

XPERT OFFICE FURNITURE TRADING TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. The Supplier is XPERT OFFICE FURNITURE (A.B.N. 33 793 710 285) of 13 Dickson Place, Warriewood, NSW 2102.
- 1.2. The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.
- 1.3. The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Customer.
- 1.4. The Order shall be defined as any request for the provision of Goods and/or Services by the Customer with the Supplier which has been accepted by the Supplier.
- 1.5. The Goods are the products and/or components provided by the Supplier.
- 1.6. The Price is the amount invoiced for Goods supplied or Services provided.
- 1.7. Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.8. Major failure refers to Major failure as defined under the *Competition and Consumer Act 2010* and the *Fair Trading Acts* in each of the States and Territories of Australia.
- 1.9. Security Interest as defined in Section 12 of the *Personal Property Securities Act 2009* (Cth) ("PPSA").
- 1.10. "Security Agreement", "Commingle Goods", "Collateral", "Financing Statement", "Financing Charge Statement" are defined under Section 10 of the PPSA.

2. GENERAL

- 2.1. These Terms and Conditions together with the Supplier's quotation and the Supplier's website price list comprise this Agreement and should be read in conjunction with the Supplier's Credit Application form.
- 2.2. Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the Supplier in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these Terms and Conditions will prevail.
- 2.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 2.4. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.5. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 2.6. Where more than one Customer completes this Agreement each shall be liable jointly and severally.
- 2.7. 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 and the offending provision shall be deemed as severed from these Terms and Conditions.
- 2.8. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.
- 2.9. A 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.

3. PLACEMENT OF ORDERS

- 3.1. Orders placed by the Customer with the Supplier will be considered valid when placing the Order in writing.
- 3.2. The Supplier may at its discretion revise its price list from time to time. It is the Customer's responsibility to check the Supplier's current prices at the time of placing the Order.
- 3.3. Any written Quotation given by the Supplier shall expire thirty (30) days after the date of the written quotation.
- 3.4. Unless otherwise specified, prices listed on the Supplier's website are GST inclusive and quotes are GST exclusive. GST will be charged by the Supplier at the applicable rate for items that attract GST.
- 3.5. All Prices are based on current taxes and statutory charges and should these vary during the period from the date of the Order or a purchase order to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

4. SUPPLY AND DELIVERY OF GOODS AND/OR SERVICES

- 4.1. At any time before payment is made by the Customer, the Supplier reserves their right to:
 - 4.1.1. Decline requests for any Goods/Services requested by the Customer.
 - 4.1.2. Cancel or postpone the supply of Goods/Services at their discretion.
- 4.2. Unless otherwise agreed in writing, the Supplier will quote for Flat-packed or Fully Assembled Delivery of the products purchased by the Customer. Where possible the Supplier agrees to quote for additional delivery services such as Installation, Placement and Removal of Packaging from site as required by the Customer.
- 4.3. Delivery of the Goods shall be deemed to be complete when the Goods are delivered to the Customer or to the carrier as nominated by the Supplier and/or Customer.
- 4.4. Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods/Services at specific times requested by the Customer during the term of this Agreement.
- 4.5. The Supplier may agree to provide, on request from the Customer, any additional Goods/Services not included or specifically excluded in the Quotation/Order. In this event, the Supplier shall be entitled to make an additional charge.

5. PAYMENT

- 5.1. Invoices issued by the Supplier shall be due and payable as per payment terms specified on the Invoice ("Default Date").
- 5.2. Non-Credit Customers and Credit Customers that have exceeded their credit limit must make full payment to the Supplier prior to the manufacture and/or supply of the Goods. The Supplier may refuse to supply and/or commence manufacture until payment in full is made.
- 5.3. Credit terms of up to 30 days will be granted at the sole discretion of the Supplier and upon submission of a completed Credit Application Form. Any credit, or credit limit granted by the Supplier may be revised by the Supplier at any time and at its sole discretion.
- 5.4. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these Terms of Conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.
- 5.5. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

6. DEFAULT

- 6.1. If the Supplier does not receive the Outstanding Balance for the Price on or before the Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt

collection agency for further action. The Customer acknowledges and agrees that:

- 6.1.1. After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under this Agreement;
- 6.1.2. The Supplier may, in its discretion, calculate interest at the rate of ten percent (10%) per annum for all monies due by Customer to the Supplier.
- 6.1.3. If the Customer's vehicle and/or machinery is held at the Supplier's premises, the Supplier may, at its discretion, charge a reasonable fee for storage.
- 6.1.4. In the event of the Customer being in default of his obligation to pay and the overdue account is then referred to a debt collection agency, and/or law firm for collection the Customer shall be liable for the recovery costs incurred and if the agency charges commission on a contingency basis the Customer shall be liable to pay as a liquidated debt, the commission payable by the Supplier to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:
$$\text{Commission} = \frac{\text{Original Debt} \times 100}{100 - \text{Commission \% charged by agency incl GST}}$$
- 6.1.5. In the event where the Supplier or the Supplier's agency refers the overdue account to a lawyer the Customer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

7. RISK AND LIABILITY

- 7.1. The Supplier relies upon the integrity of the information supplied by the Customer. The Customer will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order and that the Supplier is made aware of any special requirements pertaining to the Order.
- 7.2. The Supplier takes no responsibility if the specifications provided by the Customer are wrong, inaccurate or insufficient, and the Customer will be liable in that event for any expenses incurred by the Supplier to rectify the Order.
- 7.3. If the Customer supplies its own materials or parts for the Supplier to use in manufacturing or assembling the Goods:
 - 7.3.1. The Customer is responsible for ensuring that the materials or parts are of acceptable quality and fit for the required purpose.
 - 7.3.2. The Supplier takes no responsibility if the Goods are defective as a result of defects in the materials or parts supplied by the Customer.
- 7.4. The Supplier takes no responsibility for representations made in relation to the Goods or any delay in the delivery of the Goods made by a third party/third party manufacturer which was or is beyond the Supplier's reasonable control.
- 7.5. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any indirect, special or consequential loss incurred as a result of delay or failure to provide the Goods and/or services or to observe any of these conditions due to an event of force majeure for any cause or circumstance beyond the Supplier's reasonable control.
- 7.6. The Supplier does not represent that it will provide and/or deliver any Goods/Services unless it is included in the Quote.
- 7.7. Subject to clauses 8.1 and 8.2, the Customer accepts risk in relation to the Goods when the Goods pass to his care and/or control.

8. WARRANTY

- 8.1. The Supplier warrants that the rights and remedies to the Customer in this Agreement for warranty against defects are in addition to other rights and remedies of the Customer under any applicable Law in relation to the goods and services to which the warranty relates.
 - 8.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia
 - 8.3. For goods and/or components not manufactured by the Supplier, the warranty for Goods supplied shall be the current warranty provided by the manufacturer. 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. The Supplier will use its best endeavours to assist the Customer with any claim with respect of the Goods.
 - 8.4. For Goods supplied and/or manufactured by the Supplier, the Supplier warrants:
 - 8.4.1. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods or services repaired or replaced if the goods or services fail to be of acceptable quality and the failure does not amount to a major failure.
 - 8.5. If the Goods and Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a consumer guarantee under the Australian Consumer Law in relation to those Goods and Services is limited to, at the discretion of the Supplier:
 - 8.5.1. The resupply of the Goods and Services;
 - 8.5.2. The payment of the cost of providing the Goods and Services again.
 - 8.6. Subject to clauses 8.1 and 8.2, claims for warranty should be made in one of the following ways:
 - 8.6.1. The Customer must send the claim in writing together with proof of purchase to the Supplier at 13 Dickson Place, Warriewood, NSW 2102;
 - 8.6.2. The Customer must email the claim together with the proof of purchase to the Supplier on sales@xpertofficefurniture.com.au; or
 - 8.6.3. The Customer must contact the Supplier on the Supplier's business number (02) 9979 1936 or mobile number 0450 522 324.
 - 8.7. The Customer agrees to notify the supplier of any defects within ten (10) days of receipt of Goods.
 - 8.8. Goods where a claim is made are to be returned to the Supplier or are to be left in the state and conditions in which they were delivered until such time as the Supplier or its Agent has inspected the Goods. Such inspection is to be carried out within a reasonable time after notification.
9. **RETENTION OF TITLE**
 - 9.1. Subject to clauses 8.1 and 8.2, while the risk in Goods shall pass on delivery and/or supply (including all risks associated with unloading); legal and equitable title in the Goods shall remain with the Supplier until full payment of all Goods supplied by the Supplier to the Customer is made.

Pending such payment the Customer:

 - 9.1.1. Shall hold the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested.
 - 9.1.2. Agrees to hold the Goods at the Customer's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Customer's possession.
 - 9.1.3. The Customer should store the Goods separately and in such a manner that it is clearly identified as the property of the Supplier and keep the Goods insured to full replacement value.
 - 9.1.4. The Customer must not allow any person to have or acquire security interest in the Goods whilst the Goods are in the Customer's possession.

- 9.1.5. The Customer may sell and/or use the Goods in the ordinary course of business.
- 9.1.6. If the Goods are resold before all monies are paid to the Supplier, the Customer shall hold the proceeds of sale in a separate identifiable account on trust for the Supplier and promptly account the Supplier for those proceeds in payment of the Price for the Goods.
- 9.2. The Supplier is authorised to enter the Premises or the premises where the Customer stores the Goods without liability for trespass or any resulting damage in retaking possession of the Goods until the accounts owed to the Supplier by the Customer are fully paid.
- 9.3. Notwithstanding the provisions above, the Supplier shall be entitled to issue legal proceedings to recover the Price of the Goods.

10. PERSONAL PROPERTY SECURITIES ACT 2009 (Cth) ("PPSA")

- 10.1. The Customer acknowledges that these Terms and Conditions will constitute a Security Agreement which creates a security interest in favour of the Supplier over all present and after acquired Goods and/or Services supplied by the Supplier to the Customer to secure the payment of the Price or any other amount owing under this agreement from time to time including future advances.
 - 10.2. The Customer acknowledges that by accepting these Terms and Conditions and by virtue of the retention of title clause as provided for in Clause 9, the security interest is a purchase money security interest ("PMSI") as defined under Section 14 of the PPSA for all present, after acquired Goods and/or Services including any Commingle Goods.
 - 10.3. The security interest will continue to apply as an interest in the Collateral for the purposes of PPSA with priority over registered or unregistered security interest.
 - 10.4. The Supplier may register the security interest as PMSI on the Personal Property Securities Register ("PPSR") under the PPSA without providing further notice to the Customer.
 - 10.5. The Customer agrees the Supplier is not required to disclose information pertaining to the Supplier's security interest to an interest party unless required to do pursuant to PPSA or under the general law.
 - 10.6. The Customer agrees and undertakes:
 - 10.6.1. To sign any documents and/or provide further information reasonably required by the Supplier to register Financing Statement or Financing Charge Statement on the PPSR;
 - 10.6.2. To indemnify the Supplier for all expenses and/or costs incurred by the Supplier in registering a Financing Statement or Financing Charge Statement on PPSR including the costs of amending, maintaining, releasing and enforcing any security interests in the Goods;
 - 10.6.3. Not to register and/or make a demand to alter a Financing Statement in the Collateral without prior written consent of the Supplier;
 - 10.6.4. To provide the Supplier with 7 days written notice of any change or proposed change to the Customer's business name, address, contact details or other changes in the Customer's details registered on the PPSR;
 - 10.6.5. To waive any rights of enforcement under Section 115 of the PPSA for Collateral not used predominantly for personal, domestic or household purposes;
 - 10.6.6. To waive any rights to receive Verification Statement in respect of any Financial Statement or Financing Charge Statement under Section 157 of the PPSA.

11. TERMINATION AND CANCELLATION

Cancellation by Supplier

- 11.1. The Supplier may cancel any Order prior to delivery of the Goods by giving written notice to the Customer. In this event:
 - 11.1.1. The Supplier shall repay to the Customer any sums paid in respect of the Order.
 - 11.1.2. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.
- 11.2. 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 in the event that:
 - 11.2.1. Any money payable to the Supplier becomes overdue; or
 - 11.2.2. The Customer becomes insolvent, 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
 - 11.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation by Customer

- 11.3. The Customer may cancel any Order prior to delivery of the Goods by giving written notice to the Supplier. In this event:
 - 11.3.1. The Customer shall be liable for any loss incurred by the Supplier with respect to the Order, including but not limited to the costs of materials, labour and orders placed with third parties.
 - 11.3.2. The Customer shall further be liable for a cancellation fee of 30% of the Price and a restocking fee of 20% of the price.

12. SET-OFF

- 12.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.
- 12.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

13. JURISDICTION

- 13.1. This Agreement is deemed to be made in the State of NSW and all disputes hereunder shall be determined by the appropriate courts of NSW (New South Wales)

14. PRIVACY ACT 1988

- 14.1. For the Supplier to obtain from a credit reporting agency a credit report containing:
 - 14.1.1. The Customer and/or the Guarantor/s agrees; personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.
 - 14.1.2. That the Supplier may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
- 14.1.3. The Customer consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

15. ENTIRE AGREEMENT

- 15.1. These Terms and Conditions as defined in Clause 2.1 constitute the whole Agreement made between the Customer and the Supplier.
- 15.2. This Agreement can only be amended in writing signed by each of the parties.
- 15.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.
- 15.4. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.