

GUBBA GARDEN SHEDS AND STUDIOS TERMS OF SALE

1. Definitions

- 1.1 "Agreement" means these Terms of Sale.
- 1.2 'Goods' shall mean all goods, including Sheds, or services provided by us to you and shall include, without limitation, or any fee or charge associated with the supply of goods by us to you.
- 1.3 'Price' shall mean the cost of the Goods as agreed between us and you subject to clause 3 of this Agreement.
- 1.4 'Shed' means any building, structure, garden shed, studio, sleep-out work-shed, or similar structure.
- 1.5 'We', 'Us' and 'Our' shall mean Gubba Products Limited and its agents and employees.
- 1.6 'You' shall mean the customer, its agents and employees, or any person acting on behalf of and with the authority of the customer, or any person purchasing Goods from us.

2. Acceptance

- 2.1 Any instructions or order received by us from you for the supply of Goods shall constitute acceptance of this Agreement.
- 2.2 The terms set out in any email or letter override this Agreement if there is any inconsistency between them.
- 2.3 All Goods ordered by you and accepted by us are subject to the availability of the Goods. If Goods are not available for any reason either you or we may cancel your order and all monies paid, if any, will be immediately refunded without any further claim by either party.

3. Price

- 3.1 Where no price is stated in writing or agreed to orally the Goods shall be supplied at our standard rate as at the date of supply. Any price stated in quotation will be valid for 30 days from the date of the quotation.
- 3.2 The Price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond our control between the date of the contract and the date of the supply of the Goods.
- 3.3 Any published prices on our literature or websites are indicative only and are not an offer to supply capable of being accepted.
- 3.4 Unless stated otherwise, all prices include GST.

4. Payment

- 4.1 You must pay the purchase price of the Goods in full in cleared funds before delivery.
- 4.2 Custom goods must be paid for in full in cleared funds before manufacture begins.
- 4.3 50% of assembly fees and any extra materials required must be paid in cleared funds before the assembler arrives on site.
- 4.4 The remaining 50% of assembly fees and materials is to be paid within 7 working days of the completion of assembly and installation of the Goods.
- 4.5 Interest may be charged on any amount owing after its due date at the rate of 1% per month or part month.
- 4.6 Should you fail to pay any amount due to us by its due date, then you shall pay all of our costs and expenses (including legal costs) which may be incurred in the recovery or attempted recovery of overdue amounts from you.
- 4.7 If your account is in default, we may cease to supply you with any further Goods until the default is remedied.
- 4.8 Prior to the manufacture of Goods, we may require a deposit from you. If we do, we may withhold any Goods and manufacturing until the deposit has been paid.

5. Cancellation

- 5.1 Cancellation of an order may incur a fee at our discretion, plus any freight charges to return the Goods to the manufacturer and any costs arising from damage to the Goods during transit.
- 5.2 Once goods are delivered, delivery fees for cancelled orders are not refundable.
- 5.3 Custom orders for Goods cannot be cancelled. Any cancellation of custom Goods may incur charges at our discretion.

6. Ownership and Risk

- 6.1 Ownership of Goods remains with us until payment is made in full for the Goods.
- 6.2 We supply the Goods to you on the basis that we have a purchase money security interest (as defined in the Personal Property Securities Act 1999) in the Goods.
- 6.3 If payment for the Goods is overdue in whole or in part we may repossess and resell or retain the Goods and may for that purpose enter upon your premises or any other premises upon which the Goods are situated at any time and without notice and without being in any way liable to you or any other person or entity.
- 6.4 If you dispose of any of the Goods before payment is made in full, you shall hold the proceeds of sale in trust for us.
- 6.5 The risk of any loss or damage to any Goods sold, or deterioration of the Goods, due to any cause whatsoever shall pass to you upon delivery of the Goods. If the Goods remain on our premises owing only to the failure of you to accept the Goods or at your request, such Goods shall be at your risk.

7. Delivery

- 7.1 As we are reliant on the manufacturers of the Goods and freighters, we can make no guarantees about delivery times. Any delivery time supplied to you is therefore a guideline only. Custom sheds take longer to make and occasionally components are not available immediately. If you have any specific timeframe requirements for delivery of the Goods, please advise these when placing the order, we will do all we can to meet them for you.
- 7.2 On delivery of the Goods, you must inspect the Goods as soon as reasonably possible to check that your order is complete and not damaged in anyway. If the order is not complete or damaged, you must notify us within 48 hours and supply us with whatever information or evidence you may have relating to the incomplete order or damaged Goods.

- 7.3 Subject to clause 7.2 and any obligation we have under the Consumer Guarantee Act 1963, if applicable, we will arrange for the order to be correctly completed and delivered or the damaged Goods replaced. If Goods are observed to be damaged on arrival, you must send the damaged Goods back with the same delivery driver if that is feasible at the time and notify us immediately.
- 8. Storage**
- 8.1 Sheds being picked up from our warehouse or a freight depot must be picked up within 14 days of notification of their arrival. Failure to do so may incur a reasonable storage fee.
- 9. Assembly**
- 9.1 We work with qualified assemblers including a network of assemblers across the country who specialise in Kitset Shed assembly. We cannot guarantee an assembly time frame as that can be affected by demand and weather. Whenever applicable, we will, however, do our best to get the Goods erected for you in a timely manner.
- 9.2 Unless stated otherwise, all assembly work is quoted for a clear, level site on solid ground. If work is required to level or reinforce the site extra charges may be incurred on an hourly rate plus any materials. If there is more than 2 hours work required to prepare the site the assembler may choose to reschedule the job to a time when the site has been sufficiently prepared.
- 9.3 If the assembler arrives on site and finds that they cannot complete the job due to site conditions, we may charge you a reasonable call out fee.
- 10. Building Consent / Permits / Building Code Requirements**
- 10.1 We strongly recommend you check any building consent requirements with your local council. We do not provide any building consent or permit advice. Some sheds are available with a "Producers Statement" which states that they meet building code requirements.
- 10.2 You must advise us before purchase if you require a building consent so we can guide you to the correct Goods.
- 11. Colours, Images and Product specifications**
- 11.1 We recommend that you inspect a colour swatch if colours are critical to you. Computer screens and printing give an indication of colour only and are a close representation but not exact. To the maximum extent permitted by law, we are not responsible for any colour misrepresentations.
- 11.2 From time to time we may change our material specifications and product images. Every effort is made to ensure our website and literature display correct images and specifications, however we reserve the right to change materials specified with like materials of similar or better appearance and durability.
- 12. Foundations**
- 12.1 A concrete pad is always the strongest foundation for any shed. We particularly recommend a concrete pad for high wind areas.
- 12.2 Garden Master and Galvo Sheds are only warranted under clause 16 in high wind areas if assembled and correctly bolted to a recessed concrete pad. We can supply detailed instructions on how to lay a suitable concrete pad.
- 12.3 All sheds should be firmly secured to the ground, with concreted piles, bolted securely to concrete / tarmac or pegs driven into the ground and secured to the shed/floor as a bare minimum.
- 12.4 Any concrete pads should be square and level. If they are not exactly square and level this can cause issues with the shed assembly and extra charges may be incurred.
- 12.5 Please talk to us if you are in a high wind area so we can recommend the correct shed and foundations to suit the location.
- 13. Incorrect Goods**
- 13.1 Occasionally Goods are supplied incorrectly by the manufacturer. Manufacturers do their best to avoid such a situation but it does happen from time to time. We will endeavour to resupply any incorrect or missing parts as quickly as possible.
- 14. Guarantee**
- 14.1 If you have signed this Agreement as a guarantor, you agree that we may recover from you payment of any moneys owing by the customer to us.
- 15. Limitation of Liability**
- 15.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on us, our liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the lesser of the minimum extent required by the relevant statute or the fees paid under the invoice for the Goods.
- 15.2 Except as otherwise provided by clause 15.1, we shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of the Goods to you, including consequential loss whether suffered or incurred by you or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Goods provided by us to you.
- 15.3 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where we provide the Goods for the purposes of a business in terms of sections 2 and 43 of the Consumer Guarantees Act 1993.

- 15.4 We will not be liable to you for any loss or damage arising out of or in connection with any delay or failure to perform the terms of the contract of supply where such delay or failure is caused directly or indirectly from causes beyond our control (including any failure by any of our suppliers to supply on time).
- 15.5 Except as otherwise stated in clause 15.1 we will not be liable to you for any loss or damage arising out of any misuse or abuse of the Goods or in the case of any Express Warranty provided by a manufacturer, any failure to comply with the requirements for the use or maintenance of the Goods as stated in such express warranty.

16. Warranties and Warnings

- 16.1 No representation, condition, warranty or promise expressed or implied by law or otherwise applies to the Goods or Services except where the Goods are supplied pursuant to the Consumer Guarantees Act 1993 (subject to clause 15.1 and 15.3) or particular Goods are supplied with a manufacturer's express warranty included in which case such warranty will apply.
- 16.2 We take pride in the Goods we supply to our customers and subject to this Agreement we stand behind the quality of the Goods we supply when they are properly used and maintained or where applicable used in accordance with any manufacturer's express warranty for any particular type of Goods.
- 16.3 You agree to comply with any instructions provided by us to you in relation to the use of the Goods.
- 16.4 Subject to your compliance with clause 16.3, if you observe an imperfection or fault arising from the use of any Goods supplied by us within twelve (12) months of the Goods having been delivered to you, then subject to this Agreement and particularly clause 15, which recognises that you may have certain additional rights under the Consumer Guarantees Act 1993 and the Fair Trading Act 1986, if we are satisfied in our discretion having regard to reasonable and normal use of the Goods and the material composition of the Goods that there is in our view a justified claim of imperfection or defect, then we will at our cost either remedy the imperfection or defect if that is reasonably possible or replace the item for you if a replacement is available. You should appreciate however that sometimes remedies or restoration cannot entirely remove the imperfection in some items due to the nature of the material used in the item or the work undertaken to repair an item.
- 16.5 Where particular Goods are manufactured and an express warranty is provided by the manufacturer, you must:
- (a) comply with the manufacturer's requirements for use and maintenance of the Goods where that is applicable;
 - (b) note any specific disclaimer that may apply to such Goods with regard to standards of use and location.
- 16.6 Any warranty provided by us or the manufacturer of the Goods will not cover damage, whether accidental or intentional to the Goods.
- 16.7 You will need to arrange your own insurance cover for the Goods to cover damage due to acts of God, fire or extreme weather conditions.

17. Indemnity

- 17.1 You indemnify us and our officers, directors, agents, advisers and employees against any actions, proceedings, losses, damages, liabilities, claims, costs and expenses including fines, penalties, legal and other professional costs on a full indemnity basis that we or any of our officers, directors, agents, advisers or employees incurs or suffers as a direct or indirect result of the provision of the Goods by us to you pursuant to this agreement or any breach of this Agreement by you.

18. Privacy Act

- 18.1 You agree that we may disclose information we hold about you to credit reporting and/or debt collection agencies, as necessary to recover any amount you owe us. You also agree that we may obtain information about your credit history from appropriate agencies.

19. General

- 19.1 This Agreement shall be binding on the legal representatives, assignees and successors of both parties.
- 19.2 If any provision of this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.3 No failure or delay on the part of either party in exercising any power or right under this Agreement will operate as a waiver, nor will any single or partial exercise of such right or power preclude any other or future exercise of the same, or any other right or power contained in this Agreement.
- 19.4 We shall not be liable for any failure or delay which results from circumstances beyond our reasonable control, including, without limitation: unavoidable delays in production; delays in the delivery of raw materials; default by sub-contractors; default by component suppliers; strikes and labour unrest; shipping delays; shortages; war; government intervention; fire; flood; accident; natural disaster; or any other event interpreted under New Zealand law as an act of God.
- 19.5 All intellectual property relating to the Goods supplied including trademarks and copyright remains at all times the property of the owner and must not be infringed in anyway by you.