

Distinctive Blinds Pty Ltd - Terms & Conditions of Trade

Delivery & Installation- Delivery will be effected as soon as possible as stated on this order however due to the nature of custom manufacturing delays or errors this timeframe is an estimate only. No compensation will be offered for inconvenience, cost, lost work time or any other associated losses incurred by the Client due to delays, manufacturing errors, warranty or defect. See clause 5,6,13

Defects & Warranty- Unless otherwise specified Distinctive Blinds & Curtains' products are covered by a twelve (12) month manufacturer's warranty.

Where component suppliers offer a longer warranty this covers only the component costs and not any associated labour or installation costs.

No guarantees or warranty provide for any fault arising out of obvious damage/misuse or adjustments required due to house movement. Refer clause 11

Cancellations of Order- In the event of cancellation the Client shall pay all costs incurred by Distinctive Blinds & Curtains up to the date of cancellation.

Refer Clause 13

Recovery Of Costs- Unless otherwise agreed the Client agrees to pay any and all outstanding amounts due upon completion of the installed Products or when invoiced and requested by Distinctive Blinds & Curtains and according to any payment plan. After seven (7) days any outstanding amount shall incur a five percent (5%) administration fee and be subject to default interest of two and a half percent (2.5%) interest compounding per calendar month. The Client will incur any and all fees and charges in recovering monies. Refer Clauses 4 & 12

1. Definitions

- 1.1 "Distinctive Blinds & Curtains" means Distinctive Blinds Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Distinctive Blinds Pty Ltd.
- 1.2 "Client" means the person's buying the Products 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.
- 1.3 "Products" means all Products or Services supplied by Distinctive Blinds & Curtains to the Client at the Client's request from time to time (where the context so permits the terms 'Products' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the products as agreed between Distinctive Blinds & Curtains and the Client in accordance with clause 4 Below.

2. Acceptance

- 2.1 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 delivery of the Products.
- 2.2 These terms and conditions may only be amended with Distinctive Blinds & Curtains' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Distinctive Blinds & Curtains.

3. Change in Control

- 3.1 The Client shall give Distinctive Blinds & Curtains 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, email address, contact phone numbers, or business practice). The Client shall be liable for any loss incurred by Distinctive Blinds & Curtains as a result of the Client's failure to comply with this clause.

4. Price and Payment

- 4.1 At Distinctive Blinds & Curtains' sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Distinctive Blinds & Curtains to the Client; or
 - (b) the Price as at the date of delivery of the Products according to Distinctive Blinds & Curtains' current price list; or
 - (c) Distinctive Blinds & Curtains' quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
 - 4.2 Distinctive Blinds & Curtains reserves the right to change the Price if a variation to Distinctive Blinds & Curtains' quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as non-standard requirements for electrical works, poor weather conditions, limitations to accessing the site, prerequisite work by any third party not being completed, hidden wires or pipes in walls) will be charged for on the basis of Distinctive Blinds & Curtains' quotations and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
 - 4.3 At Distinctive Blinds & Curtains' sole discretion a deposit of up to fifty (50%) percent of the Price may be required.
 - 4.4 The Price will be payable by the Client on the date/s determined by Distinctive Blinds & Curtains, which may be:
 - (a) 50% Deposit, a further pre-installation payment and final payment on install;
 - (b) on delivery of the Products;
 - (c) before delivery of the Products;
- A date requested by the Company including before final onsite works are completed;
- (a) the payment plan or date specified on any invoice or other form as being the date for payment; or
 - (b) failing any notice to the contrary, the date which is (7) days following the date of any invoice given to the Client by Distinctive Blinds & Curtains.
- 4.5 The Client shall agree to pay any progress payment requested by Distinctive Blinds & Curtains where part delivery has occurred even if all on-site works are incomplete.
 - 4.6 Payment may be made by cash, cheque, bank cheque, electronic-line banking, credit card or by any other method agreed to between the Client and Distinctive Blinds & Curtains.
 - 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery of Products

- 5.1 Delivery ("Delivery") of the Products is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Products at Distinctive Blinds & Curtains' address; or
 - (b) Distinctive Blinds & Curtains (or Distinctive Blinds & Curtains' nominated carrier) delivers the Products to the Client's nominated address even if the Client is not present at the address.
- 5.2 At Distinctive Blinds & Curtains' sole discretion the cost of delivery is in addition to the Price.
- 5.3 The Client must take delivery by the receipt or collection of the Products whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Products as arranged then Distinctive Blinds & Curtains shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 Any time or date given by Distinctive Blinds & Curtains to the Client is an estimate only. The Client must accept delivery of the Products even if late and Distinctive Blinds & Curtains will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

6. Delays & Extension of Time

- 6.1 Distinctive Blinds & Curtains and the Client acknowledge that due to the custom manufactured and highly specific nature of the Products, delays in Delivery due to supply restrictions, manufacturing errors or installation delays may occur.
- 6.2 The Client accepts that delays of up to eight (8) weeks will be considered reasonable where supply restrictions, manufacturing errors or installation delays occur.
- 6.3 Distinctive Blinds & Curtains will endeavour to alert the Client's via phone, email or sms message about delays before any expected completion date, however failure to do so does not constitute a failure of Distinctive Blinds & Curtains' contractual obligation.
- 6.4 The Client agrees that where Distinctive Blinds & Curtains' ability to perform its obligations of this contract adversely affected by war, strike, trade disputes, damage to plant or machinery, shortage or delay of materials or any other cause beyond the control of Distinctive Blinds & Curtains the contract may be terminated or suspended with written notice to the Client for up to three (3) months at the discretion of Distinctive Blinds & Curtains.
- 6.5 The Client accepts that installation may be cancelled with little notice if the installer is delayed or due to hot or wet weather, unsafe access or unavailability of parking.
- 6.6 The Client accepts that additional periods of access for installation may be required due to manufacturing errors or delays and access must be allowed as per clause 5.1
- 6.7 Distinctive Blinds & Curtains shall not be liable for any loss, costs or damage whatsoever arising from delays.
- 6.8 Distinctive Blinds & Curtains may request full or part payments in the event of delays as per clause 4.5.

7. Risk

- 7.1 Risk of damage or loss of the Products passes to the Client on Delivery and the Client must insure the Products on or before Delivery.
- 7.2 If any of the Products are damaged or destroyed following delivery but prior to ownership passing to the Client, Distinctive Blinds & Curtains is entitled to receive all insurance proceeds payable for the Products.
- 7.3 The production of these terms and conditions by Distinctive Blinds & Curtains is sufficient evidence of Distinctive Blinds & Curtains' rights to receive the insurance proceeds without the need for any person dealing with Distinctive Blinds & Curtains to make further enquiries.
- 7.4 Where Distinctive Blinds & Curtains is required to install the Products, the Client warrants that the structure of the premises or framing upon which these Products are to be installed is sound and will sustain the installation and work incidental thereto, and that the Client must advise Distinctive Blinds & Curtains of the precise location of all wiring or plumbing that may be hidden behind any surface at the installation, site and clearly mark the same. Distinctive Blinds & Curtains shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or framing be unable to accommodate the installation or for any damage to hidden wiring or pipes (whether or not the Client is aware of their exact location).
- 7.5 Distinctive Blinds & Curtains shall reserve the right to suspend installation due to safety reasons (including, but not limited to, hot or inclement weather), unsafe access or the unavailability of parking and no compensation for losses incurred by the Client will be accepted.

8. Product Terms & Warnings

- 8.1 The Client acknowledges and accept that:
 - (a) whilst fabric and component manufacturers make every effort to match dye lots, paints, weaves, colours or shades, these may vary between batches of product and/or between sales samples and the actual product supplied; and
 - (b) fabric and component manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when installed; and
 - (c) the manufacturing process for blinds, awnings and the like may require seams and joins and the appearance of these may be affected by light source and in particular the construction of the chosen product.
 - (d) mismatching of patterned fabric may result due to the inherent nature of fabric as mentioned in the above clauses; and
 - (e) fabric fur, ripples or marks will be considered viewed from at least one (1) metre of distance in an even light; and
 - (f) All powder coated and painted surfaces will have a uniform appearance in colour and texture when viewed from at least one (1) metre of distance in an even light; and
 - (g) all powder coated and painted surfaces shall be free of excessive scratches that penetrate through the layers of coatings to the bare metal or surface below as per AS3715-2002.
- (h) Child safety restraints will be installed where necessary by law.
 - 8.2 The Client accepts that due to the nature of fabric, the finished Products may not roll up or sit level in either the up or down positions. Although Distinctive Blinds & Curtains shall endeavour to fit the Products to the best possible placement, the Client shall accept that the framing the Products are being attached to may not be square and/or plumb.
 - 8.3 The Client accepts that Fabrics can have a tendency to ripple, smile or sag especially when installed on rollers wider than 2.5mts. The Client accepts that this effect is normal and commercially acceptable.
 - 8.4 The Client accepts that tension on fabric (in particular applying to Ziptrak and Zipscreen blinds) may cause some rippling or sagging and this is considered accepted industry standards.
 - 8.5 Distinctive Blinds & Curtains shall be indemnified from any damage that may be caused (including, breakage to tiles) during the removing of existing fittings in preparation of the installation of the Products.
 - 8.6 Where Distinctive Blinds & Curtains causes damages during (including but not limited to tiles, wall fixtures, bricks and plaster), Distinctive Blinds & Curtains shall replace or repair the damaged parts to a commercially acceptable standard and/or as close to the original part as possible. The Client therefore accepts that some variation may occur due to dye lots, patterns of tiles or damaged parts due to age of the parts and availability of such replacements.

9. Access

- 9.1 The Client shall ensure that Distinctive Blinds & Curtains has a clear and free access to the work site at all times to enable them to undertake the works. Distinctive Blinds & Curtains shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Distinctive Blinds & Curtains.

10 Title

- 10.1 Distinctive Blinds & Curtains agree that ownership of the Products shall not pass until:
 - (a) the Client has paid Distinctive Blinds & Curtains all amounts owing to Distinctive Blinds & Curtains; and
 - (b) the Client has met all of its other obligations to Distinctive Blinds & Curtains.
- 10.2 Receipt by Distinctive Blinds & Curtains 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.
- 10.3 It is further agreed that:
 - (a) until ownership of the Products passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Products and must return the Products to Distinctive Blinds & Curtains on request;
 - (b) the Client holds the benefit of the Client's insurance of the Products on trust for Distinctive Blinds & Curtains and must pay to Distinctive Blinds & Curtains the proceeds of any insurance in the event of the Products being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Products other than in ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Products then the Client must hold the proceeds of any such act on trust for Distinctive Blinds & Curtains and must pay or deliver the proceeds to Distinctive Blinds & Curtains on demand;
 - (d) the Client shall not convert or process the Products 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 Distinctive Blinds & Curtains and must sell, dispose of or return the resulting product to Distinctive Blinds & Curtains as it so directs.
 - (e) the Client irrevocably authorises Distinctive Blinds & Curtains to enter any premises where Distinctive Blinds & Curtains believes that Products are kept and recover possession of the Products;
 - (f) Distinctive Blinds & Curtains may recover possession of any Products in transit whether or not delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of Distinctive Blinds & Curtains;
 - (h) Distinctive Blinds & Curtains may commence proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products has not passed to the Client.

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

- 11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 11.2 The Client must inspect the Products on delivery and must within seven (7) days of delivery notify Distinctive Blinds & Curtains in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Products as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Distinctive Blinds & Curtains to inspect the Products.
- 11.3 If the Client is not a consumer within the meaning of the CCA, Distinctive Blinds & Curtains liability for any defect or damage in the Products is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by Distinctive Blinds & Curtains at Distinctive Blinds & Curtains' sole discretion;
 - (b) limited to any warranty to which Distinctive Blinds & Curtains is entitled, if Distinctive Blinds & Curtains did not manufacture the Products;
 - (c) otherwise negated absolutely.
- 11.4 Subject to this clause 11, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 11.2; and
 - (b) Distinctive Blinds & Curtains has agreed that the Products are defective; and
 - (c) the Products are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Products are returned in as close a condition to that in which they were delivered as is possible.
- 11.5 Notwithstanding clauses 11.2 to 11.4 but subject to the CCA, Distinctive Blinds & Curtains 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 any Products;
 - (b) the Client using the Products for any purpose other than that for which they were designed including wind or storm related damage;
 - (c) the Client continuing the use of any Products after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines Provided by Distinctive Blinds & Curtains;
 - (e) the Client or any third party arranged by the Client installs the Products in an incorrect manner;
 - (f) any house movement that impacts on the fit of the Products after installation.
- (g) fire wear and tear, accident, or act of god.

12. Default and Consequences of Default

- 12.1 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 Distinctive Blinds & Curtains' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.
- 12.2 If the Client owes Distinctive Blinds & Curtains any money the Client shall indemnify Distinctive Blinds & Curtains from and against all costs and disbursements incurred by Distinctive Blinds & Curtains in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Distinctive Blinds & Curtains' contract default fee, and bank dishonour fee).
- 12.3 Without prejudice to any other remedies Distinctive Blinds & Curtains may have, if at any time the Client is in breach of these terms and conditions (including those relating to payment) under these terms and conditions Distinctive Blinds & Curtains may suspend or terminate the supply of Product to the Client. Distinctive Blinds & Curtains will not be liable to the Client for any loss or damage the Client suffers because Distinctive Blinds & Curtains has exercised its rights under this clause.

12.4 Without prejudice to Distinctive Blinds & Curtains other remedies at law Distinctive Blinds & Curtains shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Distinctive Blinds & Curtains shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Distinctive Blinds & Curtains becomes overdue, or in Distinctive Blinds & Curtains opinion the Client will be unable to make a payment when it falls due;
- (b) the Client 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 Client or any asset of the Client.

13. Cancellation

- 13.1 Distinctive Blinds & Curtains may cancel any contract to which these terms and conditions apply or cancel delivery of Products at any time before the Products are delivered by giving written notice to the Client. In giving such notice Distinctive Blinds & Curtains shall repay to the Client any money paid by the Client for the Products. Distinctive Blinds & Curtains shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of Products the Client shall be liable for any and all loss and/or Costs incurred (whether direct or indirect) by Distinctive Blinds & Curtains as a direct result of the cancellation (including, but not limited to, any loss of profits) being at minimum of one third (33%) of the price.

14. Privacy Act 1998

- 14.1 The Client agrees for Distinctive Blinds & Curtains to obtain from a credit reporting body (CRB) a credit report containing personal information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Distinctive Blinds & Curtains.
- 14.2 The Client agrees that Distinctive Blinds & Curtains 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 years.

- 14.3 The Client consents to Distinctive Blinds & Curtains being given a consumer credit report to collect overdue payment on commercial credit.

14.4 The Client agrees that personal credit information provided may be used and retained by Distinctive Blinds & Curtains for the following purposes (and for other agreed purpose or required by):

- (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) processing of any payments 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 Products.
- 14.5 Distinctive Blinds & Curtains may give information about the Client to a CRB for the following purpose:
 - (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.
 - 14.6 The information given to the CRB may include:
 - (a) personal information as outlined in 14.1 above;
 - (b) name of the credit provider and that Distinctive Blinds & Curtains 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 Distinctive Blinds & Curtains has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Distinctive Blinds & Curtains, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to more than one hundred and fifty dollars (\$150)

- 14.7 The Client shall have the right to request (by email) from Distinctive Blinds & Curtains
 - (a) a copy of the information about the Client retained by Distinctive Blinds & Curtains and the right to request that Distinctive Blinds & Curtains correct any incorrect information; and
 - (b) that Distinctive Blinds & Curtains does not disclose any personal information about the Client for the purpose of direct marketing;
- 14.8 Distinctive Blinds & Curtains will destroy personal information upon the Client's request (by email) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 14.9 The Client can make a privacy complaint by contacting Distinctive Blinds & Curtains via email. Distinctive Blinds & Curtains 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

15. Unpaid Seller's Rights

- 15.1 Where the Client has left any item with Distinctive Blinds & Curtains for repair, modification, exchange or for Distinctive Blinds & Curtains to perform any other service in relation to the item and if after three (3) months Distinctive Blinds & Curtains has not received or been tendered the whole of any monies owing to it by the Client, Distinctive Blinds & Curtains shall have, until all monies owing to Distinctive Blinds & Curtains:
 - (a) a lien on the item; and
 - (b) 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.
- 15.2 The lien of Distinctive Blinds & Curtains shall continue despite the commencement of proceedings, or judgement for any monies owing to Distinctive Blinds & Curtains having been obtained against the Client.

16 General

- 16.1 The failure by Distinctive Blinds & Curtains to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Distinctive Blinds & Curtains 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 provision shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they shall be governed by the laws of South Australia in which Distinctive Blinds & Curtains has its principal place of business, and are subject to the jurisdiction of the Courts in South Australia.
- 16.3 Subject to clause 11, Distinctive Blinds & Curtains shall be under no liability whatsoever to the Client for indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Distinctive Blinds & Curtains of these terms and conditions (alternatively Distinctive Blinds & Curtains' liability shall be limited to damages which under no circumstances shall exceed the Price of the Products).
- 16.4 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 Distinctive Blinds & Curtains nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5 Distinctive Blinds & Curtains may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.6 The Client agrees that Distinctive Blinds & Curtains may amend these terms and conditions at any time. If Distinctive Blinds & Curtains makes a change to these terms and conditions, then that change will take effect from the date on which Distinctive Blinds & Curtains notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Distinctive Blinds & Curtains to provide Products to the Client.
- 16.7 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.
- 16.8 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.