

# TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1 "Company" shall mean AS De Bruin Cabinetmakers Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing goods and services from Company.
- 1.3 "Goods and Services" shall mean all goods, chattels, or services, provided by the Company to the Customer, and shall include without limitation all metalwork, fixtures and fittings, machinery, manufactured components, assemblies, patterns, tools and dies made to order, all charges for labour and work, hire charges, freight charges, insurance charges, or any fee or charge associated with the supply of goods by the Company to the Customer.
- 1.4 "Price" shall mean the cost of the goods and services as agreed between Company and the Customer subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions whether verbal or written received by Company from the Customer for the supply of goods and services shall constitute acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Company to collect, retain and use any information about the Customer, or for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Company to any other party.
- 3.2 The Customer authorises Company to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the goods and services shall be deemed to be sold at the current amount as such goods and services are sold by Company at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods and services that is beyond the control of Company between the date of the contract and delivery of the goods and services.

## 5. PAYMENT

- 5.1 Payment for goods shall be made in full on or before the 20<sup>th</sup> of the month following supply if a current credit arrangement is in place, or otherwise payment in full before despatch or pickup of goods is expected.
- 5.2 Where the duration of the work extends beyond one month from the date of commencement monthly invoices will be issued and shall be paid in instalments each month or part month in full on or before the 20<sup>th</sup> of the month following the date of the invoice..
- 5.3 A deposit of 20% of the price is required where the total price quoted exceeds \$20,000.
- 5.4 Interest may be charged on any amount owing after the due date at the rate of 2% per month.
- 5.5 Any expenses, disbursements and legal costs incurred by Company in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.6 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

## 6. QUOTATION

Where a quotation is given by Company for goods and services:

- 6.1 The quotation shall be valid for one month from the date of issue; and
- 6.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated in writing to the contrary; and
- 6.3 Where applicable, specific terms of the quote take precedence over general terms of these Terms & Conditions of Trade,

## 7. WARRANTIES BY CUSTOMER

The Customer warrants that:

- 7.1 It has and shall continue to provide Company with all information and assistance relevant to the carrying out of work that is the matter of this contract; and
- 7.2 It has obtained all necessary planning and consents from the relevant Local Authority and has informed Company of all matters relating to such consents that might affect or delay delivery and acceptance of the finished goods; and
- 7.3 Agrees that it is liable for any costs attributable to failing to meet its warranties.

## 8. RISK

- 8.1 The goods remain at the Company's risk until despatch to the Customer, but when title passes to the Customer pursuant to clause 10.1 of this contract the goods are at the Customer's risk whether delivery has been made or not.
- 8.2 Delivery of goods shall be deemed complete when the Company gives possession of the goods Ex Works for delivery to the Customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the Customer.
- 8.3 The time agreed for delivery shall not be an essential term of this contract.
- 8.4 Where Company delivers goods to the Customer by instalments and Company fails to deliver one or more instalments the Customer shall not have the right to repudiate the contract.

## 9. AGENCY

- 9.1 The Customer authorises the Company to contract either as principal or agent for the provision of goods that are the matter of this contract.

## 10. TITLE, RESERVATION OF TITLE & PERSONAL PROPERTIES SECURITIES ACT

- 10.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the Customer when the Customer has made payment in full for all such goods supplied by Company.
- 10.2 Until full payment has been received in respect of the goods supplied the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999; and
- 10.3 A security interest is taken in all goods previously supplied by the seller to the Customer (if

10.4 the Customer undertakes to sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register, and

- 10.5 give the seller not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice); and
- 10.6 immediately advise the seller of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.
- 10.7 Unless otherwise agreed to in writing by the seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA

## 11. DISPUTES

- 11.1 The Customer shall be deemed to have accepted the goods and services unless the Customer notifies Company otherwise within 2 working days of delivery of the goods and services to the Customer.

## 12. LIABILITY

- 12.1. In the case of accidental damage the liability of the Company shall be limited to the terms of its policy with its insurers with regard to any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Customer or any other person arising directly or indirectly from any breach of any of the Company's obligations arising under or in connection with this contract including delays in the delivery of Goods or Services or from any cancellation of the contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors. Claims for loss or damage or injury shall be limited to the terms the Company has with its insurers and linked at the Company's option to repair of the Goods or replacement of the Goods or Services or the price of the Goods or Services.
- 12.3 The Company shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, bad weather, adverse environmental conditions, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or reasons force majeure caused beyond the Company's reasonable control. The occurrence of such an event shall not give the Purchaser a right of cancellation of any contract.

## 13. CONSUMER GUARANTEES ACT

- 13.1 The parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by the Act where the Customer acquires the Goods or Services for the business purposes of a business and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention.

## 14. WARRANTY

- 14.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly provided to the Customer at the time of sale HOWEVER no warranty shall exceed that given by the manufacturer.
- 14.2 Company does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.

## 15. CANCELLATION

- 15.1 Company shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 15.2 Any cancellation or suspension under clause 15.1 of this agreement shall not affect Company's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to Company under this contract.

## 16. USE OF INTELLECTUAL PROPERTY AND INDEMNITY

- 16.1 The Customer agrees that the use of intellectual property in which the Company is proprietor in the form of published material, patents, trademarks, copyrights, manuals, drawings and other technical information, shall be for the sole purposes of the Customer in using the Goods and may not be copied, altered, adapted or given to any third party without the written permission of the Company. The Customer further agrees not to give or make any undertaking, assertion or representation in relation to the Goods to any other person or Company without the prior approval in writing of the Company, and the Customer shall indemnify the Company against liability or cost incurred by the Company as a result of any breach by the Customer of this provision.
- 16.2 Where the Company has followed plans, drawings, designs, specifications and instructions being oral or written provided by the Customer, the Customer shall indemnify the Company against damages, costs and expenses in respect of which the Company may become liable by following such plans, drawings, designs, specifications and instructions and including those arising from the infringement of patents, copyrights or trademarks by the Customer.

## 17. MISCELLANEOUS

- 17.1 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of Company.
- 17.2 Failure by Company to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Company has under this contract.
- 17.3 The contract including these terms and conditions of sale shall be governed by New Zealand Law.
- 17.4 Where the terms of this contract are at variance with the order or instruction from the Customer, this contract shall prevail.
- 17.5 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.6 In the event of any dispute between the Company and the Customer arising out of this contract such dispute shall be referred to a Mediator to be agreed between the parties and upon failure to accept the resolution of the Mediator shall be referred to an Arbitrator to be agreed between the parties and upon failure to reach agreement arbitration be conducted in accordance with the New Zealand Arbitration Act 1996 and any amendments thereof and