

WEBSITE TERMS AND CONDITIONS

This website is owned and operated by Banyan Constructions Pty Ltd. By accessing this website, you agree to be bound by the following terms and conditions.

1. Acceptance of Terms and Conditions

- 1.1 By visiting our Website you agree to be bound by these Terms and Conditions in full, including those additional terms and conditions and policies referenced herein and/or available by hyperlink.
- 1.2 These Terms and Conditions apply to all users of the site, including without limitation users who are browsers, vendors, customers, merchants, and/ or contributors of content.
- 1.3 Please read these Terms and Conditions carefully before accessing or using our website. You must not use our Website if you do not accept these Terms and Conditions or any part of them.

of Content for personal use.

3.3 You must not:

- (a) republish any Content from our Website;
- (b) present any Content in public;
- (c) reproduce or exploit any Content on this Website for commercial purpose;
- (d) edit or otherwise modify any Content on the Website; or
- (e) redistribute any Content from this Website unless we expressly permitted redistribution.

2. Acceptable Use of Website

- 2.1 We grant you a non-exclusive, non-transferable, revocable (by us), limited licence to view and use information accessible from the Website.
- 2.2 You must not use the Website for any purpose other than permitted under clause 2.1 above, and specifically you must not:
- (a) cause damage or interfere with accessibility to the Website;
 - (b) use the Website in connection with illegal, unlawful, fraudulent, immoral or harmful purposes or activities;
 - (c) store, transmit or distribute any Malicious Computer Program or circumvent the security features of the Website, other websites or access to the internet; or
 - (d) conduct any systematic or automated data collection activities.

4. No Warranty as to Website

- 4.1 The Website is provided 'as is' and we do not provide any express or implied representation or warranty and disclaims all responsibility as to:
- (a) the availability of the Website and its associated services at the time you wish to use it;
 - (b) merchantability, fitness for a particular purpose and non-infringement;
 - (c) accuracy or validity of information and Content on the Website; and
 - (d) whether Content is free from any Malicious Computer Program.
- 4.2 No Content on the Website constitutes advice of any kind and you should consult with an appropriately qualified party prior to using or relying on the Content or engaging us.

3. Intellectual Property

- 3.1 We own or are licensed to use our Intellectual Property in the Website.
- 3.2 You may only view and download Content on the Website for caching purposes and print a single copy

5. Third Party Websites and Materials

- 5.1 In this clause:
- (a) **Third Party Material** means material from a Third Party Website which are linked or framed to and from a Third Party Website; and

(b) **Third Party Website** means a website operated by a third party.

5.2 We do not verify, endorse or approve Third Party Material and we provide no warranty or representation about Third Party Material or Third Party Websites, including (but not limited to) in relation to:

- (a) the quality, accuracy, merchantability or fitness for purpose of Third Party Material or products or services available from Third Party Website; or
- (b) whether they infringe any Intellectual Property Rights of any person or entity.

5.3 We are not responsible or liable for:

- (a) any offers, statements or representations that are made on behalf of a Third Party Website; or
- (b) any Malicious Computer Program from Third Party Websites.

6. Disclaimer of Other Warranties

6.1 To the full extent permitted by law, we exclude all representations, warranties or terms (whether express or implied) not otherwise specified in these Terms and Conditions (whether in respect of the Website, goods, or otherwise).

6.2 These Terms and Conditions include, by implication, only those warranties, conditions and terms that:

- (a) law or legislation implies into these Terms and Conditions; and
- (b) law or legislation prohibits the parties from modifying, excluding or contracting away;

such as any warranties implied by the Australian Consumer Law which cannot be modified or excluded.

7. Limitation of Liability

7.1 In this clause, a **Covered Party** means:

- (a) us, our affiliates, and any officer, director, employee, sub-contractor, agent, related body corporate or successor; and

- (b) each third party supplier of Content, their affiliates, and any officer, director, employee, subcontractor, agent, body corporate or successor.

7.2 To the fullest extent permitted under the law, a Covered Party is not responsible or liable for:

- (a) content provided to you for free-of-charge;
- (b) inaccuracy, errors or omissions with content;
- (c) unavailability or interruption of usage of the Website and its services;
- (d) any delay or failure in performance beyond the reasonable control of a Covered Party;
- (e) loss of data;
- (f) any indirect, special or consequential liability to a user (including legal fees) arising out of or from content or use of the Website;
- (g) consequences resulting from your provision of false, fraudulent or incorrect information in relation to the Website; or
- (h) any breach of these Terms and Conditions by you.

7.3 The exclusions and limitations of liability in this clause 7 apply even if you expressly advise a Covered Party of the potential loss. However, nothing in these Terms and Conditions will exclude or limit our liability in respect of any matter which it would be illegal or unlawful for us to exclude or limit, or to attempt or purport to exclude or limit, our liability.

8. Indemnity

8.1 You agree to indemnify us and undertake to keep us indemnified against any loss, damage, costs, expenses, claims, liability (including legal fees) whatsoever arising out of or in connection with:

- (a) your breach of these Terms and Conditions (including any of your representations or warranties in these Terms and Conditions); and
- (b) any Claim that you have breached these Terms and Conditions.

9. Privacy Policy

- 9.1 We securely store and handle your private information. Please see our Privacy Policy on our Website for more information. The Privacy Policy is taken to form part of these Terms and Conditions.

10. Breach of Terms and Conditions

- 10.1 If you breach any of these Terms and Conditions we may take appropriate actions including but not limited to:
- (a) issuing a warning notice;
 - (b) suspending your access to the Website;
 - (c) prohibiting your access to the Website;
 - (d) refusing to supply goods to you; or
 - (e) bringing court proceedings against you.

11. Termination

- 11.1 These Terms and Conditions terminate automatically if we cease to operate the Website.

12. Jurisdiction

- 12.1 We make no representation that Content is appropriate or available for use in other locations and jurisdictions.
- 12.2 These Terms and Conditions are governed by the laws of Australian Capital Territory. The Parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory. No Party may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

13. Amendment

- 13.1 We reserve the right to update, change or replace any part of these Terms and Conditions at any time and without notice. You can review the most current version of the Terms and Conditions at any time on this page. It is your responsibility to check this page periodically for changes.
- 13.2 Your continued use of or access to the Website following the posting of any changes constitutes

acceptance of any changes to these Terms and Conditions and the version that is current when you use or access the Website.

14. Whole Agreement

- 14.1 These Terms and Conditions, and any instruments referred to herein, embodies the whole Agreement between the Parties relating to the subject matter of these Terms and Conditions and supersedes all previous agreements in respect of your usage of our Website.

15. Assignment

- 15.1 We may transfer, assign, sub-license or otherwise deal with our rights and obligations under these terms of use without notifying you or obtaining your consent.
- 15.2 You may not transfer, sub-license or otherwise deal with your rights and obligations under these Terms and Conditions.

16. Severability

- 16.1 If all or any part of any provision of these Terms and Conditions are invalid or unenforceable, then:
- (a) that provision is severed from these Terms and Conditions to the extent necessary to remove the invalidity or illegality; and
 - (b) the remaining provisions of these Terms and Conditions remains valid and enforceable.

17. Survival of Certain Terms

- 17.1 The terms of these Terms and Conditions which are capable of having effect after these Terms and Conditions end continue to have full effect, including clauses in relation to:
- (a) protection of intellectual property; and
 - (b) guarantees, warranties, indemnities and limitation of liability.

18. Interpretation

- 18.1 In these Terms and Conditions unless the contrary intention appears:
- (a) a reference to these Terms and Conditions or any instrument includes any variation or

- replacement of any of them;
- (b) a reference to a person includes a body corporate, joint venture, association, government body, firm and any other entity;
- (c) a reference to legislation includes any amendments to it, any legislation substituted for it, and any subordinate legislation made under it;
- (d) the singular includes the plural and vice versa;
- (e) words of one gender include any gender;
- (f) headings do not affect the interpretation of these Terms and Conditions;
- (g) reference to a Party includes that Party's personal representatives, successors and permitted assigns;
- (h) reference to a thing (including a right) includes a part of that thing;
- (i) if a Party comprises two or more persons:
- (i) reference to a Party means each of the persons individually and any two or more of them jointly;
- (ii) a promise by that Party binds each of them individually and all of them jointly;
- (iii) a right given to that Party is given to each of them individually; and
- (iv) a representative, warranty or undertaking by that Party is made by each of them individually;
- (j) a provision must not be construed against a Party only because that Party prepared it;
- (k) a provision must be read down to the extent necessary to be valid and if it cannot be read down to that extent, it must be severed;
- (l) if a thing is to be done on a day which is not a Business Day, it must be done on the Business Day before that day;
- (m) another grammatical form of a defined expression has a corresponding meaning;
- (n) the word "include" is used without any limitation;
- (o) the rights, duties and remedies in these Terms and Conditions operate to the extent that they are not excluded by law; and
- (p) examples are descriptive only and not exhaustive.
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- 19. Definitions**
- 19.1 The following words have these meanings unless the contrary intention appears:
- (a) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- (b) **Claim** means any claim, suit, action, demand, or right.
- (c) **Content** means any material on the Website and Social Media as amended from time to time including but not limited to text, document, image, logo, photo, audio material, video material and audio-visual material.
- (d) **Intellectual Property** means all existing or future species of industrial and intellectual property, whether registered or unregistered, registrable or not:
- (i) as defined in Article 2 of the World Intellectual Property Organisation (WIPO) Convention; or
- (ii) recognised by any statute or any principle of law or equity, including copyrights, patents, designs, trademarks, confidential information, trade secrets and the right to register all such intellectual or industrial property rights.
- (e) **Liability** means responsibility for any loss (either direct or indirect), damage, injury, or expense.
- (f) **Malicious Computer Program** includes programs that contain viruses, Trojan horses,

- worms or any other computer programming that may damage, modify, delete, detrimentally interfere with, access without authority or expropriate any system, data or personal information.
- (g) **Party** means a party to this terms and conditions.
- (h) **Parties** mean all parties to this terms and conditions.
- (i) **Terms and Conditions** means the terms and conditions set out in this document.
- (j) **Website** means www.banyanconstructions.com.au or any website operated by us where these Terms and Conditions are published.
- (k) **We** (with capitals or not) means Banyan Constructions Pty Ltd ACN 150 509 354 and our related bodies corporate, and the words “us” and “our” etc. have corresponding meanings.
- (l) **You** (with capitals or not) means the user of this Website and/or who places an Order with us and the words “your” and “yours” have corresponding meanings.