

Dunrite Termites & Pest Control – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Company" means Active Termite Pty Ltd ATF Blackfoot Trust T/A Dunrite Termites & Pest Control its successors and assigns or any person acting on behalf of and with the authority of Active Termite Pty Ltd ATF Blackfoot Trust T/A Dunrite Termites & Pest Control.
- 1.2 "Customer" means the person/s requesting the Company to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Company in the course of it conducting, or supplying to the Customer, any Services.
- 1.4 "Services" means all Services supplied by the Company to the Customer at the Customer's request from time to time.
- 1.5 "Price" means the price payable for the Services as agreed between the Company and the Customer in accordance with clause 3 of this contract.
2. **Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by the Company.
- 2.2 These terms and conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.
3. **Change in Control**
- 3.1 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.
4. **Price and Payment**
- 4.1 At the Company's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Company to the Customer; or
 - (b) the Company's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Company reserves the right to change the Price if a variation to the Company's quotation is requested (such as the Customer requesting additional rooms or site serviced which were not expressly included in the Company's quotation).
- 4.3 At the Company's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:
 - (a) on delivery of the Services;
 - (b) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (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 Customer by the Company.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and the Company.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for providing the Company's Services. 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.
5. **Delivery of Services**
- 5.1 At the Company's sole discretion delivery of the Services shall take place when the Services are supplied to the Customer at the Customer's nominated address.
- 5.2 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.3 The Company may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.4 Any time specified by the Company for delivery of the Services is an estimate only and the Company will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Company is unable to supply the Services as agreed solely due to any action or inaction of the Customer then the Company shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 5.5 The Company reserves the right to use their choice of registered pesticides and methods of treatment.
6. **Risk**
- 6.1 Irrespective of whether the Company retains ownership of any Incidental Items all risk for such items shall pass to the Customer as soon as such items are delivered to the Customer and shall remain with the Customer until such time as the Company may repossess the Incidental Items. The Customer must insure all Incidental Items on or before delivery.
- 6.2 The Company reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Customer's failure to insure in accordance with clause 6.1.
- 6.3 The Company offers no guarantee against infestation in areas that are unexpressly inspected. Further, the Company shall not be liable for any loss or damage or costs incurred as a result of infestations that existed in areas or in structural members which were not accessible for visual inspection at the time of delivery of the Services.
- 6.4 The Company shall not be held liable for any cracked tiles, scarred cement or floor coverings, colour matching, cracked concrete or staining of treated items that may occur as a result of the Company completing the Services.
7. **Customer's Responsibilities**
- 7.1 The Customer shall ensure that the Company has clear and free access to the work site at all times to enable them to undertake the works. The Company shall not be liable for any loss or damage to the site unless due to the negligence of the Company.
- 7.2 It is specifically acknowledged by the Customer that it is their responsibility to arrange for the relaying of carpets by a specialist carpet layer contractor.
- 7.3 The Company cannot and does not offer to make judgements on or report on the extent of any structural damage, if the Customer's responsibility to seek information of this type from a qualified licensed builder.
- 7.4 It is the Customer's responsibility to contact the Company at the end of the warranty period to arrange a follow up inspection and/or treatment.
- 7.5 Where the Services are preventative/remedial subterranean termite or other work, it is specifically acknowledged by the Customer that no inspection or report is made on damage or activity to the building unless expressly stated otherwise in writing by the Company.
- 7.6 In the event a minster is used on internal pest control, then it is the Customer's responsibility to ensure any fish tank is covered and any power connection to it is switched off.
- 7.7 The Company shall not be held liable for any loss, damages or costs howsoever arising from the Customer's failure to comply with this clause; it shall be the Customer's responsibility to:
 - (a) Take internal bird cages and pet rodents outside prior to internal Services commencing; and
 - (b) Cover all bird aviaries with plastic sheets prior to external Services commencing; and
 - (c) Empty and remove all pet bowls from any area that Services are to commence; and
 - (d) Ensure all dogs, cats and any other pets are moved to a safe place, and away from the areas that Services are to commence;
 - (e) Cover external fish ponds with plastic prior to external Services commencing.
8. **Hidden Utilities**
- 8.1 Prior to the Company commencing any work the Customer must advise the Company of the precise location of all hidden utilities on the site and clearly mark the same. The hidden mains & services the Customer 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 utilities that may be on site.
- 8.2 Whilst the Company will take all care to avoid damage to any hidden utilities the Customer agrees to indemnify the Company 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 clause 8.1.
9. **Title**
- 9.1 The Company and the Customer agree that where it is intended that the ownership of Incidental Items is to pass to the Customer that such ownership shall not pass until:
 - (a) the Customer has paid the Company all amounts owing for the Services; and
 - (b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- 9.2 Receipt by the Company of any form of payment other than cash shall not be a condition of the Company's obligation to provide the Services unless cleared or recognised and until then the Company's ownership or rights in respect of the Incidental Items shall continue.
10. **Personal Property Securities Act 2009 ("PPSA")**
- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 In consenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Incidental Items that have previously been supplied and that will be supplied in the future by the Company to the Customer.
- 10.3 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 respect) that the Company may require in order to register:
 - (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 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Company 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 Incidental Items charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items in favour of a third party without the prior written consent of the Company;
- 10.4 The Company 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.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer agrees to be a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by the Company under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
11. **Security and Charge**
- 11.1 In consideration of the Company agreeing to supply Services, 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).
- 11.2 The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 11.3 The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
12. **Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**
- 12.1 The Customer must inspect the Company's Services on completion of the Services and must within seven (7) days notify the Company in writing of any evident defect in the Services or Incidental Items provided (including the Company's workmanship) or of any other failure by the Company to comply with the description of, or quote for, the Services which the Company was to supply. The Customer must notify any other alleged defect in the Company's Services or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Company to review the Services or Incidental Items that were provided.
- 12.2 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**).
- 12.3 The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly stated or set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If the Company is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Company may refund any money the Customer has paid for the Services but only to the extent that such refund shall take into account the value of Services and Incidental Items which have been provided to the Customer which were not defective.
- 12.7 If the Customer does not consent to within the meaning of the CCA, the Company's liability for any defective Services or Incidental Items is:
 - (a) limited to the value of any express warranty or warranty card provided to the Customer by the Company in the Company's sole discretion;
 - (b) otherwise negated absolutely.
- 12.8 Notwithstanding clauses 12.1 to 12.7 but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused to arise as a result of:
 - (a) the Customer failing to properly maintain or store any Incidental Items;
 - (b) the Customer using the Incidental Items for any purpose other than that for which they were designed;
 - (c) the Customer continuing to use any Incidental Item after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Services by the Customer or any third party that is not the Company's responsibility;
 - (e) the Customer failing to follow any instructions or guidelines provided by the Company;
 - (f) fair wear and tear, any accident, or act of God.
13. **Intellectual Property**
- 13.1 Where the Company has designed, drawn or developed Incidental Items for the Customer, the copyright in any Incidental Items shall remain the property of the Company.
- 13.2 The Customer warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order
- and the Customer agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.
- 13.3 The Customer agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which the Company has created for the Customer.
14. **Default and Consequences of Default**
- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Services to the Customer. The Company will not be liable until the form of payment has been honoured by the Customer because the Company has exercised its rights under this clause.
- 14.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to the Company becomes overdue, or in the Customer's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, 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 Customer or any asset of the Customer.
15. **Cancellation**
- 15.1 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any money paid by the Customer for the Services. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Customer cancels delivery of the Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).
16. **Privacy Act 1988**
- 16.1 The Customer agrees for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company.
- 16.2 The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account; where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.
 The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 16.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Customer and Company or required by law from time to time):
 - (a) the provision of Services by the Company, its agents or distributors; and/or
 - (b) the marketing of Services by the Company, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.
- 16.5 The Company may give information about the Customer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
 The information given to the credit reporting agency may include:
 - (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that the Company is a current credit provider to the Customer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of the Company, the Customer has committed a serious credit infringement (that is, fraudulently or shown an outstanding intent to owing which are overdue by more than sixty (60) days, and for which debt collection action has been started);
 - (g) advice that cheques drawn by the Customer or one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Customer by the Company has been paid or otherwise discharged.
17. **General**
- 17.1 The failure by the Company to enforce any provision of these terms and conditions shall not constitute a breach of any provision, nor shall it affect the Company'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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Company has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 17.3 Subject to clause 12 the Company 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 Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 17.4 The Company 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.
- 17.5 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.6 The Customer agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then the Customer will take effect from the date on which the Company notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Company to provide Services to the Customer.
- 17.7 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 other event beyond the reasonable control of either party.
- 17.8 The Customer 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.