

- Cars & Trucks
- Boat & Bikes
- Aircraft
- Commercial Seating
- Tarps & Shades
- Foam Supplies



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 18 Adams Road
 Yarrowonga NT 0830
info@topendupholstery.com.au
 ABN 61 659 977 698

TERMS AND CONDITIONS OF QUOTES AND SALES

Definitions

“Business” Means Trinity Investments (NT) Pty Ltd ABN 61 659 977 698 Trading as Top End Upholsterers & Motor Trimmers and its successors and assigns or any person acting on behalf of and with the authority of the Business

“Client” means the person/s ordering the Works as specific in any invoice, document or order, and if there is more than one, Client is a reference to each Client jointly and severally.

“Goods” means all goods, items, equipment and plant mentioned in the order, written or verbal, placed by the Client and issued to the Business or on an invoice issued by the Business

“Price” means the Price payable for the Works as agreed between the Business and the Client.

“Site” means the address where Works may be carried out, as agreed between the Business and the Client

“Works” means all work performed by the Business at the Clients request.

“The Act” means the Competition and Consumer Act 2010

1.0 PRICE AND PAYMENT

1.1 At the Business’ sole discretion, the Price shall be either:

- As indicated on invoices provided by the Business to the Client in respect of Works performed or Goods supplied; or
- The Business’ quoted Price (subject to clause 1.2) which shall be binding upon the Business provided that the Client accepts a quotation whether written or verbal within 30 days.

1.2 The Business reserves the right to change the Price:

- If a variation to the Goods which are to be supplied is requested; or
- If a variation to the Works originally scheduled (including any applicable plans or specifications) as requested; or
- Where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to, limitations to accessing the Site, prerequisite work by any third party not being completed or hidden services, etc) which are only discovered on or after commencement of the Works; or
- In the event of increases to the Business in the cost of labour or materials which are beyond the Business’ control

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1.3 sole discretion:

- (a) A deposit of not more than 50% may be required;
- (b) A valid Company Purchase order from 30 Day account holding Clients may be required;
- (c) Any deposit required must be paid in full on acceptance of any quote;
- (d) The Business will not commence any Works or supply any Goods until required deposit is paid in full;
- (e) The Price will be payable by the Client on the date/s determined by the Business, which may be:
 - On completion of the Works; or
 - By way of progress payment in accordance with the Business' specified progress payment schedule
 - 30 Days following the end of the month for valid 30 Day Account Holding Clients in which an invoice and statement will be emailed to the Client's specified email address
 - The date specified on any invoice or other form as being the date for payment; or
 - Failing any notice
 - to the contrary, the date which is 7 days following the date of any invoice given to the Client by the Business

1.4 Payment may be made by cash, electronic transfer/online bank transfer, credit card (plus a surcharge of up to 1.4% of the Price) or by any other method as agreed to between the Client and the Business

2.0 SITE WORKS

2.1 Site Access:

- Where the Works are carried out onsite the Client must ensure that the Business always has clear and free access to the Site to enable them to undertake the Works. The Business shall not be liable for any loss or damage to the Site unless due to the negligence of the Business.

2.2 Prior to the Business commencing any work the Client must advise the Business of the precise location of all services on the Site

2.3 Whilst the Business will take all care to avoid damage to any services, the Client agrees to indemnify the Business in respect of all any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per Clause 2.1

3.0 TITLE

3.1 The Business and the client agree that ownership of the Goods shall not pass to the Client until:

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- the Client has paid the Business all amounts owing to the Business; and
- the Client has met all its other obligations to the Business

3.2 Receipt by the Business 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.

3.3 It is further agreed that until ownership of the Goods passed to the Client in accordance with Clause 3.0:

- The Client is only a bailee of the Goods and must return the Goods to the Business on request within 7 days;
- The Client holds the benefit of the Client's insurance of the Goods on trust for the Business and must pay to the Business the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- The production of these terms and conditions by the Business shall be sufficient evidence of the Business' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Business to make further enquiries;
- The Client must not sell, dispose, or otherwise part with possession of the goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Business and must pay or delivery the proceeds to the Business on demand;
- 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 the Business and must sell, dispose of or return the resulting product to the Business as it so directs;
- The Client irrevocably authorises the Business to enter any premises where the Business believes the Goods are kept and recover possession of the Goods at the cost and expense of the Client
- The Business may recover possession of any Goods in transit whether or not delivery has occurred;
- The Client shall not charge or grant any encumbrance over the Goods nor grant no otherwise give away any interest in the Goods while they remain the property of the Business; and
- The Business may commence proceedings to recover the price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

4.0 DEFECTS, WARRANTIES AND RETURNS

4.1 The Client must inspect all Goods on delivery (or the Works on completion) and must within 10 days of delivery or completion notify the Business in writing of any evident defect/damage, shortage in quantity, or failure to comply with the order description or quote. The Client must notify any other alleged defect in the Goods/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client

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must allow the Business to inspect the Goods or to review the works within 10 days of said notification.

- 4.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the Competition and Consumer Act 2010) certain statutory implied guarantees and warranties (including without limitation the statutory guarantees under the Act) may be implied into these terms and conditions (Non-excluded Guarantees).
- 4.3 The Business acknowledges that nothing in these terms and conditions purports to modify or exclude the Non- Excluded Guarantees
- 4.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Business makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Works. The Business' liability in respect of the warranties is limited to the fullest extent permitted by law.
- 4.5 if the Client is a consumer within the meaning of the Act, the Business' liability is limited to the extent permitted by section 64 A of Schedule 2.
- 4.6 If the Business is required to replace any Goods under this clause or the Act, but is unable to do so, the Business may refund any money the Client has paid for the Goods.
- 4.7 if the Business is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the Act, but is unable to do so, then the Business 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 and Goods which have been provided to the Client which were not defective.
- 4.8 If the Client is not a consumer within the meaning of the Act, then Business' liability for any defect or damage in the Goods is;
 - limited to the value of any express warranty or warranty card provided to the Client by the Business at the Business' sole discretion
 - limited to any warranty to which the Business is entitled, if the Business did not manufacture the Goods;
 - otherwise negated absolutely
- 4.9 Subject to this clause 4, returns will only be accepted provided that:
 - The Client has complied with the provisions of clause 4.1; and
 - the Business has agreed that the Goods are defective; and
 - the Goods are returned within a reasonable time at the Clients cost (if that cost is not significant); and

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- the Goods are returned in as close a condition to that in which they were delivered/collected as is possible.

4.10 Notwithstanding clauses 4.1-4.9 but subject to the Act, the Business shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- the Client failing to properly maintain or store any Goods;
- the Client using the Goods for any purpose other than that for which they were designed;
- the Client continuing to use any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- interference with the Works by the Client or any third party without the Business prior approval;
- the Client failing to follow any instructions or guidelines provided by the Business;
- fair wear and tear, any accident, or act of God.

5.0 INTELLECTUAL PROPERTY

- 5.1 Where the Business has designed, drawn, written plans or a schedule of Works, or created any products/Goods for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Business, and shall only be used by the Client at the Business' discretion.
- 5.2 the Client warrants that all designs, specifications or instructions given to the Business will not cause the Business to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Business against any action taken by a third party against the Business in respect of any such infringement.
- 5.3 The client agrees that the Business may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products/Goods which the Business has created.

6.0 CANCELLATION

- 6.1 The Business may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Business shall repay to the Client any sums paid

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in respect of the Price, less any amounts owing by the Client to the Business for Works already performed or Goods purchased. The business shall not be liable for any loss or damage whatsoever arising from such cancellation.

- 6.2 In the event that the Client cancels the delivery or Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Business as direct result of the cancellation (including, but not limited to, any loss of profits)
- 6.3 Cancellation of orders for Goods/products made to the Client's specifications will not be accepted once production has commenced.

7.0 UNPAID SELLER'S RIGHTS

- 7.1 Where the Client has left any item with the Business for repair, modification, exchange or for the Business to perform any other service in relation to the item and the Business has not received or been tendered the whole of any monies owing to it by the Client, the Business shall have, until all monies owing to the Business are paid:
- a lien on the item; and
 - the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 7.2 the lien of the Business shall continue despite the commencement of proceedings, or judgment for any monies owing to the Business having been obtained against the Client.

8.0 DISPUTE RESOLUTION

- 8.1 if a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and proving details of the dispute. Within 14 days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution

9.0 GENERAL

- 9.1 The failure by the Business to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Business' 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.

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- 9.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the Northern Territory and are subject to the jurisdiction of the courts in the Northern Territory.
- 9.3 Subject to clause 4, the Business shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Business of these terms and conditions (alternatively the Business' Liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 9.4 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 the Business nor to withhold payment of any invoice because part of that invoices is in dispute.
- 9.5 The Business may license or sub-contract all or any part of its rights and obligations without the consent of the Client.
- 9.6 the Client agrees that the Business may amend these terms and conditions at any time. If the Business makes a change to these terms and conditions, then that change will take effect from the date on which the Business notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Business to provide any Goods and/or Works to the Client.
- 9.7 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 even beyond the reasonable control of either party.
- 9.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.