

GENERAL COMMERCIAL TERMS AND CONDITIONS

Unless specifically stated otherwise, the following clauses shall form part of DSK Kitchen & Furniture Pty Ltd's (DSK) QUOTATION and these General Terms and Conditions.

1. DEFINITIONS

- 1.1 CONTRACT SUM means the amount the CUSTOMER will pay to DSK to perform the WORKS the subject of the QUOTATION to which these TERMS apply.
- 1.2 COMMENCEMENT DATE means the date the GOODS will be delivered, or the WORKS will commence as set out in the QUOTATION;
- 1.3 CUSTOMER means the person(s) or company named in the QUOTATION who wishes to engage DSK in the commercial supply of GOODS or WORKS;
- 1.4 DEFECTS means any defect in the design material or workmanship of the GOODS supplied by DSK.
- 1.5 DEPOSIT means 10% of the PRICE to be paid by the CUSTOMER to DSK as stated in the QUOTATION at the times set out in the QUOTATION;
- 1.6 PRICE means the price set out in the QUOTATION;
- 1.7 GOODS shall mean the materials, products or services to be purchased or to be supplied to the CUSTOMER as specified in the QUOTATION;
- 1.8 QUOTATION means the quotation provided to and accepted by the CUSTOMER to undertake the WORKS to which these TERMS apply;
- 1.9 IP RIGHTS has the meaning in clause 17 below;
- 1.10 RESOLUTION INSTITUTE means Level 2, 13 – 15 Bridge Street, Sydney NSW 2000;
- 1.11 WORKS means the scope of works set out in the QUOTATION;
- 1.12 TERM means the TERM of this agreement as set out in the QUOTATION;
- 1.13 TERMS means these General Terms and Conditions of the commercial sale and/or supply of GOODS for the WORKS and as amended by DSK in writing from time to time.

2. FORMATION OF THE CONTRACT

- 2.1 A QUOTATION from DSK is binding on the CUSTOMER, if:
 - (a) A deposit is paid by the CUSTOMER; or
 - (b) the WORKS or the GOODS the subject of the QUOTATION are carried out and/or supplied by DSK in accordance with the QUOTATION.

3. DEPOSIT

- 3.1 The CUSTOMER agrees to pay DSK the DEPOSIT for the WORKS as stated in the QUOTATION.

4. TERM

- 4.1 This Agreement commences on the COMMENCEMENT DATE and continues for the TERM set out in the QUOTATION, unless terminated earlier in accordance with this Agreement.

5. THE WORKS

- 5.1 DSK will complete the WORKS for the CUSTOMER (as defined in the QUOTATION):
 - (a) in a competent and tradesmanlike manner to the reasonable satisfaction of the CUSTOMER in accordance with these TERMS and/or any relevant drawings, plans or specifications supplied in relation to the WORKS;
 - (b) within the dates or time limits specified in the QUOTATION; and
 - (c) in accordance with the relevant Australian Standards, National Building Code and any other relevant standards or regulations prescribed by the relevant State or Territory of Australia in which the WORKS are being carried out.

6. DEFECTS – THE WORKS

- 6.1 DSK agrees to make good or rectify any DEFECTS or defaults in the WORKS, at its own cost, as notified by the CUSTOMER in writing within a period of 26 weeks after

completion of the supply of the GOODS or completion of the WORKS.

- 6.2 The extent and timing of DSK's rectification of DEFECTS in the WORKS will be carried out at agreed times and dates.
- 6.3 If an agreement cannot be reached in relation to the rectification of DEFECTS in the WORKS, the parties must follow the Dispute Resolution procedure set out in clause 15.

7. WARRANTY – THE WORKS

- 7.1 Upon completion of the WORKS the subject of the QUOTATION, DSK warrants to the CUSTOMER that the WORKS will be fit for their intended purpose and will be complete without any omissions.
- 7.2 DSK's liability referred to in clause 7.1 above, excludes any implied warranties, claims for indirect, remote or consequential losses, whether relating to the WORKS or otherwise.

8. VARIATIONS TO THE WORKS

- 8.1 Within the TERM, the CUSTOMER shall promptly notify DSK of any variations to the GOODS or the WORKS the subject of the QUOTATION.
- 8.2 If the CUSTOMER has notified DSK and requested a variation to the GOODS or the WORKS, DSK will provide the CUSTOMER with an updated QUOTATION.
- 8.3 The updated QUOTATION will be accepted by the CUSTOMER in accordance with clause 2 of these TERMS.

9. DELAY TO THE WORKS

- 9.1 If there is a delay to the completion of the WORKS, DSK will give the CUSTOMER notice of that delay and details of the extent of the delay.

10. INVOICES AND PAYMENT TERMS

- 10.1 DSK will invoice the CUSTOMER on the milestone dates agreed in the QUOTATION or on the last business day of the month for each and every month the WORKS are carried out.
- 10.2 The CUSTOMER will pay DSK within 30 Business Days from the date of the invoice.
- 10.3 DSK retains ownership of all GOODS and WORKS listed in the QUOTATION and the invoice until full payment is received within the period listed above.
- 10.4 If payment is not received within the period set out in clause 10.2, DSK reserves the right to withhold delivery, or retrieve any unpaid GOODS already delivered.
- 10.5 DSK reserves the right to suspend the supply of GOODS and the WORKS if these payment terms are not met.
- 10.6 Disputes as to payment are to be resolved in accordance with the relevant statute or in accordance with clause 15.

11. GST

- 11.1 THE PRICE is inclusive of all labour and supply taxes other than GST.

12. TERMINATION

- 12.1 A failure of the CUSTOMER to pay invoices by the due date entitles DSK to terminate the WORKS by written notice.
- 12.2 Nothing in clause 12.1 prevents DSK from claiming payment in accordance with clause 10 above.

13. INSURANCE

- 13.1 For the TERM, DSK shall affect and maintain at its own cost, all applicable insurances as required by law and to cover its responsibilities and liabilities under the QUOTATION in respect of the GOODS and/or the WORKS.

14. NO WAIVER

- 14.1 Failure by DSK to enforce the performance of any of the provision of the QUOTATION shall neither be deemed to be a waiver of its rights hereunder nor shall it affect the validity of the QUOTATION in any way.

15. DISPUTE RESOLUTION

- 15.1 Any dispute or difference arising out of or relating to these TERMS between the parties (**Dispute**) must

comply with the following steps before initiating any court proceedings:

- (a) A party to the Contract claiming that a Dispute has arisen must agree give notice in writing to the other party within 12 months after receipt of the GOODS or completion of the Works, whichever is applicable;
- (b) Specifying the facts, matters, circumstances and any quantum involved; and
- (c) To be signed by an authorised member of the party.

15.2 Bona Fide Conference

- (a) Within 10 Business Days of a party's receipt of a Dispute Notice, or such further period as agreed, the Senior Executive or other representatives of each party with appropriate authority, to resolve the Dispute and bind the parties, must meet in a bona fide attempt to resolve the Dispute.
- (b) If the Dispute is not within 10 Business Days of the service of the Dispute Notice, that Dispute shall be and is hereby referred to the Resolution Institute for facilitation of a mediation with accordance with the Resolution Institute's Mediation Rules.

15.3 Mediation

- (a) The parties must co-operate with Resolution Institute as facilitator.
- (b) If within 28 Business Days after referral of the Dispute to mediation to the Resolution Institute, the parties have not agreed upon the mediator or other relevant particular, the mediator and any other relevant particular will be determined in accordance with Resolution Institute's Facilitation Rule, which are current at the date of the QUOTATION.
- (c) This clause will remain operative after the contract has been performed and notwithstanding its termination.
- (d) It is a condition precedent to the rights of either party to commence litigation (other than for interlocutory relief) that it has first offered to submit the Dispute to mediation.

16. APPLICABLE LAW

- 16.1 THE QUOTATION shall be governed, construed and shall take effect in accordance with the laws of State in which the GOODS were delivered or where the WORKS were carried out.
- 16.2 The CUSTOMER and DSK hereby agree to submit to the exclusive jurisdiction of the Australian Courts in respect of these TERMS.

17. INTELLECTUAL PROPERTY

- 17.1 As a matter of law, all plans, designs, illustrations, photos, images or other similar material produced by DSK, whether in printed form or otherwise is owned by DSK (**IP RIGHTS**).
- 17.2 It is a breach of DSK's copyright and other IP RIGHTS for anyone to use, copy or reproduce these IP RIGHTS, whether in whole or in part, unless expressly authorised by DSK.

18. LIMITATION OF LIABILITY

- 18.1 Neither party will be liable to the other party for any consequential loss suffered or incurred by the other party arising out of or in connection with this Agreement, whether arising under contract, in tort (including negligence) or otherwise.
- 18.2 To the maximum extent permitted by law, DSK's maximum aggregate liability to the CUSTOMER (whether under contract, tort, statute or in equity) arising out of or in connection with this Agreement is limited to the total amount of the PRICE paid under this Agreement.

19. ENTIRE AGREEMENT

- 19.1 These TERMS set out in the QUOTATION (together with any subsequent changes made in writing by the CUSTOMER represent the entire terms and conditions of the agreement between the CUSTOMER and DSK.