

Interior Solutions 2008 Ltd - Terms & Conditions of Trade

1. Definitions

- 1.1 "Supplier" means Interior Solutions 2008 Ltd, its successors and assigns or any person acting on behalf of and with the authority of Interior Solutions 2008 Ltd.
- 1.2 "Customer" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Works" means all Works or Materials supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Works as agreed between the Supplier and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.

3. Price and Payment

- 3.1 At the Supplier's sole discretion the Price shall be as indicated on invoices provided by the Supplier to the Customer in respect of Works performed or Materials supplied;
- 3.2 The Supplier reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, obscured building defects, change of design, which are only discovered on commencement of the Works; or
 - (d) in the event of increases to the Supplier in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Supplier's control.
- 3.3 Where a building programme is in place, we reserve the right to make progress claims for payments on labour and equipment to date.
- 3.4 Detailed below is the Deposit/Payment terms required:
40% upon acceptance of quotation being a deposit – this allows the job to be logged into the system and materials ordered;
60% upon completion of work **Sign Here (Initials)**
- 3.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:
- (a) for certain approved Customer's, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (b) the date specified on any invoice or other form as being the date for payment;
- 3.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking.
- 3.7 In the event that retentions are made, the Supplier reserves the right to treat all retentions as placing the Customer's account into default.
- 3.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4. Delivery of the Works

- 4.1 Subject to clause 4.2 it is the Supplier's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 4.2 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Customer written or verbal notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify the Supplier that the site is ready.
- 4.3 At the Supplier's sole discretion the cost of delivery is in addition to the Price.
- 4.4 The Customer must take delivery by receipt or collection of the Materials whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Materials as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 4.5 Any time or date given by the Supplier to the Customer is an estimate only. The Supplier shall not be liable for any loss or damage whatsoever due to failure by the Supplier to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of the Supplier.

5. Risk

- 5.1 If the Supplier retains ownership of the Materials under clause 8 then where the Supplier is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
- (a) the Customer or the Customer's nominated carrier takes possession of the Materials at the Supplier's address; or
 - (b) the Materials are delivered by the Supplier or the Supplier's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- 5.2 Notwithstanding the provisions of clause 6.1 if the Customer specifically requests the Supplier to leave Materials outside the Supplier's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.

6. Access

- 6.1 The Customer shall ensure that the Supplier has clear and free access to the work site at all times to enable them to undertake the Works. The Supplier shall not be liable for any loss or damage to the site unless due to the negligence of the Supplier.

7. Title

- 7.1 The Supplier and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid the Supplier all amounts owing to the Supplier; and
 - (b) the Customer has met all of its other obligations to the Supplier.
- 7.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 7.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 7.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Supplier on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) the production of these terms and conditions by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries.
 - (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
 - (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
 - (f) unless the Materials have become fixtures the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Materials are kept and recover possession of the Materials.
 - (g) the Supplier may recover possession of any Materials in transit whether or not delivery has occurred.

(h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Supplier.

(i) the Supplier may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

8. Personal Property Securities Act 1999 ("PPSA")

8.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

(b) a security interest is taken in all Materials previously supplied by the Supplier to the Customer (if any) and all Materials that will be supplied in the future by the Supplier to the Customer.

8.2 The Customer undertakes to:

(a) 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 on the Personal Property Securities Register;

(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;

(c) not register a financing change statement or a change demand without the prior written consent of the Supplier; and

(d) immediately advise the Supplier of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.

8.3 The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

8.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

8.5 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

8.6 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses **9.1 to 9.5**.

9. Security and Charge

9.1 In consideration of the Supplier agreeing to supply the Materials, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

9.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.

9.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

10. Customer's Disclaimer

10.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Supplier and the Customer acknowledges that the Works are bought relying solely upon the Customer's skill and judgment.

11. Defects In Materials

11.1 The Customer shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Materials within a reasonable time following delivery if the Customer believes the Materials are defective in any way. If the Customer shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Materials or repairing the Materials.

11.2 Materials will not be accepted for return other than in accordance with 12.1 above.

12. Warranties

12.1 Subject to the conditions of warranty set out in clause 13.2 the Supplier warrants that if any defect in any workmanship of the Supplier becomes apparent and is reported to the Supplier within three (3) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the workmanship.

12.2 The conditions applicable to the warranty given by clause 13.1 are:

(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

(i) failure on the part of the Customer to properly maintain any Materials; or

(ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Supplier; or

(iii) any use of any Materials otherwise than for any application specified on a quote or order form; or

(iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.

(c) in respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

12.3 For Materials not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

13. Consumer Guarantees Act 1993

13.1 If the Customer is acquiring Materials for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by the Supplier to the Customer.

14. Intellectual Property

14.1 Where the Supplier has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Supplier, and shall only be used by the Customer at the Supplier's discretion.

14.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

15. Default and Consequences of Default

15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 2.5% above the base rate of _____ Limited's primary banker ("the Overdue Rate") on all overdue accounts for any month or part thereof that the account remains overdue, including interest at the Overdue Rate from the date of judgement until payment in full.

15.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).

15.3 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Works to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.

15.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;

(b) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16. Insurance

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- 16.1 The Customer accepts and acknowledges that the Price does not include Contract Works Insurance and/or Professional Indemnity Insurance, unless otherwise stated. In the event that such insurance is requested by the Customer, the cost thereof shall be added to the Price.
- 17. Compliance with Laws**
- 17.1 The Customer and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 17.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 17.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 18. Cancellation**
- 18.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Supplier for Works already performed. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.3 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19. Dispute Resolution**
- 19.1 All disputes and differences between the Customer and the Supplier touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.
- 20. Privacy Act 1993**
- 20.1 The Customer authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by the Supplier from the Customer directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 20.2 Where the Customer is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Customer shall have the right to request the Supplier for a copy of the information about the Customer retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Customer held by the Supplier.
- 21. Unpaid Supplier's Rights**
- 21.1 Where the Customer has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any moneys owing to it by the Customer, the Supplier shall have, until all moneys owing to the Supplier are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Supplier having been obtained against the Customer.
- 22. Construction Contract Act 2002**
- 22.1 The Customer hereby expressly acknowledges that:
- (a) the Supplier has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Supplier by a particular date; and
 - (iv) the Supplier has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if the Supplier suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if the Supplier exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to the Supplier under the Contractual Remedies Act 1979; or
 - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Supplier suspending work under this provision.
- 23. General**
- 23.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Christchurch Courts of New Zealand.
- 23.3 The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 23.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.6 The Customer agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Supplier to provide any Works to the Customer.
- 23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Personal/Directors Guarantee and Indemnity

I/WE ACKNOWLEDGE AND AGREE THAT

- 3. **I/We have received, read and understood the Supplier's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
- 4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to the Supplier by the Customer and all obligations herein have been fully paid satisfied and performed.
- 5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Supplier's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to the Supplier, each Guarantor shall be a principal debtor and liable to the Supplier accordingly.
- 6. If any payment received or recovered by the Supplier is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Supplier shall each be restored to the position in which they would have been had no such payment been made.
- 7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
- 8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Supplier.**
- 9. I/we irrevocably authorise the Supplier to obtain from any person or company any information which the Supplier may require for credit reference purposes. I/We further irrevocably authorise the Supplier to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Supplier as a result of this Guarantee and Indemnity being actioned by the Supplier.
- 10. The above information is to be used by the Supplier for all purposes in connection with the Supplier considering this Guarantee and Indemnity and the subsequent enforcement of the same.

PERSONAL GUARANTEE

If the work is carried out for a limited liability company or other incorporated body, it is acknowledged that the work is being carried out at the request of those persons whom sign this document, and such person accepts responsibility in their personal capacity and jointly and severally with the client and each other for the payment of the account. Any personal guarantee made by any party shall not exclude the client in any way whatsoever from the liabilities and obligations contained in this contract. If the account is not paid by the due date _____ Limited shall be entitled to look at any or all of the undersigned for payment without being obliged to first enforce payment from the client itself.

Name: _____
(Owner/Director)

Signature: _____ Date: _____
(Owner/Director)

Home Address: _____

Signatures and Witnesses

I _____ of _____ have read and accept the Terms of Trade as outlined in this document.

Name: _____

Signature: _____

Date: _____

Interior Solutions Limited

Signature: _____

Date: _____