

# One Day Paint Pty Ltd Website and Applications Terms and Conditions

## Brief

On the domain [www.onedaypaint.com.au](http://www.onedaypaint.com.au) (the “**Website**”), One Day Paint Pty Ltd (A.B.N. 63 619 878 134) (“**ODP**”) operates an online service as well as online applications, through which customers (“**Users**”) can book a Painter for the provision of painting services (“**Painting Services**”), by submitting an Online Estimate and choosing to Book Now. ODP then matches and coordinates the most suitable Painter from its database of ODP Licenced Painters to the Booking.

This is a contract between ODP and the Users.

The Painter is in the business of providing Painting Services.

ODP enters into agreements with Users for and on behalf of Painters for provision of Painting Services to Users.

The User enters into two contractual relationships. The first contract being with ODP, governing the access to and use of the Website and applications in accordance with the terms and conditions of this Agreement. The second contract being with ODP as agent for the Painter for the provision of the Painting Services (“**Painting Agreement**”).

The User is deemed to have entered into this Contract and a contractual relationship with ODP through the making and acceptance of a Booking.

## **AND THE PARTIES HEREBY AGREE:**

Access to and use of the Website and applications is subject to the terms and conditions outlined in this agreement (the “**Terms**”).

## 1. Definitions and Interpretations

1.1. In these Terms (including the recitals), unless the context otherwise requires:

“**Booking**” means the booking made by you on the Website or by email for the provision of Painting Services;

“**Booking System**” means the online systems which enable you to make a Booking;

“**Painting Fee**” means the fee, as advised by ODP from time to time, (inclusive of goods and service tax, if applicable) for the Painting Services charged and invoiced by ODP;

“**Intellectual Property Rights**” means all present and future rights anywhere in the world in relation to copyright, trademarks, designs, patents or other proprietary rights, or any rights to registration of such rights whether existing before or after your access to the Website;

**“Site Content”** means all material, content and information made available on the Website and/or applications including but not limited to written text, graphics, images, photographs, logos, trademarks, audio material, video material and any other forms of expression;

**“you”**, **“your”** means you as the user of the Website or application.

1.2. In these Terms, unless the context otherwise requires:

(a) headings are for convenience only and do not affect its interpretation or construction;

(b) the singular includes the plural and vice versa;

(c) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to these Terms;

(d) words importing a gender include other genders;

(e) the word “person” means a natural person and any association, body or entity whether incorporated or not;

(f) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;

(g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;

(h) all monetary amounts are in Australian currency;

(i) a reference to time refers to Eastern Standard Time;

(j) “includes” is not a word of limitation; no rule of construction applies to the disadvantage of a party because these Terms are prepared by (or on behalf of) that party;

(k) a reference to any thing is a reference to the whole and each part of it;

(l) a reference to a group of persons is a reference to all of them collectively and to each of them individually; and

(m) a reference to a document includes all amendments or supplements to, or replacements or novation’s of, that document.

## 2. Terms and Conditions

2.1. Access to and use of this Website and applications is governed by these Terms.

2.2. The Terms are periodically reviewed by ODP and we reserve the right to change the Terms, without any notice to you, by updating this document. You should review

this document, which is available on the Website regularly as any changes to the Terms take immediate effect from the date of any such publication on this document. Your continued use of the Website and/or applications after any such changes are made will be deemed to constitute your acceptance of those changes.

2.3. You acknowledge that any hyperlinks or other redirection tools taking you to other websites operated by third parties that appear on the Website or applications (“**Third Party Sites**”) are not under the control of ODP and do not form part of the Website or applications. You agree that you will not hold ODP liable or in any way accountable for anything that occurs on any Third Party Site.

### 3. Acceptance

3.1. In order to use this Website or applications and make a Booking, you must first agree to the Terms.

3.2. You accept the Terms by:

- (A) submitting your property and personal details; and
- (B) clicking to accept/agree to the Terms.

3.3. Notwithstanding clause 3.2, you may not accept the Terms or access the Website or applications if:

- (A) you are a person barred from entering into contracts under legislation; or
- (B) you are not of legal age to form a binding contract with ODP

In which case, you must immediately leave the Website and cease using the applications.

3.4. By accepting the Terms, you agree that this is clear and unequivocal proof that the Terms are not unconscionable, that there is no unfair bargaining power or position, that there is no duress, and that you have carefully read and understood the Terms.

3.5. If you do not understand any part of the Terms you should seek independent legal advice.

### 4. Email Booking System

4.1. To make a Booking you must submit your details via the website and/or applications, ‘User Profile’, and use the Booking Now button to request a Booking. You will receive a Booking confirmation, request for more details, tax invoice and the Painting Agreement that constitutes the contractual relationship between you and ODP as agent for and on behalf of the Painter that you are deemed to have entered into for the provision of the Painting Services.

4.2. ODP will then make your contact details, location, requested time and the scope of the Painting Service available to their Painter network. An available Painter will then confirm their acceptance of the Booking.

4.3. You are able to request a preferred Painter. ODP will take your preference into account when facilitating the Painting Service, however a specific Painter cannot be guaranteed and will depend on the Painter's availability.

4.4. Payment of the Booking Fee is required prior to the acceptance of your Booking.

4.5. When a Booking is confirmed by a Painter, ODP will notify you.

4.6. If the requested Painter cannot fulfill your Booking, ODP will arrange an alternative Painter for the requested Booking time.

4.7. If the requested Booking cannot be facilitated, ODP will arrange an alternative time for the Painting Service with you and a Painter.

4.8. You are not permitted to engage the Painting Services of a Painter other than through the Booking System on the Website applications.

4.9. The Email Booking System is provided to enable you to make legitimate Bookings and to make payments for those Bookings, and for no other purposes.

4.10. Any speculative, false or fraudulent Booking is prohibited. You agree that the Booking System will only be used to make legitimate Bookings for you or another person for whom you are legally authorised to act. You acknowledge that abuse of the Booking System may result in you being denied access to the Booking System.

4.11. ODP has the right at any time to add, change or withdraw functions available on the Website or applications at its own discretion.

## 5. User Profile

5.1. You will be required to register your personal information, including your name, post code, phone number and email on the Website or applications in order to make a Booking ("**User Profile**").

5.3. You confirm that you are at least 18 years of age and possess the legal authority to use the Estimate / Email Booking System in accordance with these Terms. You also agree that all information supplied by you in using the Website or applications and the email will be true and accurate at all times.

5.4. ODP may delete or block User Profiles at its own discretion. Blocked users are prohibited from setting up a new User Profile.

## 6. Online Estimate

6.1. The generation of an online estimate and associated email do not in themselves constitute an agreement of ODP to undertake Painting Services.

6.2. The online estimate is an approximation and is not a guaranteed cost to undertake Painting Services. The estimate is based on information provided by the user regarding your project requirements. Actual cost may change once all project elements are finalised or negotiated. Prior to any changes of cost, the user will be notified.

6.3. All prices displayed are an average determined by ODP for the elements nominated. The final quote may vary for one of the following, but not limited to, reasons;

- Additional surfaces
- Existing conditions
- Hazardous materials
- Cost of materials supplied
- Repairs required prior to painting of any surfaces
- Inconsistency in paint types and colours
- Ceiling heights other than the Australian Standard 2.4m
- Impediment to access for preparation and painting services as a result of your fixtures, fittings and equipment

6.4. ODP reserves the right to alter the estimate price at any stage as per Clause 18.2

6.5. You acknowledge that any further submissions of costs by ODP are to supersede any estimates provided by us. The Terms and Conditions related to the Quote are to be read in conjunction with the Clauses described in this document

## 7. Changes and Cancellations

7.1. You can cancel or amend a Booking free of charge, up to 7 days before the Painting Service is scheduled to begin.

7.2. If you cancel or amend a Booking within 7 days before the Painting Service is scheduled to begin, you will have to pay cancellation costs equivalent to the value of the total booking fee

7.3. You cannot cancel a Booking during the performance of the Services.

7.4. The Painting Agreement shall expire once the Painting Services under the Booking have been performed.

7.5. If the Painter is unable to fulfill a confirmed Booking (in full or part), ODP will attempt to find you a replacement Painter. If we cannot find you an alternative Painter, we will reschedule your Booking to a new time which suits you. If we cannot find a suitable time for you, you may cancel the Booking at no charge.

## 8. Painting Services

8.1. ODP operates the Website and applications as a third party facilitator for the Painting Services and provides you with the platform to purchase the Painting Services.

8.2. ODP is not an agent or broker for you. You enter into any transaction with ODP on behalf of a Painter entirely at your own risk.

8.3. ODP uses their best efforts to monitor the Painting Services offered by a Painter. However, ODP does not make any representation as to the safety, quality, condition or description of any products used or Painting Services provided by the Painter. Any issues regarding safety, quality, condition or description should be notified to ODP, who will then pass the issue onto the Painter designated to your Booking. You should refer to the terms and conditions of your Painting Agreement for further information.

8.4. All bookings are subject to Painter availability.

## 9. Payment

9.1. You agree that all payments are to be processed either by Direct Debit into the nominated ODP Banking Account or by the online Payment Portal provided by Stripe.com.

9.2. All Payments are to be in accordance with ODP Payment terms which are;

- 20% Booking Fee – Prior to the Booking being Confirmed
- 40% Deposit – Prior to the commencement of Painting Services
- 40% Remainder – Due within seven days following the completion of Painting Services

9.3. On receipt of the Final Painting Fee, ODP will hold the Painting Fee on behalf of the Painter until such time as it accounts to the Painter, pays a refund to you (if you are entitled to a refund) or credits payment of our fees and charges. No interest will be payable by ODP to you or the Painter on amounts held by ODP.

9.4. If the User is entitled to a refund, as per the Painting Agreement, ODP will process the refund within 14 days of the right to the refund arising.

## 9. Termination

9.1. ODP may at its discretion terminate your use of, or access to, the Website applications at any time. If this happens we may notify you by email. If your use of the Website or applications is terminated:

(A) you are no longer authorised to access the Website or use any other ODP services with the email address you used to register with the Website or any other email address you possess;

(b) you will continue to be subject to and bound by all restrictions imposed on you by the Terms; and

(c) all licences granted by you and all disclaimers by ODP and limitations of ODP's liability set out in the Terms or elsewhere on the Website or applications will survive termination.

9.2. You may terminate this agreement by emailing ODP at [info@onedaypaint.com.au](mailto:info@onedaypaint.com.au). ODP will remove you from the mailing list within fourteen (14) days of receipt of the email requesting termination of your User Profile.

9.3. ODP reserves the right to deduct any outstanding fees and charges owing to ODP and/or the Painter on your User Profile prior to disabling it.

## 10. Security of Payment

10.1. We have taken all practical steps from both a technical and systems perspective to ensure that all of your information is well protected. A secure payment gateway through [stripe.com](https://stripe.com) is used to process all transactions and credit card details. ODP does not give any warranty or make any representation regarding the strength or effectiveness of the secure payment gateway and is not responsible for events arising from unauthorised

## 11. Dispute Resolution Process

11.1. ODP will use reasonable endeavours to mediate any dispute concerning the use of the Website or applications.

11.2. Disputes in relation to the Painting Services carried out by a Painter or any other issue will be referred, where appropriate, to external dispute resolution services or authorities.

## 12. Privacy

12.1. In this clause Personal Information means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

12.2. ODP collects and stores Personal Information you enter into the User Profile. Personal Information collected by ODP will be maintained in accordance with our Privacy Policy available on the [www.onedaypaint.com.au/privacy](http://www.onedaypaint.com.au/privacy)

12.3. You agree that ODP will disclose your Personal Information, including your name and address to the Painter in order for the Painter to carry out the Painting Services.

12.4. Both parties must abide by all relevant Australian Privacy Principles set out in the Privacy Act 1998 in their collection, use, disclosure and storage of Personal Information.

## 13. Acceptable Use

13.1. You must not use, or cause this Website or applications to be used, in any way which:

- (A) breaches any of these Terms;
- (B) infringes ODP's or any third party's Intellectual Property Rights;
- (C) is fraudulent, illegal or unlawful; or
- (D) causes impairment of the availability or accessibility of the Website or applications.

13.2. You must not use, or cause this Website or applications to be used, as a medium which stores, hosts, transmits sends or distributes any material which consists of:

- (A) spyware;
- (B) computer viruses;
- (C) Trojans;
- (D) worms;
- (E) keystroke loggers; or
- (F) any other malicious computer software.



## 14. Intellectual Property

14.1. The Site Content is protected by copyright and ODP reserves all Intellectual Property Rights which may subsist in the Site Content and/or the Website and/or applications.

14.2. By accepting the Terms, you are granted a non-exclusive licence to:

- (A) view the Website and/or applications;
- (B) print pages from the Website and/or applications in its original form; and
- (C) download any material from the Website and/or applications for caching purposes only.

14.3. You must not, without ODP's prior written consent which may be withheld at its absolute discretion:

- (A) copy, republish, reproduce, duplicate or extract Site Content;
- (B) redistribute, sell, rent or licence any Site Content; or
- (C) edit, modify or vary the Site Content.

## 15. Indemnity and Liability

### 15.1. General indemnity

You agree to indemnify ODP, on demand, against any claim, action, damage, loss, liability, cost, charge, expense or payment which ODP may pay, suffer, incur or are liable for, in relation to any act you do or cause to be done, in breach of these Terms.

### 15.2. General limitation of liability

We will not be liable to you in contract, tort or equity in relation to any direct, indirect or consequential loss you incur in relation to the contents or use of or reliance on Site Content or otherwise in connection with the Website or applications.

### 15.3. Painting Services Liability

To the extent permitted by law, ODP will not be responsible and will be excluded from all liability, for any loss or damage whatsoever (including personal injury, loss of life and damage to property) that you or another person may suffer in connection with the offer or supply of (or default in supplying) the Painting Services.

### 15.4. Information accuracy

You acknowledge and agree that some of the Site Content may be provided by way of blogs, reviews or comments made by other users of the Website or applications, and that ODP does not accept any liability for the accuracy of such information or

your reliance on the same. The Site Content is provided to you as general information only and is not intended to substitute or replace the advice of a duly qualified professional (where applicable).

#### 15.5. Acceptance

By using this Website or applications, you agree and accept that the indemnity and limitations of liability provided in this clause 16 are reasonable.

### 16. Warranties and Representations

16.1. The use of this Website or applications is at your own risk. The Site Content and everything from the Website or applications is provided to you on an “as is” and “as available” basis without warranty or condition of any kind.

16.2. None of ODP’s affiliates, directors, officers, employees, agents, contributors, third party content providers or licensors make any express or implied representation or warranty about the Site Content or Website or applications.

16.3 Any warranty related to the Painting Services provided by ODP will rely on the pre-existing conditions. ODP may refuse to provide a warranty should the pre-existing surfaces not be to a standard suitable for the proper application of paint.

### 17. General Provisions

17.1. Any provision of, or the application of any provision of these Terms which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

17.2. Any provision of, or the application of any provision of these Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

17.3. If a clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in these Terms.

17.4. These Terms shall be governed by and construed in accordance with the law for the time being applicable to Victoria and you agree to submit to the non-exclusive jurisdiction of the Courts of Victoria.