

CAMBRIDGE KITCHENS LIMITED
TERMS OF TRADE



CAMBRIDGE KITCHENS

AND BATHROOMS

**CAMBRIDGE KITCHENS LIMITED
TERMS OF TRADE**

In these Terms of Trade we have used **we, us** and **our** to refer to CAMBRIDGE KITCHENS LIMITED and **you** to refer to our customer. By agreeing to acquire goods (and any associated services) from us you agree to these Terms to the exclusion of your terms (if any).

1. INSTALLATION

- 1.1 If we agree to install Goods for you, we do so on the basis that it is your obligation to:
- (a) promptly provide all necessary plant, materials, services and other resources necessary to enable us to carry out the installation;
 - (b) promptly obtain any necessary consent, approval, permit, licence or authorisation to enable us to carry out the installation;
 - (c) arrange, at your cost, for any plumbing or electrical works that may be required in connection with the installation of the Goods to be lawfully carried out by a qualified professional;
 - (d) provide upon request evidence of your compliance with clause 1.1(c);
 - (e) provide upon request a certificate of currency confirming insurance for the property and evidence that your insurer has been notified of the renovations;
 - (f) ensure that the premises and foundations are structurally sound and in a proper condition for the installation to proceed; and
 - (g) to provide safe and secure onsite storage for materials and accessories supplied and used by us, our employees and contractors.
- 1.2 You must advise us promptly of any decision or instruction that needs to be made or given before we are able to proceed with the installation.
- 1.3 If we have given you a time for Delivery or installation of the Goods (or any part of them), such time is approximate only and is not deemed to be of the essence.
- 1.4 You agree to allow us access to your property on request at all reasonable times:
- (a) for purposes of carrying out the works or inspection, measurement or installation of the Goods;
 - (b) for purposes of photographing or filming the works created from the designs for the purposes of publicising our services, and/or inspection of the works by a third party for the purpose of any professional award or membership;
 - (c) for any other purpose contemplated in these Terms.

2. TITLE AND RISK

- 2.1 We will retain title to Goods we supply until they have been paid for in full and you have performed all your other obligations under these Terms.
- 2.2 Risk in all Goods passes to you when the Goods are Delivered. You will insure Goods for their full price, and will not sell, dispose or part with possession of them or do anything else inconsistent with our ownership of the Goods, from Delivery until title in them passes to you.
- 2.3 You will bear the risk of any damage to the Goods during installation carried out at your premises (except to the extent the damage has been caused by or contributed to by our negligence).

3. ESTIMATES

- 3.1 Unless stated otherwise, any price we give you for the Goods is an estimate (**Estimate**) on a plus GST basis of the anticipated costs based on information available to us at that time and we may charge you more than the amount quoted if our costs (e.g. the cost of labour, materials, transport, tax, exchange rates or other costs) or the specifications change. The Estimate is subject to clause 4 below.
- 3.2 The Estimate is open for acceptance for 30 days after it is dated unless withdrawn by us prior to acceptance.
- 3.3 We will not commence the Work until you have accepted the Estimate in writing.

4. PRICE

- 4.1 Notwithstanding any Estimate given, unless we have agreed in writing to be bound by a set price for the Goods, you will pay to us our actual cost of the Goods (**Actual Cost**) which will be calculated by totalling the following:
- (a) the number of hours of service multiplied by the hourly rates for the workers involved on the date which the Goods are provided;

- (b) any disbursements (including without limitation delivery costs) incurred by us on your behalf;
- (c) the cost of any Goods supplied by us as part of the Work.

- 4.2 The Actual Cost and all prices are plus GST and other taxes which are payable by you in New Zealand dollars.
- 4.3 Disbursements incurred by us on your behalf and the cost of any Goods supplied may include a reasonable mark-up by us.
- 4.4 In the event these Terms of Trade are terminated for any reason prior to completion or delivery of the Goods, you must immediately pay us the Actual Cost as at the termination date.

5. PAYMENT

- 5.1 We may require you to pay an initial design deposit being an advanced payment to be credited towards the Actual Cost before we progress from concept plans to specified working plans in relation to the Goods ("Design Deposit"). The Design Deposit is non-refundable if these Terms of Trade are terminated before completion of the work and Delivery of the Goods.
- 5.2 We may require you to pay a further deposit of 50% of the Estimate being an advanced payment prior to commencement of production of the Goods.
- 5.3 You must pay for the Goods in full prior to Delivery, unless we decide otherwise.
- 5.4 Unless otherwise agreed, payment is due within 7 days of the date of our invoice.
- 5.5 All payments must be made without set-off or deduction. Receipt of a cheque, bill of exchange, or other negotiable instrument will not constitute payment and you remain liable for payment until payment is received by us.
- 5.6 We may apportion payments to outstanding accounts as we see fit.

6. DEFAULT

- 6.1 You will be in Default if:
- (a) you fail to pay an amount due under these Terms by the due date for payment; or
 - (b) you commit a breach of any of your other obligations under these Terms, the Security or the terms of any other contract you have entered into, or enter into in the future, with us or one of our related entities; or
 - (c) you become insolvent, are wound up, have a receiver appointed, enter into any composition or arrangement with your creditors, do any act which would render you liable to be placed in liquidation or have a receiver appointed over your property, commit an act of bankruptcy, cease to be of full legal capacity, or die;
 - (d) Goods that we have retained title to are at risk; or
 - (e) an event or a series of events (whether related or not) occurs which, in our opinion, may cause a material adverse change in your ability to meet your obligations to us.
- 6.2 If you are in Default then we may, at our option, do any one or more of the following:
- (a) charge you default interest at 8% per annum on any late payments calculated on a daily basis from the due date until the date payment is received;
 - (b) require you to remedy the default in the manner and within the period that we tell you;
 - (c) require you to pay to us all amounts you owe us immediately;
 - (d) suspend or terminate these Terms;
 - (e) enforce security interests created by these Terms;
 - (f) exercise any rights that we have under these Terms or that are available to us at law.
 - (g) Engage a collection agency of our choice to act on our behalf in the execution of any one, or all of the above.
 - (h) Any related costs associated with the collection of payments will be passed on to the client.
- 6.3 Termination under this clause will not affect any of our rights that have arisen prior to termination.

7. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- 7.1 Clause 2.1 creates a security interest in Goods we supply to you.
- 7.2 You will not grant any other security interest or any lien over Goods that we have a security interest in.

- 7.3 At our request you will promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the Goods.
- 7.4 We may at any time enter your premises and properties to uplift Goods that we have a security interest in.
- 7.5 If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, our security interest will continue in the whole in which they are included. You will not grant any other security interest or any lien in either the Goods or in the whole.
- 7.6 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, and 133 of the PPSA.
- 7.7 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 7.8 You will give us prior written notice of any proposed change of your name or address.

8. WARRANTIES

- 8.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations on us which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these Terms, we exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 8.2 Where you acquire goods and/or services from us for the purposes of a business:
- (a) the parties acknowledge and agree that:
- (i) you are acquiring the goods and/or services covered by these Terms for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;
- (ii) the goods and/or services are both supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and
- (b) you agree that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.
- 8.3 Where any new appliance or product is installed as part of the delivery of the Goods, we will make available to you as soon as practicable after Delivery any manufacturer's warranty which is available for such appliance or product. You acknowledge that any such warranty applies to the appliance or product to which it relates only, and you will be solely responsible for any associated costs including but not limited to any inspection, removal, or re-installation of such appliance or product.

9. LIMITATION OF LIABILITY

- 9.1 Except as expressly otherwise provided by clauses 8.1 or 8.2, we will not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from Goods or services provided by us to you.
- 9.2 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms or for any other reason, such liability is limited to the amount of the price of the Goods concerned. If Goods are returned by you, or if you make a claim in writing to us in relation to Goods or associated services provided, we may, in our discretion, arrange for repair or replacement of the Goods or re-perform the services, or refund the price of those Goods to you, provided that:
- (a) the Goods must be returned or the claim must be made in writing to us within fourteen (14) days of Delivery; and
- (b) you supply the date and number of any invoice relating to the Goods; and
- (c) we are given a reasonable opportunity to inspect the Goods.

10. INTELLECTUAL PROPERTY

- 10.1 In respect of Intellectual Property used in or arising from the production of the Goods or the performance of any associated services:
- (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms (whether you or us, or any third party);
- (b) any new Intellectual Property will be dealt with in accordance with clause 11.
- 10.2 If any Goods are to be supplied to your design, you warrant that the manufacture and supply of such Goods by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs and expenses in the event of any claim being made that the manufacture or supply of such Goods by us infringes any patent, copyright or other rights of any other person.

11. INTELLECTUAL PROPERTY OWNERSHIP

- 11.1 Subject to clause 10.1(a) we are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests in the Goods, and any other work performed by us for you, as first owner of those Intellectual Property rights and interests.
- 11.2 We will retain exclusive worldwide ownership at all times (both before and after payment and Delivery of the Goods) of our plans, concepts, drawings, specifications, models, photographs, documents, software, artistic styles, methods of working, techniques, ideas, skills and know-how or any other material which we own.
- 11.3 You must not attribute the Goods to anyone other than us or remove any of our trade marks, signatures, logos or similar from the Goods. You further agree not to distribute any of our plans, concepts, drawings or other material provided to you as part of the Goods to any third party without our prior written consent.
- 11.4 For the avoidance of doubt, you acknowledge that all of our plans, concepts, drawings and other material provided to you by us remains our property at all times, and may not be utilised by you or passed on to any third party without our prior written consent, notwithstanding payment of the Design Deposit or any other amounts by you to us and/or subsequent termination of these Terms.

12. PRIVACY OF INFORMATION

- 12.1 You authorise us:
- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
- (b) to disclose information about you:
- (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
- (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.

13. NOTICES

- 13.1 Any notice may be given by phone, in person, posted, or sent by fax or email to you or where you are a company, to any of your directors.

14. CONFIDENTIALITY

- 14.1 You will at all times treat as confidential all non-public information and material received from us and will not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

15. COSTS

- 15.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.

16. CREDIT INFORMATION

- 16.1 You consent to us, or any financier or credit-rating agency, making enquiries of and obtaining or disclosing any information about you or your financial standing and credit worthiness.

17. JURISDICTION

- 17.1 These Terms are governed by and construed according to the laws of New Zealand. Subject to clause 18, you may take legal action against us only in a New Zealand court.

22.9 References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

18. DISPUTES

18.1 Any claim or dispute arising under these Terms will be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

19. FORCE MAJEURE

19.1 We will not be liable for any failure or delay in complying with any obligation imposed on us under these Terms if the failure or delay arises directly or indirectly from a cause reasonably beyond our control.

20. SURVIVAL

20.1 This clause 20 and clauses 2, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 21, and 22 and any other provision which by its nature is intended to survive the termination or expiration of these Terms will survive the termination or expiration of these Terms or Delivery of the Goods.

21. GENERAL

21.1 These Terms supersede and cancel any earlier representations, warranties, understandings and agreements (whether oral or written), and together with your Credit Application constitute the entire agreement between us and you relating to their subject.

21.2 You may only assign, sell, or otherwise dispose of any right or obligation under these Terms if we consent in writing first.

21.3 If you have entered into these Terms as the trustee of a trust and you have no right to or interest in any of the assets of the trust except in your capability as trustee of the trust, your liability will be limited to the value of the assets of the trust which now or in the future are (or, but for your wilful neglect or default, would be) in the hands of the trustees for the time being of the trust. This clause does not limit any liability you have to us as a personal guarantor.

21.4 No failure or delay by us to exercise (in whole or in part) any right, power or remedy under these Terms will operate as a waiver of that right, power or remedy.

21.5 We may change these Terms at any time. Any change applies from when it is published on our website www.cambridgecolour.co.nz www.cambridgekitchens.co.nz or otherwise disclosed to you.

22. DEFINITIONS

22.1 In these Terms unless the context otherwise requires:

Delivery means the collection of Goods by you or one of your employees, contractors or agents from our premises, unless we have agreed to dispatch Goods for you, in which case delivery means the despatch of the Goods from our premises. If you indicate to us that you will fail or refuse to take or accept delivery, then the Goods are deemed to have been delivered when we are willing to deliver them.

Default has the meaning set out in clause 6.

Goods has the meaning set out on the customer application form and includes all goods and associated services supplied by us to you from time to time.

Intellectual Property means all intellectual property rights including, without limitation, copyright, patent and design rights, artistic styles, methods of working, techniques, ideas, skills and know-how, ideas, procedures, calculations and all other statutory and common law rights and interests.

Security means all existing and future security held by us that secures your obligations under these Terms.

22.2 The rule of construction known as the contra proferentem rule does not apply to these Terms.

22.3 Words referring to the singular include the plural and vice versa.

22.4 Any reference to a party includes:

- (a) that party's executors, administrators, or permitted assigns; or
- (b) if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.

22.5 Clause headings are for reference only.

22.6 References to clauses are references to clauses of these Terms.

22.7 References to money will be New Zealand currency, unless specified otherwise.

22.8 Expressions referring to **writing** will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by fax or email).