

# Oliver and Smith Industries : Terms & Conditions

## APPLICABLE TERMS AND ACCEPTANCE OF ORDER

These terms of contract between OLIVER AND SMITH INDUSTRIES LIMITED (the "Customer") shall apply to all orders for office furniture and commercial fitting materials ("Goods") and any supporting workmanship for design, layout and installation ("Services") accepted by the company and that in the case of conflict or dispute these terms and conditions shall prevail and take precedence over any document or oral message from the Customer. Where the Company fails to enforce any terms or conditions under this contract the Company will not be deemed to have waived these rights with respect to any term or condition or right.

This customer shall acknowledge that these terms of sale constitute a Security Agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). For the purposes of the PPSA, Collateral shall include all and any Goods and Services sold by the Company to the Customer and the proceeds thereof. The customer shall agree to give the Company a security interest in all of Customer's present and after-acquired property that the Company has supplied and not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without the prior written consent of the Company.

The Company may register a Purchase Money Security over the Goods and Services and the Customer shall agree to waive the right to a verification statement for purposes of s.148 of the Personal Properties Securities Act.

### **Quotations and Price**

The Company shall publish a price list of its Goods ruling at the time of the order or shall confirm the price of Goods as a quotation and the Customer shall confirm acceptance by providing an order to the Company or signing the quotation or sending an electronic confirmation to the Company.

The description given of the Goods in any written or published form has been given by way of identification only to assist the Customer in making an offer to the Company and the use of such information does not constitute this contract as a sale by description and binding on the Company, until the Company has accepted an offer from the Customer and has confirmed and signed a quotation listing a Description of Conditions which is declared as a sale by description and the signed quotation and warranty shall be part of this contract.

Quotations of Goods and Services shall be valid for thirty (30) days from the date of publication but no quotation will constitute an offer unless signed by the Company and the Company may withdraw any quotation before the Customer's signed acceptance.

The quotation or price may be increased if the Company suffers any cost increases which are beyond its control in the supply, production and delivery of Goods (due to currency changes or supplier price increases or taxation and duties) between the date of contract (or where the

contract arises from a quotation, the date of quotation) and the date of delivery, or if the Customer varies or alters the specifications of the quotation or the requirements for the Goods or Services. All prices are exclusive of GST, insurance, freight and other handling charges unless specified in the quotation or the Customer electronic confirmation.

### **No cancellation for Make to Order Goods.**

Upon approval of a Company quotation by the Customer or Customer order to the Company, the Customer shall agree that Goods that are designed or procured specifically for the Customer (meaning nonstandard or make to order) cannot be cancelled without the Customer paying the full cost of the manufacture or procurement of the Goods to the time of cancellation.

### **Payment.**

Payment shall be made upon the delivery of the Goods or Services OR by 50% deposit and the remainder of price upon delivery otherwise payment will be the 20th of the month following date of except where the Company has agreed to provide credit to the customer which terms shall be declared at the time of the order or quotation. The Customer shall make payment of all amounts due to the Company without any delay or deduction whether by way of set-off, counterclaim or otherwise. The Customer shall agree that the Company has sole discretion to apply payments from the Customer to any transaction or Company invoice notwithstanding that the Customer may have applied the payment to a particular transaction or invoice.

If at any time to Company reasonably deems the credit of the Customer to be unsatisfactory, it may require the Customer to provide at the Customer's cost, security for the payment and/or the Company may suspend performance of its obligations under this contract until security is provided to its satisfaction and the company may require the Customer to pay all costs incurred as a result of suspension and re-commencement of supply including legal and debt collection costs.

### **Interest for Late Payments.**

The Company may charge interest on any money's outstanding under this contract on a daily basis at a rate equal to 5% above the bank indicator lending rate of the Company. Interest is payable from the date payments was due until that date the Company receives payment. The right of the Company to charge interest is without prejudice to its other rights or remedies for the Customer's default in failing to pay on the due date, and the Company may suspend performance of any of its obligations and secure any Goods it has supplied and in the Customers possession until payment is made in full.

### **Delivery of Goods and Services.**

Delivery of the Goods to the care and control of the Customer at the site designated by the customer shall constitute delivery. Completion of installation, repair or servicing of the Customer's property according to the

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quotation or order shall constitute delivery of Services. The Company will make every effort to ensure that Goods and Services are applied on time, but will not be responsible for any loss to the Customer arising in any way from delays in delivery. The Customer agrees that where the goods are delivered in instalments each delivery will be regarded as a separate contract and subject to the same payment terms.

Where the Company has performed part or all of the supply of Goods or Services at a time agreed by the Customer but where delivery is delayed because of an act, omission or delay by the Customer the Company will require the Customer to pay that portion of the contract price which represents the costs incurred by the Company in carrying out supply and the Company may also charge stand by costs while the Customer renders the site ready.

Where the Customer or its agents has arranged for the supply of plans, layouts or drawings for the installation of the Goods or application of Services OR where the Goods are to be applied to or mixed with second hand or existing goods being the property of the Customer, by declaration in the quotation, it shall be the sole responsibility of the Customer that supply is satisfactory for the purposes they are intended and if the Company uses such supply and incurs costs where supply is not fit for the purpose intended by the Customer, the Customer shall pay the Company for all costs incurred in the Company's supply.

### **Risk, Ownership and Title.**

The Customer agrees that the Company has legal and equitable right to the title in the Goods and value of Services and ownership shall only pass to the customer when the contract price is paid. For as long as ownership in the Goods is retained by the Company the Customer will store the Goods separately and in such a way that they are identifiable as the property of the Company.

Notwithstanding that property in the Goods and value of Services is retained by the Company, the Customer is hereby authorised to use the Goods and Services in the ordinary course of business but cannot alter the Goods or mix with or attach with other goods or property of the Customer without the written permission of the Company, and can only use the Goods or Services as the fiduciary agent and Bailee of the Company until the Customer pays the Company in full without deduction or setoff.

In any event where Goods or Services remain unpaid by the Customer, the Company has unreserved right to enter the property of the Customer or its agents during normal business hours and remove Goods relating to the unpaid amount in accordance with the Credit (repossession) Act and the Customer will not hold the Company responsible for any economic or consequential loss that the customer may suffer as a result, whether the Goods are attached to other goods or building or property owned by the Customer, or not. The Company may resell the Goods notwithstanding that the Goods may have deteriorated or are damaged by the Customer. The proceeds of such sale shall be applied against monies owed by the Customers and shall otherwise not release the Customer from its obligations to pay the full contract price for the Goods.

Regardless of ownership by the Company of the Goods, the Customer agrees to accept risk in the Goods for any loss, theft, damages or deterioration of or to the Goods upon delivery and while in the possession of the Customer. This means that the Customer shall agree to properly store, protect and insure the Goods under its risk policy. Failure by the customer to properly protect and insure the good shall not absolve the Customer of the legal responsibility to the Company to pay for the Goods in the event of fire or loss damage or theft while under the care and responsibility of the customer.

The Customer shall inform its creditors of the terms upon which it buys Goods from the Company and must declare the Company's reservation of title to any Trustee in Bankruptcy or Liquidator of the Customer or any Receiver of the Customer's business or assets of the rights of the Company and title to the Goods.

### **Retention of Title upon resale of the Goods.**

Where Goods or Services including the value of services in respect of which title has not passed to the Customer are sold by the Customer any book debt created upon sale of such goods and the proceeds of sale of such Goods, when received by the Customer, shall be held upon trust by the Customer for the Company and any proceeds of sale so received by the customer shall be placed in a separate bank account and shall be first applied towards that satisfaction of all indebtedness of the Customer to the Company.

If the Goods including the value of Services the subject of this contract, have become the constituent of mixed with or attached to any other goods, meaning Goods that are sold by the Company and those goods are sold by the Customer prior to the Company receiving payment, then a portion of the proceeds of that sale, attributable to the Company's Goods or Services shall be the property of the Company, and the Customer shall ensure that such proceeds are at all times held in a separate fund in trust for the company.

This reservation of title and ownership is effective whether or not the Goods have been altered from that supplied or mixed with other good or materials or fixed to a building or property owned by the Customer. Where such Goods are altered or mixed and are severable but not identifiable or where it is impractical to remove the Goods without incurring loss to an innocent third party, or to the Customer shall agree to give the Company an ownership interest in the property of the Customer in proportion to the contribution made by the Goods to the value of the Customer's property.

### **Company Guarantee & Warranty**

The warranty of the Goods as to merchandisable quality and fitness of the Goods for purposes declared in the Company catalogue or published material shall for a period of (2) years from delivery. Where the Customer sells the Goods to a third party the Company will extend the period of warrant to two (2) years following delivery by the Customers to the third party but the Customer shall accept

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responsibility and liability for determining the fitness of the Goods for the purposes of the third party.

Where the Company accepts liability for damage or defect covered by its guarantee and elects to repair or replace Goods it may repair or replace by other articles of similar description and value (but can be a standard type) as soon as reasonably practicable and such substituted articles shall become subject to the provisions of this contract, in that the Company will conduct the repair or replacement at no charge to the Customer.

The Company shall not be liable for any economic or consequential loss to the Customer arising out of any breach of the obligations of the Company and the liability of the Company whether in contract or pursuant to any cancellation of the contract or in act or otherwise in respect to all claims for loss, damage or injury the Customer may regard, shall be linked at the option of the Company to the repair or replacement of the Goods or to the price of the Goods.

## Consumer Guarantees Act 1993.

It is acknowledged that where the acquisition of Goods by the Customer from the Company is deemed to be for the business purposes of a business these terms and conditions of trade shall have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by that Act and all provisions of these terms and conditions shall be read as modified to the extent necessary to give effect to that intention.

Where the Customer sells the Goods to a Consumer or Householder third party the provisions of the Act will apply subject to the warranty terms and the Customer agrees to inform the third party of the warranty conditions.

The Customer may use published material, manuals, training notes and instructions of care for the Goods and maintenance guidelines provided by the Company but shall not 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 any liability or cost incurred by the Company as a result of any breach by the Customer of this provision.

## Claims for Damaged or Defective or Deteriorated Goods.

The Company, at its discretion, will repair or replace any damaged or deteriorated Goods meaning Goods that are not of merchantable quality or fit for the purposes described in its catalogue or published material or make a reasonable allowance on the purchase of goods to replace the Goods provided:

- a) That the customer makes a claim specifically identifying the damage or defect(s) within thirty (30) days of the damage or defect occurring; and
- b) That the Company has reasonable opportunity to investigate the claim.

If the Customer does not comply with the above requirements, the Customer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

The Customer agrees that claims shall not be considered in respect of Goods which:

- (i) Are not intact and in original condition and packaging.
- (ii) Have been improperly stored causing damage or deterioration.
- (iii) Have been altered in any way different to the conditions in which they have been supplied.
- (iv) Have been mixed with or attached to other goods of the Customer causing damage or deterioration to the Goods.
- (v) The Goods are outside of the warranty period.

## Grounds for Termination by the Company.

This Contract may be terminated by the Company immediately by written notice to the Customer if an Event of Default of payments due to the Company by the Customer occurs for any reason.

Upon termination of this agreement for any reason, all rights of the Customer granted by this agreement shall terminate. Terminations of this Contract shall not relieve the Customer of its obligations to pay all moneys owed by it to the Company on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this Contract shall not relieve the Customer from liability arising from any antecedent breach of the terms of this Contract.

## Applicable Law for Dispute and Arbitration.

In the event any dispute between the Company and the Customer arising out of this contract, the substantive laws of New Zealand shall apply and such dispute shall be referred to a mediator to be agreed between the parties on a shared cost basis 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.