the Customer's expense.

7.6 The installed/supplied Product(s) may-

- (a) expand, contract, or distort because of certain weather conditions,
- (b) fade, change colour, either over time or due to exposure to certain weather conditions,
- (c) upon encountering certain substances, Product(s) may stain or mark, and or
- (d) be damaged/scratched if impacted.

8. Title of Products(s) (including parts supplied for Service(s))

The Seller and the Customer agree that –

- 8.1 Ownership shall not pass until the Customer has paid all amounts for the Product(s) and Service(s) owed to the Seller and the Customer has met all their obligations to the Seller.
- 8.2 Any payment (other than cash) will not be deemed as a receipt of payment until all those funds have cleared in the Seller's bank account (recognised, cleared, and honoured).
- 8.3 Until clause 8.1 is met, the Customer is only a Bailee of the Product(s) and must return them on the Seller's request or authorises the Seller irrevocably to collect/recover the Product(s) from the site/premises.
- 8.4 The Customer may not on-sell any of the Product(s) until clause 8.1 is met.
- 8.5 The Seller may commence proceedings against the Customer to recover the price of the Product(s) sold should clause 8.1 not be met, the cost of which is to be at the Customer's expense (including but not limited to all legal costs (on solicitor and own Customer basis), bank fees, and any internal administration fees).

9. Personal Property Securities Act 2009 ("PPSA")

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to them by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing, the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the PPSA and creates a security interest in all Product(s) and/or collateral (account) – being a monetary obligation of the Customer to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.
- 9.3 The Customer undertakes to:
 - a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Seller may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Seller 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 Product(s) charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement concerning the Product(s) and/or collateral (account) in favour of a third party without the Seller's prior written consent.
- 9.4 The Seller and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by the Seller under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

- 10.1 In consideration of the Seller agreeing to supply the Product(s), the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements, including legal costs on a solicitor and own Customer basis incurred in exercising the Seller's rights under this clause.
- 10.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this Clause 10 including, but not limited to, signing any document on the Customer's behalf.

11. Defects, Warranties and Returns.

- 11.1 The Customer must inspect Product(s) and notify (in writing) the Seller within seven (7) days of any know damage/defect(s). Any such notification made by the Customer of damage or defects must be inspected by the Seller to determine the result of the damage/defect.
- 11.2 In these terms and conditions, certain statutory implied guarantees and warranties (including, without limitation, the statutory guarantees under the Competition and Consumer Act 2010 (CCA)) may be implied (Non-Excluded Guarantees).
- 11.3 The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions, including but not limited to the quality or suitability of the Product(s). The Seller's liability for these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Customer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 Should the Seller be required to replace the Product(s) under the CCA, but is unable to, then the Seller may choose to refund the amount the Customer has paid in consideration of the Product(s).
- 11.7 The Seller's liability for any defects or damage to any Product(s) where the Customer is not the original consumer is:
- (a) limited to the warranty provided by the Customer
 - (b) subject to the limited warranty provided to the Seller from the third party who manufactured the Product(s)
 - (c) at the Seller's sole discretion
 - (d) negated (nullified)
- 11.8 The Customer may be charged a call-out fee if the Product(s)/Service(s) is not subject to a warranty issue.

12. Cancellation

- 12.1 Due to Product(s) being custom measurements, once production has commenced or an order has been placed, cancelling an order for the Product(s) will not be permitted.
- 12.2 In the event the delivery is cancelled by the Customer, they will be liable for any, or all loss/costs incurred by the Seller.
- 12.3 The Seller is not liable for any loss or damage should the Customer breach any of these terms and conditions.
- 12.4 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Product(s) at any time before the Product(s) are delivered by giving written notice to the Customer. On giving such notice, the Seller shall repay to the Customer any money paid by the Customer for the Product(s). The Seller shall not be liable for any loss or damage arising from such cancellation.

13. General

- 13.1 The failure of either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce it. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 13.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts in Queensland.
- 13.3 Where applicable, nothing in this agreement is intended to have the effect of contracting out of the Competition and Consumer Act 2010 (CCA). The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Product(s)).
- 13.4 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm, or other events beyond the reasonable control of either party.
- 13.5 Both parties warrant the power to enter into this contract and that they are not insolvent, with this contract creating binding and valid legal obligations on them both.