

# TERMS & CONDITIONS

1. Unless otherwise agreed in writing, any order placed by the Buyer for the supply of Goods and/or Services by the Seller, is an order incorporating these Terms and Conditions.
2. If the Buyer fails to notify the Seller that they do not accept the Terms contained in this document, their agreement to the Terms will be signified by their conduct in placing an order, verbally accepting any written Quote and/or paying a deposit.

## Quote validity & Orders

3. All Quotations are subject to the Seller's inspection of the site at which the Goods are to be installed/used or the inspection and acceptance of the product/item produced by the Buyer for alteration/repair and any prices given or representations made prior to such inspection are estimates only and are not binding in any way upon the Seller.
4. Unless withdrawn beforehand by the Seller, all Quotations are valid for thirty (30) days from the date of the Quote, however Quotes are an invitation only, not to be taken to mean that the Seller is obligated to sell and no contractual relationship arises from the quote until the Seller accepts the Buyer's order.
5. Once an order has been confirmed by the Buyer and accepted by the Seller, the payment provisions in clauses 12-15 will apply.

## Title and Risk

6. Title to the Goods detailed in an order will not pass to the Buyer until full and complete payment has been received by Seller and all cheques and bills of exchange tendered as payment have been cleared and the proceeds credited to the Seller's bank account. Until then, the Buyer must take custody of the Goods and retain them as the Seller's trustee, fiduciary, agent and bailee.
7. If full and final payment is not made, the Buyer grants an irrevocable consent to the Seller to dismantle any such Goods, so the Seller can retake possession of the Goods, at the Buyer's cost.  
The Seller will not be liable for and is indemnified by the Buyer for any damage caused by, or costs incurred in, dismantling and recovering the Goods.
8. Risk in the Goods passes to the Buyer at the date of delivery/supply and the Buyer will insure the Goods that are at his/her risk, pending the passing of title.

## Price

9. Unless stated otherwise, the Price includes GST.
10. If the Seller is subjected to increased costs attributable to delays caused by the Buyer or contractors for whom the Buyer is responsible, the Seller reserves the right to increase the price by such amount as is necessary to take account of the increased costs.

## Any Changes to the Order

11. In the event the Buyer requests any change to the Goods or to the Services, or any additional Goods or Services, notice of the changes must be given to the Seller in writing as soon as possible, showing full and detailed information of the requested changes. The Seller reserves the right to refuse any such request for changes. No work in respect of the Buyer's requested changes will be commenced until the Buyer provides a signed acknowledgement to the Seller of the price or prices of such changes.

## Payment

12. Unless otherwise expressly stated by the Seller, the Buyer will pay a deposit of 10% of the Quote upon ordering goods, followed by progress payments in accordance with the Quote schedule, with all payments being made by the Buyer to the Seller on or before delivery/supply of the Goods and/or Services.
13. Where the Seller considers that the financial condition of the Buyer so warrants, it may decline to deliver or install the Goods or provide Services unless the Buyer provides satisfactory security for the purchase price.
14. If the Buyer is a Corporation under the Corporations Act 2001, the Directors of that Corporation will personally guarantee full payment of monies owed by the Buyer to the Seller.
15. If the Buyer fails to pay the purchase price when due, the Seller will be entitled (without prejudice to any other right hereunder or at law):
  - (a) to charge interest on the outstanding amount from the date when due until payment is received by the Seller, at the rate of 10% per cent per annum;
  - (b) where the Seller still retains title, to retake possession of the Goods and to give the Buyer written notice that the Seller intends to resell the Goods after the expiry of seven (7) days from the date of the notice - if the Buyer fails within that period to pay the purchase price with interest, then the Seller will be released from all obligations under the contract; and
  - (c) commence legal proceedings without notice, and the Buyer will pay the Seller's costs as between solicitor and own client of any legal action instituted by the Seller.

## Installation

16. Where the Seller is not contracted to install the Goods, the Seller's representatives may provide advice on the siting and installation (if appropriate) of the Goods. The Seller will have no liability whatsoever to the Buyer in respect of any such advice given by any representative.

## Substantial completion of Goods

17. If the Goods have been substantially completed by the Seller and the Buyer requests any alterations to the Goods, the Buyer will be required to pay the entire purchase Price as a precondition to such alterations being made and the Buyer will have no entitlement to withhold any part of purchase monies in that event.

## Ongoing orders

18. Once these Terms and Conditions are accepted by a Buyer, they will apply to this and any subsequent Quotation and/or order for Goods and/or Services of substantially the same nature by that Buyer.

## Delivery or supply date

19. If a delivery or supply date is specified, the date is an estimate only and the Seller is not liable for any delay in the delivery/supply.

## Refunds

20. If a Buyer places an order for Goods and by agreement with the Seller, cancels that order, then:
  - (a) any costs incurred by the Seller with respect to materials purchased for, or the labour used in, the production of the Goods will be paid by the Buyer or deducted from monies already paid by the Buyer; and
  - (b) the balance (if any) remaining will be refunded to the Buyer.

## Failure to collect Goods

21. In the event that a Buyer fails to collect Goods within sixty (60) days of the Seller making a reasonable effort to advise the Buyer that the Goods are ready for collection, then the Seller will be entitled to sell the Goods to another Buyer and recover any losses incurred in doing so from the Buyer.

## Warranty

22. Warranties provided by the manufacturer or supplier of materials used in the seller's Goods, shadecloth or canvas, will be carried through to the Buyer when and if possible.
23. No warranty will apply to mechanical and operational components which are the subject of wear and tear nor to damage caused by acts of God. All goods supplied will be manufactured to suit regional wind load ratings however warranties will not apply to excessive conditions that exceed such ratings.
24. The Seller offers a 'workmanship warranty' in regard to failure of the Goods that are attributable only to defects in the Seller's workmanship for the life of the product as per the manufacturer's warranty which applies under clause 22. The Seller's liability in the event of such failure, shall be limited to one of the following as determined by the Seller:
  - (a) the replacement of the Goods or the supply of equivalent Goods;
  - (b) the repair of the Goods;
  - (c) payment of the cost of replacing the Goods or acquiring equivalent Goods; or
  - (d) the payment of the cost of having the Goods repaired.
25. The Seller promises that:
  - (a) all materials used by the Seller will be new and suitable for the purpose supplied, unless provided by the Buyer or as otherwise agreed between the Seller and Buyer;
  - (b) that the work will be carried out in accordance with all relevant laws and legal requirements; in an appropriate and skilful way; with reasonable care and skill; in accordance with plans and specifications; with reasonable diligence; and the site will be suitable for occupation when the work is finished; and
  - (c) that the Quote has been calculated with reasonable care and skill, considering all the information reasonably available when the order was made and accepted.

## Waiver & Variation

26. A provision of or a right created under these Terms in favour of the Seller may not be waived or varied except in writing signed by the Seller. The Seller may elect not to exercise its rights arising from a breach of any provision of these Terms. Such election, even if the breaches are continuous and multiple, shall not create any estoppel or presumption against the Seller.

## Limitation of Liability

27. Subject to clause 16, the Seller is not liable in tort, contract or otherwise for any loss or damage of any kind whatsoever and howsoever arising out of or in connection with the supply Goods and Services, including (but not limited to) any injury, any indirect or inconsequential loss of profit; revenue; contract; or goodwill, arising out of or in connection with the supply of Goods and Services.

## Applicable Law

28. The law of Queensland governs this Contract and the Buyer and Seller submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

## Severance

29. Should any Term in this document be affected by any illegality, unenforceability or invalidity, then that Term shall be considered to the extent of such illegality, unenforceability or invalidity independently of and severable from any other Term contained in this document and shall not affect the enforceability of any other Term in this document in any way whatsoever.

## Other Terms

30. This document contains the entire understanding of the Buyer and Seller as to its subject matter. There is no other agreement, warranty or representation, express or implied, in any way defining or extending or otherwise relating to these, provisions or binding on the parties with respect to the goods or their installation.

## Definitions

31. In these Terms and Conditions:
  - (a) "the Seller" means Toowoomba Shade and Canvas ABN 58 288714 790
  - (b) "the Buyer" is the person, firm or entity who, or which, is giving the order or to whom, or to which, the Seller's quotation is addressed.
  - (c) "Goods and/or Services" means all goods, products and/or services supplied by the Seller to the Buyer.
  - (d) "Supply" means that the Seller must supply the Goods only and does not include delivery of the Goods and/or installation of the Goods, unless otherwise stated in writing by the Seller.