



General Terms & Conditions

1. Definitions and application

“Commercial Credit Account Agreement” means any agreement for commercial credit between the Supplier and a Trade Customer.

“Components” means any melamine, laminate, timber, engineered stone, hardware, glass or other material supplied to the Customer by the Supplier or used by the Supplier in the course of completing the Goods.

“Customer” means the person identified as the Customer above (“you” or “your”) and if there is more than one Customer is a reference to each Customer jointly and severally.

“Goods” means all goods, works, services or Components undertaken or supplied by the Supplier to the Customer at the Customer’s request from time to time.

“Invoice” means an invoice for payment of the Goods issued by the Supplier to the Customer under these terms and conditions.

“Personal Guarantee and Indemnity” means guarantee and indemnity provided in respect of the Customer’s Commercial Credit Account Agreement.

“Price” means the Price payable for the Goods as identified in the Quote.

“Quote” means the quote for the Goods referred to above which sets out the Price and a description of the Goods.

“Site” means the site upon which the Goods will be installed, and any associated work will be undertaken.

“Supplier” means B&J Joiners Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of B&J Joiners Pty Ltd (“we”, “us” or “our”).

“Trade Customer” means a Customer who has entered into a Commercial Credit Account Agreement.

2. Acceptance of Customer’s Order

a) These terms and conditions comprise the entire agreement between B&J Joiners Pty Ltd and the Customer for the Goods, except where they are varied by notice in writing by us to you prior to the delivery of any Goods, and incorporate:

- the Quote; and

- if the Customer is a Trade Customer, any Customer Credit Application and Personal Guarantee and Indemnity.

b) None of the Supplier’s agents or representatives are authorised to make any representations or statements not included in these terms and conditions nor is the Supplier bound by any such unauthorised statements.

c) Quotes are only valid for thirty (30) days – due to circumstances beyond our control the Price may change subject to conditions at the Project Name or variations requested by the Customer.

d) A contract is only concluded between the Supplier and Customer for the supply of Goods when the Customer’s acceptance of the Quote has been acknowledged by the Supplier in writing. These terms and conditions apply to every Quote or offer by the Supplier for the supply of Services. In the event acknowledgements by the Supplier the Quote remains subject to the availability of Components, and the Supplier shall be entitled to undertake works or supply the Goods in accordance with the availability of the Components ordered, and no liability shall be taken by the Supplier in respect of any unavailability of any Components ordered at any time and from time to time.

3. Price

a) The Price is exclusive of any tax levied on the supply of the Goods by the ‘A New Tax System (Goods and Services Tax)’ Act 1999 (Cth) and any related or ancillary legislation or regulations (“GST”). The Customer shall pay to the Supplier such amount as is equal to the GST payable by the Supplier in respect of any supply of Cabinetry by the Supplier to the Customer (“GST Amount”) in addition to any consideration (excluding GST) that is payable for such supply. The Customer must pay the GST Amount to the Supplier in accordance with the terms and conditions applying to the payment of the consideration for the supply of the Goods by the Supplier to the Customer.

b) The Supplier reserves the right to change the Price if the Customer requests a variation to the Components or to the Cabinetry design or specifications stipulated in the Quote, or if we discover hidden or unidentifiable difficulties (including, but not limited to, building defects, safety considerations or the discovery of asbestos in relation to the Site, a change of design, prerequisite work by any third party not being completed, poor weather conditions, limitations to accessing the Site, hidden pipes and wiring in walls etc).

4. Property & Risk

a) The Customer acknowledges that this constitutes a security agreement for the purposes of the **Personal Properties and Securities Act 2009 (PPSA)** and that a security interest exists in all Goods supplied to the Customer (and their proceeds).

b) The risk in the Goods sold pass to the Customer upon completion of delivery by the Supplier. The Customer specifically acknowledges that it will be responsible for any damage to Goods which have been delivered but not yet fully installed by the Supplier.

c) Notwithstanding anything containing herein, property in and legal title to the Goods does not pass to the Customer until payment for all debts owing to the Supplier by the Customer has been received by the Supplier. Until such payment has been received by the Supplier, the Customer will in so far as possible store the Goods separately and apart from its own goods and those of any other person or company.

d) The Customer is responsible for ensuring that the Site is safe and ready for the Supplier to undertake or provide the Goods. This includes (but is not limited to) ensuring any hidden services such as electrical and plumbing points are in the correct or identified location.

5. Trade Customers

If the Customer is a Trade Customer:

The Trade Customer may re-sell any of the Goods on normal commercial terms before the Supplier is paid in full provided that:-

i) The Trade Customer re-sells as principal and has no right to commit the Supplier to any contractual relationship or liability to any third party;

ii) Subject to 3(b)(i), as between the Supplier and Trade Customer, the Trade Customer re-sells as trustee, fiduciary agent and the bailee of the Supplier;

iii) The Trade Customer holds the rights in respect of the re-sale proceeds on behalf of and as trustee for the Supplier and on request of the Supplier, will assign any claim against any such third party for any unpaid debt and for this purpose the Trade Customer irrevocably appoints the directors of the Supplier for the time being as joint and several attorneys of the Trade Customer to sign any documents to give effect to such assignment; and

iv) The Trade Customer holds the proceeds of any re-sale or insurance claim on trust for the Supplier until the Supplier has been paid in full for those Goods which are subject to re-sale or insured loss, save that in the event any re-sale proceeds which the Supplier is able to recover in accordance with Clause 3(b)(iii) are less than the amount owing by the Trade Customer to the Supplier in respect of the Goods to which such re-sale proceeds pertain, the Trade Customer or its successors shall be liable to account to the Supplier for the balance as a debt owing to the Supplier by the Trade Customer to that maximum degree permitted by the law.

c) Until payment of all debts owing to the Supplier by the Trade Customer, the Supplier may, at its discretion, without further notice and without prejudice to any other of its rights, including rights arising under Chapter 4 of the PPSA, re-take possession of the Works and re-sell them or any of them and may enter upon any of the Trade Customer’s premises by its servants or agents, for that purpose, without the liability on the part of the Supplier for any loss or damage suffered as a consequence of such entry or re-taking of possession and the Trade Customer hereby agrees to provide the Supplier with an irrevocable license to so enter any premises occupied by the Trade Customer if:

i) There is a breach of any contract between the Supplier and the Trade Customer; or

ii) The Trade Customer has provided any false or misleading information to the Supplier including information set out in any application for credit or to open an account with the Supplier; or

iii) The Trade Customer commences to be wound up or is placed in liquidation, under official management or a receiver or a receiver and manager or voluntary administrator is appointed in respect of the Trade Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or an agent, takes or purports to take possession of the Trade Customer’s undertaking or property or any part thereof; or

iv) The Trade Customer parts with possession of the Goods or any of them otherwise than by way of sale in the ordinary course of its business.

d) These provisions apply despite any arrangement under which the Supplier provides credit to the Trade Customer and these provisions will prevail to the extent of any inconsistency between these provisions and any agreement or arrangement entered into by the Trade Customer and the Supplier. In addition, the Supplier may recover the purchase price of the Goods sold to the Trade Customer by legal proceedings and may file an application for the appointment of a liquidator to the Trade Customer notwithstanding that property in the Goods has not passed to the Trade Customer.

e) To the extent permitted by law, the Trade Customer and the Supplier agree that the following sections of the PPSA are excluded from this agreement: sections 95, 96, 118, 121, 130, 132, 135, 142 and 143. Without limiting any other provision contained herein, the Trade Customer waives its rights to receive from the Supplier each document or notice which under sections 144 and 157 of the PPSA it is permitted to waive, such waiver to be deemed effective at the date hereof and at all times hereafter, including after any event of default by the Trade Customer. The Trade Customer agrees that where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.

f) The Trade Customer and the Supplier agree that neither the Trade Customer nor the Supplier will disclose to any person information of the kind mentioned at section 275(1) of the PPSA, unless required by section 275(7) of the PPSA. The Trade Customer further agrees (without limiting any other provision) that it:

- i) will not authorise the disclosure of any information described under section 275(1) of the PPSA; and
- ii) waives its rights to receive anything from the Supplier under section 275 of the PPSA and agrees not to make any request under that section, to the extent permitted by law.
- g) The Trade Customer undertakes to promptly 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 Supplier may reasonably require to register a financing statement or financing change statement in relation to a security interest or register any other document required to be registered under the PPSA.
- h) The Trade Customer shall indemnify and keep indemnified the Supplier from and against all actions, claims, liabilities, obligations, losses, damages, costs and expenses of whatever nature suffered or incurred, sustained or threatened against the Supplier and its employees and agents in any way whatsoever in respect of the Supplier's exercise of any of the Supplier's rights, including, without limitation, those under Part 4 of the PPSA.
- i) The Trade Customer agrees to indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing charge statement in the Personal Property Securities Register established by the PPSA or releasing any Cabinetry charged thereby.

6. Payment – Trade Customers

a) Invoices will be issued on a monthly basis by no later than the last Business Day of each month. The Customer will pay for all Works supplied to the Customer by the Supplier within thirty (30) days from the date of issue of the Invoice.

7. Payment – all Customers

- a) Customers must pay the Price for the Goods on or before the date stipulated in an Invoice.
- b) The Supplier shall accept payments made by the Customer on Visa or MasterCard and the Supplier has authorized the Customer in writing of its acceptance of payments being made via such facility. The Supplier shall charge 1.5% of the total payment amount (including GST) where any payment is made using such facility.
- c) The Supplier may, in its sole and unfettered discretion, charge interest to the Customer on all amounts which are thirty (30) days overdue to the Supplier from the date of sale of the Cabinetry until payment at that rate which is equal to 2% greater than the rate Goods by Section 35(1) (b) of the *Taxation Administration Act 1997*. Where payment is not made by the due date, the Customer shall, in addition to any other obligations imposed hereunder, pay to the Supplier on demand all costs of the Supplier (including but not limited to storage delivery collection obsolescence, debt recovery commission costs and legal costs on a full indemnity basis) incurred by the Supplier in recovering overdue amounts from the Customer.
- d) All payments received by the Supplier shall be applied as follows:
 - i) Firstly, towards any costs of the Supplier referred to above (or any part thereof);
 - ii) Secondly, towards any interest payable as set out above (or any part thereof); and
 - iii) Thirdly, towards any amounts payable by the Customer to the Supplier.

Time is of the essence in respect of the payment of the Price under these terms and conditions.

8. Cancellation

- a) Cancellation of these terms and conditions requires approval in writing from the Supplier otherwise the Goods will be delivered to the Customer and the Supplier will be entitled to payment from the Customer.
- b) The Supplier is not obliged to supply Goods in relation to these terms and conditions and may cancel the contract at any time if:-
 - i) There is a breach by the Customer of any of these terms and conditions between the Supplier and the Customer; or
 - ii) The Customer has provided any false or misleading information to the Supplier including information set out in any Customer Credit Application or to open an account with the Supplier; or iii) The Customer (being a Trade Customer) commences to be wound up or is placed under official management or a receiver or receiver and manager or voluntary administrator is appointed in respect of the Trade Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or by an agent, takes or purports to take possession of the Trade Customer's undertaking or property or and part thereof; or
 - iv) The Supplier is unable to supply the Goods as a result of the failure of any supplier of the Supplier to deliver Components or provide services which are required in order for the Supplier to supply the Goods to the Customer.

9. Acceptance and Claims

- a) Acceptance of the Goods delivered shall be deemed for all purposes to have taken place at the date of each delivery of the Goods or completion of the Goods (as the case may be). The Supplier's liability in the event of any breach of a condition or warranty expressly set out in these terms and conditions or implied by law into these terms and conditions that cannot be lawfully excluded is limited at the option of the Supplier to:
 - (1) replacement of the Goods or supply of equivalent Goods;
 - (2) repair of the Goods; or
 - (3) payment of the cost of replacing the Goods or of acquiring equivalent Goods or of having the Goods repaired.
- b) Without limiting the generality of any other provision of these terms and conditions but subject to the above, the Supplier is not under any liability to the Customer or to any other person in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise whether directly or indirectly in respect of the supply of the goods or any ancillary services or advice or the failure or omission on the part of the Supplier to comply with its obligations hereunder and the Customer indemnifies the Supplier in respect of such loss or damage.
- c) Except as expressly provided to the contrary in these terms and conditions, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise are excluded to the extent permitted by law, including but not limited to those in the Competition and Consumer Act 2010.

10. Force Majeure

If delivery is prevented or delayed, in part or all, by reason of Act of God, or the consequence thereof including, but not limited to fire, flood, typhoon, earthquakes or by reason of riots, wars, hostilities, government restrictions, trade embargoes, strikes, lockouts, labour disputes, boycotting of goods, ship storage, manufacturer's bankruptcy, delays of damage in transportation or other causes beyond the Supplier's control, the Supplier may, at its option, perform the contract or the unfulfilled portion thereof within a reasonable time from the removal of the cause preventing or delaying performance or rescind unconditionally and without liability, this contract or the unfulfilled portion thereof.

11. Delivery in instalments

The Supplier may deliver the Goods by instalments or partial shipment and the Customer will accept each such delivery.

12. Clerical Errors

Clerical errors, typing errors or other errors in computations, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specifications of the Supplier shall be subject to correction by the Supplier.

13. Jurisdiction

All contracts between the Supplier and the Customer shall be governed by the laws of the State of Tasmania and the parties shall submit to the non-exclusive jurisdiction of the courts of the State of Tasmania (and any courts which can hear appeals from such courts).

14. Execution

Any contract between the Supplier and the Customer may be executed on behalf of the Customer by any agent or employee of the Customer and the Customer shall be bound by these terms and conditions irrespective of whether any such execution was unauthorized or fraudulent. The Customer shall indemnify and keep indemnified the Supplier from and against all actions, claims, liabilities, obligations, losses, damages, costs and expenses of whatever nature suffered or incurred, sustained or threatened against the Supplier in any way whatsoever in respect of the Supplier's acceptance and or conduct in respect of the satisfaction of any order received from the Customer or from persons purporting to act on behalf of the Customer.



15. Severance

If any provision of these terms and conditions is void, voidable, illegal or unenforceable in accordance with its terms, but would not be void if it were read down and is capable of being read down, such provision will be read down accordingly. If such clause is read down and remains void, voidable, illegal or unenforceable, or is incapable of being read down and the provision would not be void, voidable, illegal or unenforceable if a word or words were omitted, that word or words shall be severed and in any other case the whole provision is severed, save that in any cast the remainder of these terms and conditions shall remain in full legal force and effect.

16. Waiver

The failure, delay, relaxation or indulgence on the part of the Supplier in exercising any power or right conferred these terms and conditions do not operate as a waiver of the power or right, nor does any single exercise of any power of any power or right preclude any other or further exercise of that power or right or the exercise of any other power or right under these terms and conditions.

17. General

- (a) Colours of cabinetry and Components may vary slightly from sample from time to time.
- (b) Glass splashbacks may only be organised once benchtops are installed, and delivery time is dependent on the supplier of the benchtops.
- (c) Granite/Engineered Stone and or similar bench tops will only be measured once installation has taken place. The Supplier will create templates and arrange for benchtops to be made. A temporary benchtop may become necessary if there are delays in the production of benchtops even though production space may have been booked prior.
- (d) No allowances have been made for splashbacks, sinks, basins, tapware or appliances unless this is specified in the Quote.
- (e) No allowances have been made for rangehood ducting beyond the line of the ceiling
- (f) No allowances have been made for the removal or existing joinery unless this is specified in the Quote.
- (g) No allowances have been made for subcontract works; including, but not limited to; electrical works, plumbing works, gas fitting works, plastering works, painting works, floor coverings or window furnishings.
- (h) No allowances have been made to remove, reinstate or replace skirtings, architraves, bulkheads or pelmets to new or existing joinery.
- (i) A supply or delivery date will be advised upon acceptance of the Quote however this date may be varied by the Supplier by notice in writing in the event of circumstances arising which are outside the Supplier's control. The Supplier reserves the right to increase the Price in the event that a delivery of Goods is unable to be completed due to the act or omission of the Customer (for example, by failing to provide access to the Site or the Site not being ready for the delivery of the Goods).
- (j) The Customer gives the Supplier the right to photograph any completed Goods, and the Supplier reserves the right to use any such photographs in its promotional material including its website.
- (k) The Supplier reserves the right to vary the Price and/or issue a new Invoice in the event that additional visits to the Site are required to complete installation of the Goods (for example, in circumstances when installation has been commenced but flooring has not yet been installed, and the Customer requires the Supplier attend the Site to install cabinetry kickboards after flooring is completed).