

# Elevated Furniture Concepts Limited – Terms & Conditions of Trade

<p>1. <b>Definitions</b></p> <p>1.1 "Seller" means Elevated Furniture Concepts Limited, its successors and assigns or any person acting on behalf of and with the authority of Elevated Furniture Concepts Limited.</p> <p>1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(c) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.3 "Goods" means all Goods or Services supplied by the Seller to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>1.4 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Seller and the Client in accordance with clause 5 below.</p> <p>2. <b>Acceptance</b></p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.</p> <p>2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Seller.</p> <p>2.3 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Seller reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 5.2. In all such cases the Seller will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order on hold until such time as the Seller and the Client agree to such changes.</p> <p>2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>2.5 The Client accepts and acknowledges where the performance of any contract with the Client requires the Seller to enter into a finance agreement with a third party ("Finance Agreement"), the contract between the Seller and the Client shall incorporate and shall be subject to the conditions of such finance agreement, and the Client shall be liable for the costs in full incurred by the Seller under such finance agreement (including but not limited to the Seller's set-up costs and interest due under the finance agreement).</p> <p>3. <b>Errors and Omissions</b></p> <p>3.1 The Client acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Services.</p> <p>3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Seller; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.</p> <p>4. <b>Change in Control</b></p> <p>4.1 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.</p> <p>5. <b>Price and Payment</b></p> <p>5.1 At the Seller's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Seller to the Client; or</p> <p>(b) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested. Any variation as a result of increases to the Seller in the cost of labour, Goods or 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 Seller's control and will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>5.3 At the Seller's sole discretion a non-refundable deposit of up to fifty percent (50%) of the Price may be required for customised or imported Goods.</p> <p>5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:</p> <p>(a) before delivery of the Goods;</p> <p>(b) by way of instalments/progress payments in accordance with the Seller's payment schedule;</p> <p>(c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is emailed to the Client's address or address for notices;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Seller.</p> <p>5.5 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), QCard, Silver Chef, FlexiRent or by any other method as agreed between the Client and the Seller.</p> <p>5.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.</p> <p>6. <b>Delivery of Goods</b></p> <p>6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Goods at the Seller's address; or</p> <p>(b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.</p>	<p>2.6 At the Seller's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.</p> <p>2.7 Any time specified by the Seller for delivery of the Goods is an estimate only. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. The Seller will not be liable for any loss or damage incurred by the Client as a result of delivery being late. In the event that the Client is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage. The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>2.8 <b>Risk</b></p> <p>2.9 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.</p> <p>2.10 If the Client requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk. The Client acknowledges that Goods supplied may exhibit variations in colour, texture, surface, varnish or other finish and may fade or change colour over time. The Seller will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.</p> <p>2.11 The Client acknowledges and accept that:</p> <p>(a) whilst fabric manufacturers make every effort to match dye lots, colours or shade may vary between batches of product and/or between sales samples and actual product supplied; and</p> <p>(b) fabric manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when sewn; and</p> <p>(c) the sewing process for fabric may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product.</p> <p>2.12 <b>Product Specifications</b></p> <p>2.13 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Seller's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Seller.</p> <p>2.14 <b>Title</b></p> <p>2.15 The Seller and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid the Seller all amounts owing to the Seller; and</p> <p>(b) the Client has met all of its other obligations to the Seller.</p> <p>2.16 Receipt by the Seller 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.</p> <p>2.17 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 8.1:</p> <p>(a) the Client is only a bailee of the Goods and must return the Goods to the Seller on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;</p> <p>(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;</p> <p>(e) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;</p> <p>(f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred;</p> <p>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller;</p> <p>(h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p>2.18 <b>Personal Property Securities Act 1999 ("PPSA")</b></p> <p>2.19 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:</p> <p>(a) the purposes and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Client.</p> <p>2.20 The Client undertakes to:</p> <p>(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 Seller may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods charged thereby;</p> <p>(c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller; and</p> <p>(d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>2.21 The Seller and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>2.22 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.</p> <p>2.23 Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>2.24 The Client shall unconditionally ratify any actions taken by the Seller under clauses 10.1 to 10.5.</p> <p>2.25 <b>Security and Charge</b></p> <p>2.26 In consideration of the Seller agreeing to supply the Goods, the Client 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 Client either now or in the future, to secure</p>	<p>the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>2.27 The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.</p> <p>2.28 The Client irrevocably appoints the Seller and each director of the Seller as the Client'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 Client's behalf.</p> <p>2.29 <b>Defects</b></p> <p>2.30 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods. Goods will not be accepted for return other than in accordance with 12.1 above, and provided that:</p> <p>(a) the Seller has agreed in writing to accept the return of the Goods; and</p> <p>(b) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and</p> <p>(c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and</p> <p>(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.</p> <p>2.31 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of up to twenty percent (20%) of the value of the returned Goods plus any freight.</p> <p>2.32 <b>Warranty</b></p> <p>2.33 Subject to the conditions of warranty set out in clause 13.1 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within the timeframe stipulated by the Seller from the date of delivery for that particular product (which depending on the product may be between one (1) year and five (5) years) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship. The conditions applicable to the warranty given by clause 13.1 are:</p> <p>(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:</p> <p>(i) failure on the part of the Client to properly maintain any Goods; or</p> <p>(ii) failure on the part of the Client to follow any instructions or guidelines provided by the Seller; or</p> <p>(iii) any use of any Goods otherwise than for any application specified on a quote or order form; or</p> <p>(iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or</p> <p>(v) fair wear and tear, any accident or act of God.</p> <p>(b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent;</p> <p>(c) in respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.</p> <p>2.34 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller 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 Goods.</p> <p>2.35 If there is no manufacturer's warranty for Goods not manufactured by the Seller, then at the Seller's sole discretion, the Seller may provide a warranty for a period of twelve (12) months from the date of delivery.</p> <p>2.36 <b>Consumer Guarantees Act 1993</b></p> <p>2.37 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Client.</p> <p>2.38 <b>Intellectual Property</b></p> <p>2.39 Where the Seller has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.</p> <p>2.40 The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.</p> <p>2.41 The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Client.</p> <p>2.42 <b>Default and Consequences of Default</b></p> <p>2.43 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>2.44 If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).</p> <p>2.45 Further to any other rights or remedies the Seller may have under this contract, if a Client has made payment to the Seller, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.</p> <p>2.46 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client has exceeded any applicable credit limit provided by the Seller;</p> <p>(c) the Client 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</p>	<p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>2.47 <b>Cancellation</b></p> <p>2.48 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.</p> <p>2.49 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>2.50 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>2.51 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>2.52 <b>Privacy Act 1993</b></p> <p>2.53 The Client authorises the Seller or the Seller's agent to:</p> <p>(a) access, collect, retain and use any information about the Client; (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or (ii) for the purpose of marketing products and services to the Client.</p> <p>(b) disclose information about the Client, whether collected by the Seller from the Client directly or obtained by the Seller 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 Client.</p> <p>2.54 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993. The Client shall have the right to request the Seller for a copy of the information about the Client retained by the Seller and the right to request the Seller to correct any incorrect information about the Client held by the Seller.</p> <p>2.55 <b>Service of Notices</b></p> <p>2.56 Any written notice given under this contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>2.57 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>2.58 <b>Trusts</b></p> <p>2.59 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Seller may have notice of the Trust, the Client covenants with the Seller as follows:</p> <p>(a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;</p> <p>(c) the Client will not without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Client as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the Trust property.</p> <p>2.60 <b>General</b></p> <p>2.61 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.</p> <p>2.62 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 Auckland courts in New Zealand.</p> <p>2.63 The Seller shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>2.64 The Seller may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent. The Client cannot licence or assign without the written approval of the Seller.</p> <p>2.65 The Seller may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller. The Client agrees that the Seller may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Seller to provide Goods to the Client.</p> <p>2.66 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.</p> <p>2.67 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.</p>
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