
STANDARD TERMS & CONDITIONS OF TRADE
DITCH WITCH AUSTRALIA PTY LIMITED ACN 076 976 979

In this document:

Terms means the terms and conditions contained in this document, as amended by us and published on our website www.dwaus.com.au from time to time.

We, us or our means Ditch Witch Australia Pty Limited ACN 076 976 979.

Quote means any quote we issue from time to time.

1. Quotation

We may from time to time issue Quotes for the supply of goods. All Quotes issued by us to you are subject to these Terms.

Unless otherwise stated, any Quote will remain open for acceptance for the time stated on the Quote and where no time is stated, for 30 days, unless withdrawn by us earlier.

A Quote may be accepted by signing and returning the Quote. If you accept a Quote, you are also accepting all of these Terms without amendment.

2. Acceptance

We reserve the right to refuse any order placed by acceptance of a Quote within 7 days of receipt of the acceptance.

We may in our absolute discretion accept a purchase order from you in respect of the supply of goods. These Terms apply to any such purchase order accepted to the exclusion of any terms stated on the purchase order.

If you are an individual, by signing the acceptance of a Quote, you warrant that you are authorised to accept these Terms on behalf of the relevant entity.

3. Specifications

All drawings, specifications, descriptive matter or advertising issued by us and any descriptions, illustrations or particulars of goods such as weights, dimensions, performance or other attributes provided by us are approximate only and do not form part of any contract as between us. Any deviation or error in these matters do not vitiate any contract between us or give rise to any claim in relation to those matters.

We do not warrant or guarantee the quality or workmanship or fitness for purpose of any goods. Any warranties provided in relation to goods are those of the manufacturer.

Where specifications, drawings or other particulars are provided by you, our price is based upon estimates of quantities required. If any adjustment in quantities are required, the price stated in any Quote is adjusted on the unit rate basis as stated in the Quote.

4. Your obligations

You must ensure that all information provided to us is true, accurate and not misleading.

You must act reasonably and take reasonable care to protect your own interests, including managing all safety risks associated with the operation of the goods, properly reading and following any instruction or training manuals, following any reasonable direction we may give and appropriately directing your own employees, servants and agents in relation to these things

5. Shortage

Details of any goods as recorded by us upon dispatch will be conclusive evidence of the quantity received by you on delivery unless you provide conclusive evidence proving the contrary within 14 days.

You waive any claims in respect of any shortages for any goods delivered unless a notice of a claimed short delivery is provided to us within 14 days of delivery.

6. Delivery and storage

Any dates specified by us for delivery of the goods are approximate only. If no dates are so specified, delivery will be within a reasonable time. We may deliver the goods in batches or in instalments.

You have no right of action for damages or otherwise against us and release us from any claim for loss or damage occurring by reason of any failure or delay in delivery for taking delivery in batches.

If you fail to take delivery of any of goods or to provide any instructions to enable the goods to be delivered, without prejudice to any other rights, we may store or arrange for the storage of the goods pending delivery.

Any costs or expenses incurred in relation to storage, including related insurance, of goods pending delivery are payable by you.

7. Goods and Services Tax

Unless otherwise stated, all amounts and prices provided in a Quote or otherwise are exclusive of GST. Where the service provided is subject to GST, it will be added and charged to you.

8. Price increases

Amounts and prices stated on any Quote are those at the date of the Quote. If you require any changes to the Quote which affect the cost or rates for insurance, freight, cartage or shipping expenses, duties, exchange rates, sorting and stacking costs, costs of materials or any other amounts used to calculate the price or amounts stated on the Quote, or if those inputs increase in cost before acceptance or during the currency of our contract, any increase in those amounts are for your account and will increase the price accordingly.

9. Accounts and interest

Unless otherwise stated in a Quote, all accounts must be paid in full within 28 days of the next month following

STANDARD TERMS & CONDITIONS OF TRADE
DITCH WITCH AUSTRALIA PTY LIMITED ACN 076 976 979

delivery. Capital equipment is to be paid for prior to delivery.

If our accounts are not paid in full by their due date, we may charge you interest on the unpaid amount at the rate of 10% per annum.

10. Outstanding accounts

If any account remains outstanding for a period of 60 days or more, you hereby charge in our favour any real or personal property in which you have an interest with payment of any outstanding account and you irrevocably authorise us to lodge caveats to notify and protect that charge in relation to any real property in which you have an interest.

If an account remains outstanding for more than 90 days, you authorise us to provide your particulars and the particulars of the unpaid debt to any credit reporting agency to have the default in payment listed.

All costs and disbursements incurred by us in recovering payment of any overdue account or in enforcing our rights under these Terms including, without limitation, legal costs on a solicitor and client basis are payable by you.

We may retain any documents or goods held on your behalf pending payment of any outstanding account.

11. Retention of title

We reserve the following rights in relation to all goods provided by us until all amounts owing by you to us in respect of those goods are paid in full:

- (i) ownership of the goods,
- (ii) to enter your premises (or the premises where the goods are located) without liability for trespass or any resulting damage to retake possession of the goods, and
- (iii) to keep or resell any of the goods so repossessed.

In respect of the resale of the goods pursuant to this clause, we will apply the net proceeds of sale firstly towards the payment of the unpaid invoice with respect to those goods, then towards any other unpaid invoices and if there is any surplus, the surplus will be paid to you. If there is a deficiency, we may recover the amount of that deficiency from you as a debt.

12. Returns

We are not under any obligation to accept the return of any goods or to provide refunds. A request for a return must be made within 14 days, if accepted the goods must be returned freight paid to Ditch Witch Australia within 30 days of original goods shipment date. A 15% restocking fee applies to all returns.

13. Termination

We may terminate any order at any time without cause and in our absolute discretion

You may only terminate any order with our consent and on terms which indemnify us from all costs and losses in respect of the order sought to be cancelled and pay such amounts within 14 days of the cancellation.

Subject to these Terms, on termination, the that part of the price paid (if paid in advance) will be refunded to you within 14 days of the cancellation of the relevant order, less the costs and losses associated with that order.

14. Release and indemnity

You hereby release and indemnify us and agree to forever keep us indemnified from any and all cost, damage, liability, expense or loss, including indirect, consequential and special losses, that we may incur in relation to you or any third party, where the cost, damage, liability, expense or loss is caused by or contributed to by the goods, any defect of fault in workmanship or design or their use.

This indemnity applies to goods we have supplied, that are on loan to you, or are in your possession for demonstration or training purposes.

15. Risk and insurance

Risk of damage to or loss of the goods the subject of an order passes to you immediately upon dispatch from us, that is, whilst on transit for delivery to you.

Any property of yours (being property other than the goods we are providing as part of an order) in our possession, custody or control for whatever purpose remain at your risk as regards loss and damage and you agree to effect appropriate insurances against such loss and damage.

You shall be liable for and must maintain at your own cost a policy of insurance with a reputable insurer to cover all such risks as may reasonably arise including public liability for all goods which are on loan to you or in your possession for the purpose of demonstration or training. In relation to public liability such insurance shall be for an amount not less than \$10,000,000.

16. Warranties

We do not provide any warranties in relation to any goods. The only warranties in relation to the goods are those of the manufacturer and not us, and to that the rights in any manufacturer's warranty are required to be assigned to you, to the extent possible, they are assigned and title passes with the goods on these Terms.

Any warranty or condition which would otherwise be implied in any agreement between us or in these Terms (including, but not limited to, merchantability, suitability or fitness for purpose, quality, design, assembly, installation, operation or otherwise) is expressly denied and is excluded to the maximum extent permitted by law.

17. Contractual limitation of liability

To the extent permitted by law, and notwithstanding Clause 14 entitled "Release and Indemnity", our liability to you in

STANDARD TERMS & CONDITIONS OF TRADE
DITCH WITCH AUSTRALIA PTY LIMITED ACN 076 976 979

respect of any cost, damage, liability, expense or loss (including those caused or contributed to by our negligence or breach of any condition or warranty) is limited to, at our absolute discretion:

- (i) replacement of the goods or the supply of equivalent goods;
- (ii) repair of the goods supplied; or
- (iii) payment of the cost of replacing, repairing or acquiring equivalent goods.

18. Intellectual property

In this clause, "intellectual property" means all methodologies, processes, inventions, discoveries and novel designs whether or not registrable including any invention of or developments or improvements to equipment, methods or techniques.

All rights we may hold in any intellectual property associated with goods sold or delivered remains our property, whether under licence from another or otherwise.

19. Force majeure

Each of us will be released from our respective obligations under these Terms and any accepted Quotes (except as to payment and indemnity) in the event of national emergency, war, prohibitive governmental regulations or where any other cause beyond the reasonable control of either you or us, including strike, riot, lockout or trade disputes for a period of 7 days or more renders provision of the goods the subject of an accepted Quote impossible.

20. General

(b) Notices

All notices required or permitted to be given under our Terms must be in writing and given by personal service, pre-paid postage, facsimile transmission or e-mail transmission at the addresses of the parties as stated in communications between us from time to time.

(b) No waiver

No right under our Terms will be waived except as expressly agreed in writing and signed by us. We will not waive a right if we grant an extension or forbearance to you.

A waiver by us of any matter does not prejudice our rights in respect of any subsequent or other matter. Any non-exercise or partial exercise of, or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.

These Terms may only be amended in writing signed by each of us.

(c) Independent legal advice

You acknowledge that you have had adequate opportunity to obtain independent legal advice as to the meaning and effect of our Terms before they were accepted.

(d) Entire agreement

These Terms supersede all previous agreements between us and embody the entire agreement in relation to any accepted Quote or any other arrangement between us (except that other arrangement is governed by specific terms identified in a separate signed agreement between us in relation to that other arrangement).

Any previous correspondence, negotiations or representations between us do not bind either us or you and neither we nor you can rely on them.

(e) Delegation

We may delegate or sub-contract the performance of any obligation in our absolute discretion.

(f) No assignment

You may not assign the benefits or obligations under any agreement with us to any entity without our consent, which may be withheld in our absolute discretion.

(g) Severance

If (but for this clause) a provision of these Terms would be illegal, void, unenforceable or contravene any law, these Terms are to be varied so as to give effect to the intention of the Terms or severed without affecting the enforceability of the other provisions and failing that, the offending provision is to be interpreted as if the provision was omitted.

(h) Disputes and arbitration

All questions, disputes or differences which arise between us with respect to these Terms or its subject matter are to be referred to a single arbitrator in accordance with the provisions of the *Commercial Arbitration Act 1984* (NSW) or any re-enactment or statutory modification of that law for the time being in force.

(i) Governing law and jurisdiction

These Terms and the transactions contemplated by them are governed by the law of New South Wales, Australia.

We each irrevocably submit to the jurisdiction of the courts of New South Wales, Australia and all courts called to hear appeals from the courts of New South Wales in respect of the Terms or its subject matter.