

OAKWOOD KITCHENS - TERMS OF TRADE

1. INTRODUCTION

The Client acknowledges and agrees that the provision of Goods and Services by Oakwood Kitchens (Vic) Pty Ltd is governed by these Terms of Trade ("**Terms**"), and that all Work is carried out by OK on the understanding that the Client understands, has agreed to and accepts the Terms.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these Terms:

ACL means the Australian Consumer Law located in *Competition and Consumer Act 2010* (Cth), Schedule 2.

Additional Charge means:

- a) fees or charges for additional Work performed at the Client's request or reasonably required due to the Client's conduct, calculated in accordance with OK's then current prices; and
- b) expenses incurred by OK at the Client's request or reasonably required due to the Client's conduct.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods are provided.

Client means the applicant named on the account with OK, or (where no account exists) on the Quote provided by OK.

Components includes hinges, door handles, drawer runners and associated hardware.

Goods means any goods supplied by OK, including those supplied in the course of providing Services.

GST means Goods and Services Tax as defined under the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other applicable legislation governing GST.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and designs, whether registered or not.

Loss includes, but is not limited to, costs (including party to party legal costs and OK's legal costs), liquidated damages, expenses, lost profits, award of damages, personal injury and property damage.

OK means Oakwood Kitchens (Vic) Pty Ltd (ABN 35 006 626 964), namely the entity who will provide Goods and Services in accordance with these Terms, and it includes OK's agents, employees, contractors and permitted assigns.

Order means a purchase order (in the form of a Quote or an order form signed off by the Client) for Goods and/or Services placed by a Client in response to a Quote, as varied in writing from time to time by the parties.

OHRR means overhead recovery rate, being the hourly rate at which work carried out by OK's workers is charged.

Quote means a written description of the Goods or Services to be provided and an estimate of OK's charges, (including delivery costs) for the performance of the work required to provide the requested Goods and Services in accordance with the Client's instructions.

Services means services (such as on-site assembly) to be provided by OK to the Client in accordance with an Order.

Site means the physical premises where the Goods and Services are to be provided/delivered/installed.

Work means the work required to provide the Goods and Services in accordance with an Order and these terms

2.2 Interpretation

In these Terms, unless the context otherwise requires:

- a) a reference to writing includes email and other communication established through OK's website (if any);
- b) the singular includes the plural and vice versa;
- c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms;
- d) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- g) a reference to any statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time; and
- h) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing must be done on the next Business Day.

3. QUOTES AND ORDERS

- a) Upon receipt from the Client of instructions setting out the Goods and Services they require from OK, OK may give the Client a Quote relating to those instructions. For the avoidance of doubt, OK reserves the right to accept or reject any request for Goods or Services.
- b) The Client may accept a Quote by:
 - i. instructing (in writing) OK to commence the Work by signing and returning to OK a true copy of the Quote or by submitting to OK an Order in respect of the Works set out in the Quote; and
 - ii. Paying the deposit in accordance with clause 6(a)(i),and the Client acknowledges and agrees that a contract is formed between OK and the Client on acceptance of a Quote in respect of the Goods and Services and associated Work specified in the Quote/Order and on these Terms.
- c) The Client acknowledges and agrees that acceptance by the Client of the Quote also constitutes acceptance by the Client of these Terms.
- d) Quotes are valid for thirty (30) days from the date of issue, unless OK has authorised an extension.
- e) The Client warrants that it has not relied on any representation by OK and its employees, agents or contractors, other than any warranties supplied in writing in the Quote or these Terms.
- f) OK is not required to commence Work until the Quote has been accepted by the Client;

- g) OK may amend the Quote after a period of three (3) months from the date of a signed Order to take into account any rise or fall in the cost of completing the Order. OK shall notify the Client of such amendment as soon as practicable, at which point the amended Quote will apply.
- h) The Client acknowledges and accepts that any indication in a Quote of the timeframe for the provision of the Goods and/or Services is an estimate only. Whilst OK will endeavour to meet the said timeframe, the Client acknowledges and agrees that OK is not liable for any Loss incurred by the Client as a result of any delay in the provision of Goods and/or Services.
- i) Subject to any obligations in respect of consumer guarantees under chapter 3, part 3-2, division 1 of the ACL, any such estimate is not binding upon OK.
- j) The Client acknowledges and accepts that any costs incurred by OK in reliance on incorrect or inadequate information provided by the Client in its instructions or an Order may result in the imposition of Additional Charges payable by the Client on demand by OK.

4. VARIATIONS

- a) The Client may request that its Order be varied by providing a written request to OK. A request for a variation must be agreed to in writing by OK in order to have effect.
- k) Upon receipt of a request for a variation from a Client, OK may provide the Client with a revised Quote, setting out any Additional Charge anticipated as a result of the variation. For the avoidance of doubt, OK may, acting reasonably, accept or reject any variation request.
- b) If the Client wishes to proceed with the variation, it must approve the revised Quote by signing and returning it to OK via email within 7 days of receiving the revised Quote, failing which the Client shall be deemed to have rejected the revised Quote, and OK may proceed based on the previously approved Quote.
- c) Invoices for Work carried out pursuant to an approved revised Quote are payable within 14 days of the invoice.

5. CANCELLATIONS

- a) An Order cannot be cancelled by the Client without OK's prior written consent.
- b) Where an Order is cancelled, the Client:
 - i. must pay, within 7 days of a receipt of an invoice from OK, for all Work carried out and costs and charges incurred by OK up to the time of cancellation, which is charged at the OHRR.
 - ii. indemnifies OK against Losses incurred by OK as a result of the cancellation, including without limitation loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

6. INVOICING AND PAYMENT

- a) Subject to clause 6(b) below, the Client must pay OK for the Goods and Services provided as follows:
 - i. Deposit of 20% of the total quoted price on acceptance of a Quote. The deposit must be paid in order for OK to proceed with preparation of required plans/drawings for the Goods and Services;
 - ii. 10% of the total quoted price, on approval of the plans/drawings (refer to clause 7);
 - iii. When the first delivery is made, the amount payable by the Client is the value of that delivery (as determined by OK) less the amounts paid under clause 6(a)(i) and (ii). The amount shall be payable within 14 days of the client being provided with an invoice for the delivery;
 - iv. For each subsequent delivery, the Client must pay the value of that delivery (as determined by OK) within 14 days of the client being provided with an invoice for the delivery.
 - v. Final payment is due on completion of installation and quality assurance ("QA") sign off.
- b) If the Client fails to pay invoices by the due date, OK may:
 - i. Charge interest on the outstanding amount at the rate that is 10% per annum, calculated daily; and/or
 - ii. Suspend delivery of further Work until the invoice and any interest charged under clause 6(b)(i) is paid in full, unless otherwise agreed; or
 - iii. Terminate the applicable contract.
- c) All costs and expenses incurred by OK in relation to collecting overdue amounts, including but not limited to legal fees, debt collection fees, and internal costs and expenses, are payable by the Client to OK on an indemnity basis as a debt payable under these Terms.
- d) OK has full discretion to apply any payment received from the Client to any amount owing by the Client to OK.
- e) The Client and OK agree to comply with their obligations in relation to GST under the GST Law.

7. SECURITY FOR PAYMENT

7.1 Personal Property And Securities Act 1999 (CTH) ("PPSA")

- a) All terms in this clause 7.1 have their meanings in the PPSA.
- b) The Client grants to OK a purchase money security interest ("PMSI") in the Good and Services provided/installed by OK pursuant to an Order and these Terms and to any of its proceeds, to secure the purchase price for the Goods and Services and any additional or ancillary costs payable under these Terms.
- c) The Client agrees that OK may register a financing statement under the PPSA to give notice of the PMSI.

7.2 Security For Payment:

Any payment claim provided by OK to the Client is under and in accordance with the *Building and Construction Industry Security of Payment Act 2002*.

8. DRAWINGS

- a) OK will prepare drawings for the Work set out in the applicable Order based on the latest documentation provided to OK by the Client.

- b) Initial drawings and minor changes (being changes that take OK up to 30 minutes to alter) to the drawings are included in the Quote. If the Client requests design changes which in OK's opinion notably differ from the original instructions supplied by the Client on which the Quote was based, such request shall be treated as a variation request under clause 4.

9. DELIVERY AND SITE ACCESS

- a) Delivery of Goods and Services shall be made to the Client's nominated address. The Client shall make all necessary arrangements to take delivery of the Goods and Services at the scheduled delivery date and time. Delivery to a third party and/or site nominated by the Client is deemed to be delivery to the Client in accordance with these Terms.
- b) OK reserves the right to charge for additional deliveries made pursuant to Client instructions, which exceed the original delivery allowance noted on the Order, as an Additional Charge at OK's then current OHRR, and includes without limitation load, travel to Site from OK factory, unload at Site, and return travel to the OK factory.
- c) The Client must ensure OK personnel have clear, safe and uninterrupted access to the Site (including without limitation, installed staircase or mechanical lifting to all higher floors over ground level) from commencement of the Work until the Work is complete and the Client has paid to OK all monies owed to OK under these Terms.
- d) If OK is ready to deliver or install Goods and Services to/in the Site on or about the scheduled deliver/installation date, but is unable to do so because clear, safe and uninterrupted access to the Site is not made available to OK, OK may issue an invoice for the value of the Goods and Services to be installed at that time which shall be payable within 14 days, and OK shall attend to delivery/installation at a later date when there is clear, safe and interrupted access to the Site. In this instance, the Client will be required to request a new delivery date under clause 9(g).
- e) The Client indemnifies OK its employees, agents and contractors against all claims, Loss, costs, expenses, action, damage, liability, whatsoever suffered or incurred by OK (including, but not limited to, economic loss and all legal costs and disbursements on a full indemnity basis) due to access to the Site not being clear, safe and uninterrupted.
- f) The Client will indemnify OK against any Loss, costs or penalties whatsoever incurred by OK as a result of completion of any stage of Work being delayed, hindered or stopped due to interrupted or otherwise impeded site access, or other delays caused by the Client or its agents, contractors or appointed builder.
- g) If the Client requests an amendment to their initially requested delivery dates, then while OK will use its best endeavours to arrange for delivery to occur on or as close as possible to the newly requested delivery date, having regard to Work already scheduled for other clients, the Client acknowledges and agrees that OK is not liable for any Loss, costs, expenses, etc incurred by the Client as a result of any delay in delivery/installation.

10. ACCEPTANCE OF GOODS/SERVICES, DEFECTS and REMEDIATION

- a) At or shortly before practical completion of the Work, OK will provide a written QA report to the Client either in person or via email.
- b) Once OK in its sole discretion determines that practical completion has been achieved in that all Goods and Services have been provided/installed, the Client will have five (5) Business Days from the date on which they are notified that practical completion has been achieved to inspect the Goods and Services and notify OK in writing of any alleged defect, shortage in quantity, damage, or failure to comply with the Order.
- c) If the Client provides the notice described in clause 10(b) within the timeframe specified in that clause, OK shall then, within a reasonable period of time after receipt of the notice from the Client, inspect the Goods and Services, and if it agrees that there is a defect, shortage in quantity, damage, or failure to comply with the Order, OK shall remedy the issue as soon as reasonably practicable.
- d) If the Client does not provide the notice described in clause 10(b) within the timeframe specified in that clause, the Client is deemed to have accepted the Goods and Services and to have accepted that the Goods and Services are not faulty and accord with the applicable Quote, Order and these Terms. Nothing in this clause affects the Client's rights for any alleged failure of a consumer guarantee under the ACL that is not excluded under these Terms.

11. TITLE AND RISK

- a) Risk in the Goods and Services passes to the Client immediately upon delivery or installation of the Goods and Services to the Client or its agent, or to a third party nominated by the Client.
- b) Title in Goods and Services supplied to the Client under these Terms does not pass to the Client until all money (including money owing in respect of other transactions between OK and the Client) due and payable to OK by the Client have been fully paid.
- c) Until such time as payment has been received in full, the Client is bailee of the Goods delivered and irrevocably appoints OK to be its attorney to do all acts and things necessary to ensure the retention of title to the Goods including the registration of any security interest in favour of OK with respect to the Goods under applicable law.

12. PROJECT MATERIALS

- a) OK shall initiate material procurement on acceptance of a Quote in accordance with clause 3(b) and receipt of the deposit under clause 6(a)(i).
- b) The Client acknowledges that natural materials in Goods have natural variability in their finishes and appearance.
- c) In the event of material shortages for whatever reason, OK shall notify the Client as soon as possible, and will consult with the Client regarding any alternative, readily available options. If the Client wishes to retain its original materials choices and does not wish to select any readily available alternative option, the Client acknowledges and agrees that OK is entitled to an extension of the completion date for the provision of the Goods and Services without penalty by a reasonable period of time having regard to when the materials become available and OK's other workload.
- d) The Client acknowledges and accepts that OK cannot control the availability of materials and will not be liable for any Loss, costs, expenses or damages whatsoever arising from or connected with any material shortage or delay in delivery of materials, or in respect of any variability in the finishes of natural materials in the Goods or Services.

13. PROTECTION OF INSTALLED CABINETRY

- a) The Client acknowledges that OK will supply the following protection to installed cabinetry as standard:
 - i. 3mm MDF substrate or core flute to horizontal bench tops and shelving surfaces.
 - ii. 3mm MDF substrate or core flute to vertical surface of joinery in high traffic areas only.
- b) If the Client requires protection to any nominated cabinetry in addition to the standard protection described in clause 13(a), the Client must advise OK in writing when it provides its instructions for the Work required, or in a variation request. Cabinetry protection in addition to the standard protection will attract an Additional Charge.
- c) The Client acknowledges and accepts that if the protection applied to the cabinetry by OK is removed by anyone other than OK prior to completion of the Work:
 - i. OK is not liable for any damage sustained to the Goods and Services; and
 - ii. The Client is responsible for costs associated with rectifying any damage sustained to the Goods and Services as a result of the applied protection being removed, such costs will be charged out on an hourly basis at the OHRR.

14. STONE BENCH TOPS AND SPLASHBACKS

- a) If the scope of Work includes the supply and installation of stonework (such as stone bench tops and splashbacks), it will be noted in the Quote.
- b) If the Client does not require OK to provide stoneworks and stoneworks are accordingly removed from the scope of Work in the Quote, unless otherwise agreed in writing, OK will still provide substrates and templates for the Client's nominated stonemason. If stoneworks are removed from the scope of Work to be provided by OK, the Client indemnifies OK against any Loss or claims, including without limitation warranty claims, relating to stoneworks.

15. CAULKING

The Client acknowledges and accepts that unless specifically noted in the Order, caulking is excluded from the scope of Work.

16. INTELLECTUAL PROPERTY

- a) The Client warrants that it owns all Intellectual Property Rights pertaining to all information or documentation provided by it to OK for the purposes of enabling OK to prepare drawings designs, plans and the like in respect of the Goods and Services to be supplied pursuant to an Order. The Client indemnifies and agrees to keep indemnified OK against all Losses incurred by OK in relation to or in any way directly or indirectly connected with any breach of Intellectual Property Rights relating to material/information supplied by the Client.
- b) Unless otherwise specifically agreed in writing between OK and the Client, all Intellectual Property Rights in any works or ideas created or communicated by OK (including without limitation plans, drawings, sketches, design ideas and custom-made solutions) vest in and remain the property of OK. The Client must not, without OK's prior written consent, disclose any such works or ideas created or communicated by OK to any person unless the disclosure is:
 - i. the minimum disclosure required by Law; or
 - ii. to the Client's officers or employees on a need-to-know basis, provided that the disclosure is reasonably necessary, and the person who discloses the information must ensure that the person who receives the information is under an obligation to keep the information confidential.
- c) This paragraph survives termination of these Terms

17. WARRANTIES, LIABILITY AND INDEMNITY

- a) OK warrants that Work will be carried out in accordance with the Order and corresponding plans, drawings and specifications (if any), in accordance with applicable laws and legal requirements, in a proper and workmanlike manner and with reasonable care and skill, using good quality materials that are suitable for the purpose for which they are intended to be used, and which are new unless otherwise stated in the accepted Quote or Order, and completed by approximately the date (or within the period) specified by the Order, subject to any delay or extension of that date as permitted or allowed for in these Terms. The warranties are provided for the period required by applicable legislation, subject to either the private domestic or commercial builder category.
- b) In respect of Components, the Client shall be provided their respective manufacturer's/supplier's warranties, if those warranties are transferable or assignable to the Client.
- c) OK provides no warranties in respect of Client supplied products/items (such as whitegoods) used or included/installed in the Work carried out by OK pursuant to an Order.
- d) The Client acknowledges and agrees that any warranties applicable to Goods shall be null and void if the Goods are modified, altered, damaged, put to any undue stress, used in a manner that does not accord with how the Goods were designed to perform, or otherwise used not for their intended use/purpose.
- e) The Client otherwise expressly agrees that use of the Goods and Services is at the Client's risk, and that to the full extent permitted by law, OK's liability for breach of any term implied into these Terms by any law is excluded.
- f) All information, specifications and samples provided by OK in relation to Goods or Services are approximations only and, subject to any consumer guarantees under the ACL, small deviations or slight variations from them which do not substantially affect the Client's use of the Goods or Services will not entitle the Client to reject the Goods upon delivery or to make any claim in respect of them.
- g) Any advice, recommendation, information, assistance or service given by OK in relation to Goods or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without warranty or accuracy, appropriateness or reliability. OK does not accept any liability or responsibility for any Loss suffered as a result of the Client's reliance on such advice, recommendation, information, assistance or service.
- h) Subject to the ACL, OK's maximum liability for breach of a warranty is:
 - i. In the case of Goods, either replacement of goods, repair of goods, or a refund of the price paid for the goods (as determined by OK);
 - ii. In the case of Services, either supply of the services again or a refund of the price paid for the services (as determined by OK).

- i) Nothing in this clause shall restrict, limit or vary any consumer guarantees to which the Client is entitled under the ACL (if the Client is defined as a consumer in section 3 of the ACL).
- j) **The Client indemnifies OK** in respect of any claim, action, damage, Loss, liability, cost, charge, expense, outgoing or payment suffered or incurred by OK (including without limitation economic loss and all legal costs and disbursements on a full indemnity basis) caused by the Client and/or any wilful, illegal or negligent act or omission by the Client.

18. PRIVACY

The Client agrees and consents to the collection, processing, storing and use of your information in accordance with our Privacy Policy, which can be accessible via our website at [www. https://oakwoodkitchens.com.au/](https://oakwoodkitchens.com.au/).

19. DISPUTE RESOLUTION

- a) A party must not commence legal proceedings (except for seek interlocutory relief) in respect of a dispute unless:
 - i. The party claiming a dispute has given written notice of the dispute to the other;
 - ii. The parties endeavour to resolve the dispute within 14 days (or other period as agreed);
 - iii. **If the dispute remains unresolved** within the 14 day timeframe, it shall be referred to mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the then current ACDC Guidelines for Commercial Mediation (Guidelines). This paragraph survives termination of these Terms.
- b) Unless otherwise required by law or at the direction of a court of competent jurisdiction, the parties must hold confidential all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

20. NOTICE

- a) Any communication required or permitted to be given by one party to another must be in writing and delivered personally, sent by pre-paid mail or sent by email to the address shown on a Quote (or as updated from time to time). A party may only change its addresses for service by giving written notice of that change to the other.
- b) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the fourth Business Day after posting; or if sent by email before 4 pm on a Business Day at the place of receipt on the day it is sent and otherwise on the next Business Day at the place of receipt.

21. GENERAL MATTERS

- a) **Severability:** Any provision in these Terms which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it shall be severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms or the validity or enforceability of that provision in any other jurisdiction.
- b) **Governing Law:** These Terms are governed by the laws of the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of Victoria and any superior Court.
- c) **Assignment:** The Client acknowledges and agrees that OK may at any time, without the Client's consent, engage an agent or contractor to perform an obligation of OK under these Terms provided they comply with these Terms. Further, OK may assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms provided the assignee agrees to assume any duties and obligations of OK owed to the Client under these Terms. The Client is not permitted to assign, or purport to assign, any of its obligations or rights under these Terms without OK's prior written consent.
- d) **Whole Agreement:** These Terms and any Quotes, Orders and variations agreed to in writing by OK represent the whole agreement between the parties relating to the subject matter of these Terms, and supersede all oral and written negotiations and communications by and on behalf of either of the parties. The Client acknowledges that unless otherwise agreed in writing by the parties, these Terms apply if there is any inconsistency between the Client's requests and a Quote or Order.
- e) **No Warranties or Representations:** In entering into these Terms, other than as set out in these Terms, the Client has not relied on any warranty, representation or statement, whether oral or written, made by OK or any of its employees or agents relating to or in connection with the subject matter of these Terms.
- f) **Waiver:** A party's failure/delay to exercise a power/right does not operate as a waiver of that power/right.
- g) **Force Majeure:** If circumstances beyond OK's control prevent or hinder its provision of the Goods or Services, OK is not obliged to provide Goods or Services while those circumstances continue. OK may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased. Circumstances beyond OK's control include without limitation, unavailability of materials or Components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, government decrees, proclamations or orders, transport difficulties, pandemics and failures or malfunctions of computers or other information technology systems.