



A Bending Company Pty Ltd

TERMS AND CONDITIONS OF TRADE

Please ensure You carefully read all Terms below. In particular, we draw your attention to the following key clauses:

- **Clause 2:** These Terms apply to every Agreement and cannot be varied or replaced without Our agreement.
- **Clause 4:** We may vary Our quotation to account for, among other things, changes in Our costs of production.
- **Clause 6:** The amount You are liable to pay us may vary if there are changes in Our costs of production.
- **Clause 11:** We have a lien over property of yours that is in Our possession, and we may sell it to satisfy Your debt to us.
- **Clause 16:** Subject to non-excludable rights under the ACL, We limit our liability to the maximum extent allowed

1. Definitions

In these Terms:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

Agreement means any agreement for the provision of goods or services by Us to You;

consumer is as defined in the ACL and in determining if You are a consumer, the determination is made if You are a consumer under the Agreement;

Force Majeure Event means an event beyond the reasonable control of a party including, without limitation, accident, act of God, act or threat of terrorism or war, breakdown, epidemic, natural disaster, pandemic, import or export or travel restriction, industrial dispute, lockout or strike;

goods means goods supplied by Us to You;

GST means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;

services means services supplied by Us to You;

Small Business Contract means a small business contract within the meaning of the ACL;

Terms means these Terms and Conditions of Trade;

We, Us or Our means A Bending Company Pty Ltd (ABN 61 053 180 573); and

You or Your means the person, jointly and severally if more than one, acquiring goods or services from Us.

2. Application and acceptance of Terms

2.1. You acknowledge and agree that, unless We otherwise agree in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms including but not limited to:

- (a) Your terms and conditions of purchase (if any), no matter when You provide such terms to Us, even if You submit such terms and conditions of purchase with a written purchase order; and
- (b) any purported addition, adjustment, amendment, deletion, strike out You make to these Terms at any time that is not agreed by Us.

2.2. We may vary or amend these Terms by written notice to You at any time, and any variations or amendments will apply to quotes or orders placed after the notice date.

2.3. The Terms may include additional terms in Our quotation, which are not inconsistent with the Terms.

3. Your instructions

- 3.1. As applicable, and unless otherwise agreed in writing, all goods will be supplied in accordance with the *Recommended Standards for Cold Bending of Pipe & Tube (TPA-CBS-98)*.
- 3.2. You must provide Us with Your instructions or specific requirements, if any, in relation to the goods and services.
- 3.3. Where You provide Us with your instructions or specific requirements, We may record Our interpretation of Your instructions in Our quotation and where this occurs:
 - (a) it is Your responsibility to check that Our interpretation is accurate, and to let Us know if it is not; and
 - (b) to the maximum extent permitted at law, We will not be liable to You provided that the goods or services We supply to You are consistent with Our quotation.

4. Quotations

- 4.1. All quotations We prepare are prepared on the basis of then current costs of production, including but not limited to labour, materials and supply from third parties.
- 4.2. Subject to clause 4.3, any quotation provided by Us is:
 - (a) valid for 30 days;
 - (b) an invitation to treat only; and
 - (c) only valid if in writing.
- 4.3. Where there is a change in Our costs of supplying the goods or services due to factors beyond Our control, we reserve the right to adjust, alter, amend, change or vary Our quotation at any time to account for such change in Our costs.
- 4.4. We reserve the right to correct any obvious errors in Our estimates, invoices or quotations.

5. Formation of Agreement

- 5.1. If You wish to engage Us to supply goods or services pursuant to Our quotation, You must submit an offer to Us in the form of a written purchase order.
- 5.2. We accept an offer, and an Agreement is made, only when:
 - (a) We accept, in writing, an offer from You; or
 - (b) if We do not provide written acceptance pursuant to clause 5.2(a), We provide You with goods or services.
- 5.3. We may refuse to accept any offer.
- 5.4. We reserve the right to require Your Director(s) to provide a personal guarantee in respect of Your obligations, and to refuse to commence work or supply goods or services until such guarantee or guarantees are provided.

6. Pricing

- 6.1. Unless otherwise indicated, prices quoted for the supply of goods and services include GST and any other taxes or duties imposed on or in relation to the goods and services.
- 6.2. If You request any variation to the Agreement (including, in Our reasonable determination, any departure from any specifications, roughs, layouts, samples, dummies or printed, typewritten or other good copy upon which We have based an estimate or quotation), We may notify You of any change to the price to account for the variation and You may:
 - (a) accept the change to the price; or
 - (b) withdraw Your request for the variation.
- 6.3. You acknowledge and agree that Our costs are subject to factors beyond Our control, including changes in foreign exchange rates, commodity prices, amounts charged by third party suppliers, compliance costs and transport costs.



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- 6.4. You acknowledge and agree that, subject to clause 6.5, where there is a change in the costs incurred by Us in relation to the goods or services:
- we may give notice to You that We propose to vary Our price to take account of such change; and
 - where this occurs, You are liable for and must pay such varied price to Us.
- 6.5. If the Agreement is a Small Business Contract and We propose to vary Our price in accordance with clause 6.4, then:
- You may cancel your order within 3 days of receipt of Our notice under clause 6.4; and
 - If You cancel Your order under clause 6.5(a), You will be liable to Us in accordance with clause 18.3.
- 7. GST**
- 7.1. We are entitled to charge You the amount of any GST payable in relation to the supply of the goods or services, whether or not GST is expressly included in the quotation.
- 7.2. If You believe You are subject to an exemption from GST, You must provide appropriate evidence to Us for Our consideration at the time of Your order.
- 8. Third party materials and suppliers**
- 8.1. Where Our performance of an Agreement requires Us to procure supply from a third party on Your behalf:
- unless You are already on notice of this need, We will provide You with such notice;
 - in addition to the cost of the supply procured, We may charge You an additional amount equal to 30% of the cost of such supply, by way of handling fee; and
 - to the maximum extent permitted at law, the Agreement shall incorporate and be subject to such third party's applicable terms and conditions
- 9. Payment**
- 9.1. Unless otherwise agreed in writing, subject to 9.2, You must make payment for the goods or services in full and without deduction within 30 days of the date of Our invoice.
- 9.2. We reserve the right:
- to require payment in part or in full upon or prior to commencement or works, delivery of the goods or completion of the services;
 - where supply of the goods and services the subject of an Agreement is to be divided into stages, to invoice You upon the completion of each stage; and
 - where We agree with You that payment may be made by way of progress payments, to invoice You one month after commencement of Our work in the amount of 75% of the value of work completed.
- 9.3. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 9.4. Payment terms may be revoked or amended at Our discretion immediately upon giving You written notice.
- 9.5. The time for payment is of the essence.
- 10. Payment Default**
- 10.1. If You default in payment by the due date of any amount payable to Us, then all money which would become payable by the You to Us at a later date on any account, becomes immediately due and payable without the requirement of any notice to You, and We may, without prejudice to any of Our other accrued or contingent rights:
- charge You interest on any sum due at the rate of 12% per annum for the period from the due date until the date of payment in full, and You must pay such amounts to Us on demand;
 - charge You for, and You must indemnify Us from, all costs and expenses (including without limitation legal costs and expenses) incurred by Us resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods, and You must pay such amounts to Us on demand;
 - cease or suspend supply of goods or services to You;
 - by written notice to You, terminate any Agreement.
- 10.2. Subject to any applicable statutory stay of proceedings, We may also rely upon clauses 10.1(c) and 10.1(d):
- where You are a natural person and become bankrupt or enter into a scheme of arrangement or assignment or composition with or for the benefit of Your creditors or any class of Your creditors generally; or
 - where You are a corporation and, You enter into any scheme of arrangement or any assignment or composition with or for the benefit of Your creditors or any class of Your creditors generally, or have a liquidator, administrator, receiver or manager or similar functionary appointed in respect of Your assets, or any action is taken for, or with the view to, Your liquidation (including provisional liquidation), winding up or dissolution without winding up.
- 11. General lien**
- 11.1. You acknowledge and agree that We will, in respect of any and all unpaid amounts You owe to Us, have an enforceable general lien over any of Your goods or other property that are or is in Our possession.
- 11.2. Without prejudice to any of Our other rights under these Terms, upon Our provision of 14 days notice to you in writing:
- We will be entitled to sell at auction or by any other means any goods or property the subject of the lien specified in clause 11.1; and
 - You remain liable to Us in the full amount of the unpaid amounts owed to Us, less the proceeds We receive from any sale under clause 11.2(a).
- 12. Passing of property**
- 12.1. Until We receive full payment in cleared funds for all goods and services supplied to You, as well as all other amounts You owe to Us:
- title and property in all goods remain vested in Us and does not pass to You;
 - You hold the goods as fiduciary bailee and Our agent;
 - You must keep the goods separate from Your goods and maintain Our labelling and packaging;
 - You must hold the proceeds of sale of the goods on trust for Us in a separate account with a bank to whom You have not given security, however failure to do so will not affect Your obligation as trustee; and
 - We may enter any premises where We suspect the goods are and remove them, notwithstanding that they may have been attached to other goods that are not Our property, and for this purpose You irrevocably licence Us to enter such premises and indemnify Us from and against all costs, claims, demands or actions by any party arising from such action.





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13. Risk and Insurance

- 13.1. The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to You immediately on the goods being delivered to You or taken from Our premises.
- 13.2. The goods are sold to You on the basis that You have obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.
- 13.3. You assume all risk and liability for loss, damage or injury to persons or to property of Yours, or third parties, arising out of the use, installation or possession of any of the goods sold by Us, unless recoverable from Us on the failure of any statutory guarantee under the ACL.

14. Performance of Agreement

- 14.1. Any period or date for delivery of goods or services stated by Us is an estimate only and not a contractual commitment.
- 14.2. We will use Our reasonable endeavours to meet any estimated dates for delivery of the goods or supply of services but will not be liable for any loss or damage suffered by You or any third party for failure to meet any estimated date.
- 14.3. If We cannot deliver goods or complete services by an estimated date, We will do so within a reasonable time.
- 14.4. Where You request delivery of goods or provision of services sooner than the earlier of:
 - (a) any estimated delivery date; or
 - (b) standard time required for such delivery or provision;then:
 - (c) We must use reasonable efforts to comply with Your request and You will be liable for any additional costs incurred by Us in doing so, including but not limited to overtime and hiring additional labour; and
 - (d) to the maximum extent permitted at law, We will not be liable or responsible for any defects or imperfections in the goods or services arising from our caused by Our efforts to comply with Your request.

15. Delivery

- 15.1. Subject to clause 15.7, We will arrange for the delivery of the goods to You.
- 15.2. You are responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to You to the point of delivery.
- 15.3. Unless otherwise agreed in writing, all freight is ex factory.
- 15.4. We may make part delivery of goods or provision of services and We may invoice You for the goods or services provided.
- 15.5. You indemnify Us against any loss or damage suffered by Us, Our sub-contractors or employees as a result of delivery, except where You are a consumer and We have not used due care and skill.
- 15.6. If delivery is attempted and is unable to be completed You are deemed to have taken delivery of the goods, the goods are held at Your risk, and You are liable for reasonable storage charges (including insurance) payable monthly on demand if We have given you prior notice of the rate of such charges.
- 15.7. If agreed that You will collect the goods:
 - (a) You must collect the goods with 7 days of being advised they are ready; and
 - (b) if You do not collect the goods within this time, You are deemed to have taken delivery of the goods, the goods are held at Your risk, and You and are liable for reasonable storage charges (including insurance)

payable monthly on demand if We have given you prior notice of the rate of such charges.

16. Liability

- 16.1. Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 16.2. If You are a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against Us for failure of a statutory guarantee under the ACL.
- 16.3. If You on-supply the goods to a consumer and:
 - (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the amount specified in section 276A(1) of the ACL is the absolute limit of Our liability to You;
 - (b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Our liability to You;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by You or any third party.

- 16.4. If clause 16.2 or 16.3 do not apply, then other than as stated in the Terms We are not liable to You in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by You or any third party.

- 16.5. We are not liable for any indirect or consequential losses or expenses suffered by You or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL that cannot be excluded, restricted or modified.

- 16.6. You acknowledge that:

- (a) You have not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Us in relation to the goods or services or their use or application; and
- (b) You have not made known, either expressly or by implication, to Us, any purpose for which You require the goods or services and You have the responsibility of satisfying Yourself that the goods or services are suitable for Your use.

- 16.7. Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

17. Suspension

- 17.1. If You delay or suspend Our performance of the Agreement for any reason for a period of 30 days or more, We may invoice You, and You must pay Us, in full for:
 - (a) any and all goods and services supplied prior to such delay or suspension;





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- (b) any work in progress as at the date of such suspension, as evidenced by Us; and
- (c) any unrecoverable costs We have incurred in relation to Your order, as evidenced by us.

18. Cancellation

- 18.1. If We are unable to deliver the goods or provide the services, then We may cancel Your order (even if it has been accepted) by written notice to You.
- 18.2. To the maximum extent permitted at law, and subject to clause 6.5, no purported cancellation of an order or any part of it by You is binding on Us once the order has been accepted.
- 18.3. If:
 - (a) You wish to cancel an order and We agree to cancellation; or
 - (b) You cancel an order under clause 6.5; or
 - (c) an Agreement is terminated under clause 21.4;then You are liable for and must pay Us on demand:
 - (d) for any and all goods and services supplied prior to the date of cancellation or termination, as applicable;
 - (e) for any work in progress as at the date of cancellation or termination, as applicable, as evidenced by Us; and
 - (f) any unrecoverable costs We have incurred in relation to Your order, as evidenced by us.

19. Shortages and Exchanges

- 19.1. You must inspect all goods immediately upon delivery.
- 19.2. Subject to clause 19.3 and 19.4, unless You notify Us with full details and description within 3 working days of delivery:
 - (a) You are deemed to have accepted the goods; and
 - (b) We will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement
- 19.3. When any shortages, claim for damaged goods or non-compliance with the Agreement specifications is accepted by Us, We may, at Our option, replace the goods, or refund the price of the goods.
- 19.4. Subject to clause 19.5, We will not under any circumstances accept goods for return that:
 - (a) have been specifically produced, imported or acquired to fulfil the Agreement;
 - (b) have been used, or altered in any way; or
 - (c) are not in their original condition and packaging.
- 19.5. If You are a consumer, nothing in this clause 19 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

20. Your property

- 20.1. To the maximum extent permitted at law:
 - (a) any equipment, materials or property You provide to Us or that is provided to Us on Your behalf (including in transit) (**Your Property**) is held by Us at Your risk;
 - (b) We may charge You an agreed amount for handling or storage of Your Property;
 - (c) We accept no liability or responsibility for any damage or loss of Your Property;

- (d) You are at all times responsible for obtaining any and all insurance for Your Property; and
- (e) You bear the risk and cost of any and all spoilage of Your Property, unless such spoilage arises from Our gross carelessness.

- 20.2. Where You provide Your Property to Us for use in supplying goods and services, You acknowledge and agree that:
 - (a) You must provide us with adequate quantities of relevant materials to cover spoilage; and
 - (b) We are under no obligation to check or count any such materials provided to Us unless You request in writing that we do so, in which case We may charge you for such checking or counting.
- 20.3. Without prejudice to Our other rights, and to the maximum extent permitted by law, We exclude any and all liability for any defects or imperfection in any goods or services supplied to You where such defect or imperfection arises from any defect or imperfection in Your Property or unsuitability of Your Property for their intended purpose.
- 20.4. If You provide Us with Your Property without instructions, then at the expiry of three months after receipt of Your Property We may dispose of or sell Your Property and retain any proceeds as compensation for Our storage costs.

21. Force Majeure

- 21.1. Subject to clause 21.2, neither party is liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by a Force Majeure Event.
- 21.2. Nothing in this clause 21 operates to excuse You from any obligation to pay money to Us.
- 21.3. If a party is prevented from acting by a Force Majeure Event, that party must:
 - (a) promptly notify the other party of the existence and expected duration of the Force Majeure Event;
 - (b) take all reasonable steps to alleviate or remedy the Force Majeure Event; and
 - (c) subject to clause 21.4, resume performance of the obligation prevented by the Force Majeure Event as soon as practicable.
- 21.4. If a Force Majeure Event prevents performance of an obligation beyond 60 days, either party may suspend or terminate the Agreement by written notice.

22. Miscellaneous

- 22.1. The law of Victoria from time to time governs the Terms, and the parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 22.2. A party's failure to enforce any of these Terms shall not be construed as a waiver of any of that party's rights.
- 22.3. If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms.

