
Blunt's Electrical Pty Ltd – Terms and Conditions of Trade

1. Definitions:

1. "Blunt's" means Blunt's Electrical Pty Ltd, its successors and assigns, or any person acting on behalf of, and with the authority of, Blunt's Electrical Pty Ltd.
2. "Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
3. "Works" means all Works or Materials provided by Blunt's to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
4. "Price" means the Price payable for the Works as agreed between Blunt's and the Client in accordance with clause 4 below.
5. "Site" means the address nominated by the Client at which the Works are to be undertaken by Blunt's.

2. Acceptance:

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, provision of any Works.
2. These terms and conditions may only be amended with Blunt's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Blunt's.
3. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
4. Any time specified by Blunt's for provision of the Works is an estimate only and Blunt's will not be liable for any loss or damage incurred by the Client as a result of any delay.

3. Change in Control:

1. The Client shall give Blunt's 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/s, or business practice). The Client shall be liable for any loss incurred by Blunt's as a result of the Client's failure to comply with this clause.

4. Price and Payment:

1. At Blunt's sole discretion the Price shall be either:
 - a. as indicated on invoices provided by Blunt's to the Client in respect of Works provided; or
 - b. Blunt's quoted Price (subject to clauses 4.2) which shall be binding upon Blunt's provided that the Client shall accept Blunt's quotation in writing within thirty (30) days. Unless specified otherwise:
 - c. charges in connection with the Works which are levied by distribution network supply providers or other statutory providers, and any third-party services required for the Works (as specified in Blunt's quotation), shall not be included in the Price and treated as a variation under clause 4.2; and
 - d. Blunt's responsibilities in respect of commissioning the Works shall be limited to proving conformance of the Works with any specification/s supplied by the Client.
2. Blunt's reserves the right to change the Price:
 - a. if a variation to the Materials which are to be supplied is requested; or
 - b. if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested, including any additional costs incurred by Blunt's where the Client requests the acceleration of the existing work schedule; or
 - c. where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, obscured Site defects, the location of underground services on the Site, existing wiring or equipment faults, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and cabling/wiring, etc.) which are only discovered on commencement of the Works; or
 - d. as a result of an increase in Blunt's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Works, fluctuations in currency exchange rates or due to relevant industry awards (e.g. site allowance and severance pay), which are outside the control of Blunt's.
3. Variations will be detailed in writing and charged for on the basis of Blunt's quotation, and will be shown as variations on Blunt's invoice. The Client shall be required to respond to any variation submitted by Blunt's within ten (10) working days, and failure to do so will entitle Blunt's to add the cost of the variation to the Price. Payment for all variations must be made in full at their time of completion.
4. At Blunt's sole discretion, a deposit may be required.
5. Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Blunt's, which may be:
 - a. on completion of the Works;
 - b. by way of progress payments in accordance with Blunt's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Site but not yet installed; or
 - c. the date specified on any invoice or other form as being the date for payment; or
 - d. failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Blunt's.

- e. Payment may be made by cash, electronic/on-line banking, credit card (plus a surcharge of up to five percent (5%) of the Price), or by any other method as agreed to between the Client and Blunt's.
- f. Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Blunt's an amount equal to any GST Blunt's must pay for any provision of Works by Blunt's under this contract or any other agreement. 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.

5. Risk:

1. Blunt's shall maintain Workers' Compensation and Public Liability Insurance for the duration of the Works. It is the Client's responsibility to ensure that they are similarly insured.
2. The Client acknowledges that, under no circumstances, will Blunt's handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on Site:
 - a. Blunt's shall suspend the Works; and
 - b. the Client shall be fully responsible for the resolution of any resulting problems; and
 - c. any additional cost incurred by Blunt's shall be added to the Price under clause 4.2.
3. Where the Client has supplied items for Blunt's to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those items. Blunt's shall not be responsible for any defects in the items, any loss or damage to the Works (or any part thereof), howsoever arising from the use of items supplied by the Client.

6. Client's Responsibilities:

1. Prior to Blunt's commencing the Works the Client is responsible for advising Blunt's of the precise location of all potential underground services on Site (to be completed by consultation with the licensed service locator "Dial Before You Dig") and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Site. Whilst Blunt's will take all care to avoid damage to any underground services, the Client agrees to indemnify Blunt's in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per this clause 6.1. If the Client requests Blunt's to engage the service locator, then this shall be in addition to the Price as per clause 4.2.

7. Title:

1. Blunt's and the Client agree that the Client's obligations to Blunt's for the provision the Works shall not cease (and ownership of the Materials shall not pass) until:
 - a. the Client has paid Blunt's all amounts owing to Blunt's; and
 - b. the Client has met all other obligations due by the Client to Blunt's in respect of all contracts between Blunt's and the Client.
2. Receipt by Blunt's 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 and until then Blunt's ownership or rights in respect of the Materials, and this contract, shall continue.
3. It is further agreed that, until ownership of the Materials passes to the Client in accordance with clause 7.1:
 - a. the Client is only a bailee of the Materials and, unless the Materials have become fixtures, must return the Materials to Blunt's on request.
 - b. the Client holds the benefit of the Client's insurance of the Materials on trust for Blunt's and must pay to Blunt's the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - c. the production of these terms and conditions by Blunt's shall be sufficient evidence of Blunt's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Blunt's to make further enquiries.
 - d. the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Blunt's and must pay or deliver the proceeds to Blunt's on demand.
 - e. the Client should not convert or process the Materials 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 Blunt's and must sell, dispose of or return the resulting product to Blunt's as it so directs.
 - f. unless the Materials have become fixtures the Client irrevocably authorises Blunt's to enter any premises where Blunt's believes the Materials are kept and recover possession of the Materials.
 - a. Blunt's may recover possession of any Materials in transit, whether or not delivery has occurred.
 - b. the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Blunt's.
 - c. Blunt's may commence proceedings to recover the Price, notwithstanding that ownership of the Materials has not passed to the Client.

8. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA):

1. The Client must inspect all Works on completion (or the Materials on delivery) and must within ten (10) working days of such time notify Blunt's in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Blunt's to inspect/review the Works provided.
2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
3. Blunt's acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Blunt's makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Works. Blunt's liability in respect of these warranties is limited to the fullest extent permitted by law.
5. If the Client is a consumer within the meaning of the CCA, Blunt's liability is limited to the extent permitted by section 64A of Schedule 2.
6. If Blunt's is required to rectify, re-provide, or pay the cost of re-providing the Works under this clause or the CCA, but is unable to do so, then Blunt's may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works which have been provided to the Client which were not defective.
7. If the Client is not a consumer within the meaning of the CCA, Blunt's liability for any defect or damage in the Works is:
 - a. limited to the value of any express warranty, or warranty card, provided to the Client by Blunt's (at Blunt's sole discretion), which will be subject to the Client's full payment of the Price, and excludes any defect of, or damage to, batteries, fuses, filters, tubes, lamps or where caused by appliances, or causative to product recalls; or
 - b. limited to any warranty to which Blunt's is entitled, if Blunt's did not manufacture the Materials; or
 - c. otherwise negated absolutely.
8. Subject to this clause 8, returns will only be accepted provided that:
 - a. the Client has complied with the provisions of clause 8.1; and
 - b. Blunt's has agreed that the Materials are defective; and
 - c. the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - d. the Materials are returned in as close a condition to that in which they were delivered as is possible.
9. Notwithstanding clauses 8.1 to 8.8, but subject to the CCA, Blunt's shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - a. the Client failing to properly maintain or store the Works;
 - b. the Client using the Works for any purpose other than that for which they were designed;
 - c. the Client continuing to use the Works after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - d. interference with the Works by the Client or any third party without Blunt's prior approval;
 - e. the Client failing to follow any instructions or guidelines provided by Blunt's;
 - f. fair wear and tear, any accident, or act of God.
10. Where Blunt's determines, at its sole discretion, that any defect or damage is not causative to any faulty workmanship of Blunt's, the Client shall be liable for the full cost of the rectification of such defect or damage, including Blunt's call-out fee.
11. Blunt's may in its absolute discretion accept non-defective Materials for return in which case Blunt's may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Materials, plus any freight costs.
12. Notwithstanding anything contained in this clause if Blunt's is required by a law to accept a return then Blunt's will only accept a return on the conditions imposed by that law.

9. Default and Consequences of Default:

1. If invoice due falls past 30 days, Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five percent (5%) per calendar month (and at Blunt's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. Plus a \$25.00 admin fee
2. If the Client owes Blunt's any money the Client shall indemnify Blunt's from and against all costs and disbursements incurred by Blunt's in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Blunt's contract default fee, and bank dishonour fees).
3. Further to any other rights or remedies Blunt's may have under this contract, if the Client has made payment to Blunt's by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Blunt's under this clause 9 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
4. Without prejudice to any other remedies Blunt's may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Blunt's may suspend or terminate the provision of Works to the Client. Blunt's will not be liable to the Client for any loss or damage the Client suffers because Blunt's has exercised its rights under this clause.

5. Without prejudice to Blunt's other remedies at law, Blunt's shall be entitled to cancel all, or any part, of any order of the Client which remains unfulfilled, and all amounts owing to Blunt's shall, whether or not due for payment, become immediately payable if:

- a. any money payable to Blunt's becomes overdue, or in Blunt's opinion the Client will be unable to make a payment when it falls due;
- b. the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

10. Cancellation:

1. Blunt's may cancel any contract to which these terms and conditions apply, or cancel provision of the Works at any time before the Works have commenced, by giving written notice to the Client. On giving such notice Blunt's shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Blunt's for Materials already procured for the Works. Blunt's shall not be liable for any loss or damage whatsoever arising from such cancellation.
2. In the event that the Client cancels this contract, or provision of the Works, the Client shall be liable for any and all loss incurred (whether direct or indirect) by Blunt's as a direct result of the cancellation (including, but not limited to, any loss of profits).
3. Cancellation of orders for Materials made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

11. Privacy Act 1988:

1. The Client agrees for Blunt's to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Blunt's.
2. The Client agrees that Blunt's may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
 - a. to assess an application by the Client; and/or
 - b. to notify other credit providers of a default by the Client; and/or
 - c. to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - d. to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
3. The Client consents to Blunt's being given a consumer credit report to collect overdue payment on commercial credit.
4. The Client agrees that personal credit information provided may be used and retained by Blunt's for the following purposes (and for other agreed purposes or required by):
 - a. the provision of Works; and/or
 - b. analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - c. processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - d. enabling the collection of amounts outstanding in relation to the Works.
5. Blunt's may give information about the Client to a CRB for the following purposes:
 - a. to obtain a consumer credit report;
 - b. allow the CRB to create or maintain a credit information file about the Client including credit history.
6. The information given to the CRB may include:
 - a. personal information as outlined in 11.1 above;
 - b. name of the credit provider and that Blunt's is a current credit provider to the Client;
 - c. whether the credit provider is a licensee;
 - d. type of consumer credit;
 - e. details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - f. advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Blunt's has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - g. information that, in the opinion of Blunt's, the Client has committed a serious credit infringement;
 - h. advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
7. The Client shall have the right to request (by e-mail) from Blunt's:
 - a. a copy of the information about the Client retained by Blunt's and the right to request that Blunt's correct any incorrect information; and
 - b. that Blunt's does not disclose any personal information about the Client for the purpose of direct marketing.
8. Blunt's will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
9. The Client can make a privacy complaint by contacting Blunt's via e-mail. Blunt's will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

12. Building and Construction Industry Security of Payments Act 2002:

1. At Blunt's sole discretion, if there are any disputes or claims for unpaid Works then the provisions of the Building and Construction Industry Security of Payments Act 2002 may apply.
2. Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2000, except to the extent permitted by the Act where applicable.

13. General:

1. The failure by Blunt's to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Blunt's right to subsequently enforce that provision. 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.
2. These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, Australia, the State in which Blunt's has its principal place of business, and are subject to the jurisdiction of the Local Court in Victoria.
3. Subject to clause 8, Blunt's shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit, pre-ascertained or liquidated damages) suffered by the Client arising out of a breach by Blunt's of these terms and conditions (alternatively Blunt's liability shall be limited to damages which under no circumstances shall exceed the Price).
4. 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 Blunt's nor to withhold payment of any invoice because part of that invoice is in dispute.
5. Any claim whatsoever which the Client may have against Blunt's shall be deemed to be waived if not made in writing within the timeframe specified in clause 4.3 from the event giving rise to such claim.
6. Neither party shall be entitled to assign (whether in part or in whole) this contract without the prior written consent of the other party, however, Blunt's may license or sub-contract all or any part of its rights and obligations without the Client's consent.
7. The Client agrees that Blunt's may amend these terms and conditions at any time. If Blunt's makes a change to these terms and conditions, then that change will take effect from the date on which Blunt's notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Blunt's to provide any Works to the Client.
8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
9. The Client warrants that:
 - a. it has the power to enter into this contract and has obtained all necessary authorisations to allow it to do so;
 - b. it is not insolvent; and
 - c. this contract creates binding and valid legal obligations on it.