

## 1. DEFINITIONS

- 1.1 “Supplier” means Woodwrights trading under Acorn Furniture Group Limited, its successors and assigns or any person acting on behalf of and with the authority of Acorn Furniture Group Limited.
- 1.2 “Buyer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Buyer is a reference to each Buyer jointly and severally.
- 1.3 “Goods” means all goods supplied by the Supplier to the Buyer at the Buyer’s request from time to time.
- 1.4 “Purchase Order” means an order of Goods or Services by the Buyer (by whatever means, including orally, in writing or by electronic means).
- 1.5 “Purchase Order Confirmation” means the confirmation by the Supplier (by whatever means, including orally or in writing or by electronic means) of a Purchase Order issued by the Buyer for Goods or Services, and if no specific confirmation is provided by the Supplier in respect of an order, the delivery of the relevant Good or provision of the relevant Service shall constitute confirmation for the purposes of this definition.
- 1.6 “Price” means the Price payable, this includes freight for Goods as agreed between the Supplier and the Buyer in accordance with clause 4 below.
- 1.7 “Privacy Policy” means the Suppliers privacy policy (available at <https://www.woodwrights.co.nz/privacy.aspx>) as updated or amended from time to time.
- 1.8 “Services” means services supplied by the Supplier to the Buyer at the Buyer’s request from time to time.

## 2. ACCEPTANCE

- 2.1 The Buyer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of Goods or the provision of Services.
- 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 agreement between the Buyer and the Supplier.

## 3. PURCHASE ORDER

- 3.1 The Buyer may submit Purchase Orders to the Supplier from time to time.
- 3.2 Upon receipt of a Purchase Order, the Supplier may confirm the Purchase Order by way of a Purchase Order Confirmation which may (depending on the nature of the Purchase Order Confirmation) specify the volume of the Goods to be supplied or details of the Services to be provided, the anticipated delivery time, shipping terms and any other specifications in relation to the Goods or Services as the Supplier may consider appropriate.
- 3.3 Unless otherwise agreed in writing by the Supplier, once a Purchase Order has been confirmed by way of a Purchase Order Confirmation, the Buyer may not cancel the Purchase Order and is bound to pay the Price.
- 3.4 Once a Purchase Order has been confirmed by way of a Purchase Order Confirmation from the Buyer to the Supplier, the Buyer must pay a 50% deposit (equating to 50% of the total Purchase Order Price, including GST). Unless otherwise agreed in writing by the Supplier.

## 4. PRICE AND PAYMENT

- 4.1 At the Supplier’s sole discretion, the Price shall be either:
- (a) as indicated on any Purchase Order Confirmation or invoice provided by the Supplier to the Buyer; or
  - (b) the Supplier’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of sixty (60) days.
- 4.2 The Supplier reserves the right to change the Price if a variation to a quotation or Purchase Order is requested.
- 4.3 Time for payment for the Goods or Services being of the essence, the Price will be payable by the Buyer:
- (a) if the Buyer receives a valid tax invoice on or before the 3rd Business Day of the month, the Buyer must pay that tax invoice by the 20th calendar day of that month; or
  - (b) if the Buyer receives a valid tax invoice after the 3rd Business Day of the month the Buyer must pay the tax invoice by the 20th calendar day of the month following the month it is received.
- 4.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Buyer and the Supplier.
- 4.5 Unless otherwise stated the Price does not include GST. In addition to the Price the Buyer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods or the provision of Services. The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition, the Buyer 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.

## 5. DELIVERY OF GOODS OR SERVICES

- 5.1 Delivery (“Delivery”) of the Goods or Services is taken to occur at the time that:
- (a) the Supplier (or the Supplier’s nominated carrier) delivers the Goods to the Buyer’s nominated address even if the Buyer is not present at the address; or

(b) the Services are performed by the Supplier.

5.2 The Buyer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

5.3 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement and may (at the Supplier's sole discretion) incur a delivery surcharge.

5.4 Any time or date given by the Supplier to the Buyer for the delivery of Goods or the provision of Services is an estimate only. The Buyer is required to accept delivery of the Goods or Service even if such delivery occurs after the estimated date. The Supplier will not be liable for any loss or damage incurred by the Buyer as a result of Goods or Services being delivered after the estimated delivery date.

## 6. RISK

6.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer must insure the Goods on or before Delivery.

6.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Buyer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

## 7. FABRIC RISK

7.1 In respect of Goods purchased, the Buyer acknowledges and accept that:

(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

(b) fabric manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when used in furnishings; and

(c) the manufacturing process for furnishings 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.

## 8. TIMBER RISK

8.1 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst the Supplier will make every effort to match sales samples to the finished Goods the Supplier accepts no liability whatsoever where such samples differ to the finished Goods supplied.

8.2 Timber is a hygroscopic material subject to expansion and contraction, therefore the Supplier will accept no responsibility for gaps that may appear in Goods during prolonged dry periods.

8.3 The Buyer acknowledges that Goods supplied may:

(a) fade or change colour over time; and

(b) expand, contract or distort as a result of exposure to heat, cold, weather; and

(c) mark or stain if exposed to certain substances; and

(d) be damaged or disfigured by impact or scratching.

## 9. TITLE

9.1 The Supplier and the Buyer agree that ownership of the Goods shall not pass until:

(a) the Buyer has paid the Supplier all amounts owing to the Supplier; and

(b) the Buyer has met all of its other obligations to the Supplier.

9.2 Receipt by the Supplier 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.

9.3 It is further agreed that until ownership of the Goods passes to the Buyer in accordance with clause 9.1:

(a) the Buyer is only a bailee of the Goods and must return the Goods to the Supplier on request.

(b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(c) the Buyer 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 Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.

(d) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.

(e) the Buyer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.

(f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.

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- (g) the Buyer 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 Supplier.
- (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.

### 10. PERSONAL PROPERTY SECURITIES ACT 1999 (“PPSA”)

- 10.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods, being a monetary obligation of the Buyer to the Supplier for payment for Goods, both previously supplied to be supplied in the future by the Supplier to the Buyer.
- 10.2 The Buyer undertakes to:
  - (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 Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier; and
  - (d) immediately advise the Supplier 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.
- 10.3 The Supplier and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by the Supplier, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Buyer shall unconditionally ratify any actions taken by the Supplier under clauses 10.1 to 10.5.

### 11. SECURITY AND CHARGE

- 11.1 In consideration of the Supplier agreeing to supply the Goods, the Buyer 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 Buyer either now or in the future, to secure the performance by the Buyer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Buyer indemnifies the Supplier from and against all the Supplier’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier’s rights under this clause.
- 11.3 The Buyer irrevocably appoints the Supplier and each director of the Supplier as the Buyer’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 Buyer’s behalf.

### 12. BUYER’S DISCLAIMER

- 12.1 The Buyer relies solely on its own judgment as to the nature, quality and condition of the Goods or Services and their sufficiency for purpose and does not rely on any representation or warranty (verbal or in writing) nor any sample or description of the Goods or Services provided by the Supplier or any of its representatives. The Buyer acknowledges that any Goods or Services are purchased relying solely upon the Buyer’s skill and judgment.

### 13. DEFECTS

- 13.1 The Buyer shall inspect the Goods on Delivery and shall within 24 hours of Delivery (time being of the essence) notify the Supplier in writing of any alleged defect (including shortage in quantity, damage or failure to comply with a Product Order). The Buyer shall afford the Supplier an opportunity to inspect the Goods within a five (5) days’ time following notification if the Buyer believes the Goods are defective in any way. The Supplier is not liable for Goods which have not been stored or used in a proper manner. If the Buyer 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 Supplier has agreed in writing that the Buyer is entitled to reject, the Supplier’s liability is limited to either (at the Supplier’s discretion) replacing the Goods, repairing the Goods or remedying the Purchase Order.

### 14. RETURNS

- 14.1 Returns will only be accepted provided that:
  - (a) the Buyer has complied with the provisions of clause 13.1;
  - (b) the Supplier has agreed in writing to accept the return of the Goods;
  - (c) the Goods are made available by the Buyer for pick up by the Supplier’s appointed transport company between the time of 9am – 5pm Monday to Friday; and

- (d) the Goods are picked up by the Supplier's transport company 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.

## 15. SUPPLIER'S WARRANTY

- 15.1 Subject to the conditions of warranty set out in clause 15.2 the Supplier warrants that if any defect in any workmanship or faulty materials of the Supplier becomes apparent and is reported to the Supplier within ten (10) years (or such other period as recorded in a Purchase Order or notified to the Buyer by the Supplier) of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the workmanship.
- 15.2 The conditions applicable to the warranty given by clause 15.1 are:
- (a) for upholstered Goods (including dining, occasional and lounge chairs):
    - (i) being used for residential purposes, the 10-year warranty applies to the frame of the Good only; and
    - (ii) being used for commercial purposes, a 3-year warranty applies to the frame of the Good only,
  - (b) fabrics used on Goods are not subject to the warranty set out in clause 15.1 but will instead be covered by the relevant fabric manufactures warranty (as notified to the Buyer by the Supplier);
  - (c) foam used in Goods for:
    - (i) residential purposes shall be covered by the 10-year warranty;
    - (ii) commercial purposes shall be covered by a 5-year warranty,
- and any wear and tear to foam or gradual softening of foam as a result of use is excluded from the warranty;
- (d) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) contact with water (including flooding); or
    - (ii) changes in the environment including humidity, fluctuating temperatures or direct sunlight (which, for example, may cause movement, cracking, joint separation or bowing in timber); or
    - (iii) failure on the part of the Buyer to properly maintain any Goods; or
    - (iv) failure on the part of the Buyer to follow any instructions or guidelines provided by the Supplier; or
    - (v) any use of any Goods otherwise than for any application specified on Product Order; or
    - (vi) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (vii) fair wear and tear, any accident or act of God.
  - (e) the warranty shall cease, and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent;
  - (f) in respect of all claims the Supplier shall not be liable to compensate the Buyer for any delay in either replacing or remedying the workmanship or in properly assessing the Buyer's claim.
- 15.3 For Goods not manufactured by the Supplier (including for the purposes of this clause, fabric), the Supplier shall use reasonable endeavours to pass on to the Buyer any warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.

## 16. CONSUMER GUARANTEES ACT 1993

- 16.1 If the Buyer is acquiring Goods or Services for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods or Services by the Supplier to the Buyer.

## 17. INTELLECTUAL PROPERTY

- 17.1 Where the Supplier has undertaken Services for the Buyer (including designing, drawing or developing Goods for the Buyer), then any intellectual property rights arising from those Services (including copyright in any designs and drawings and documents) shall remain the property of the Supplier. Under no circumstances may such intellectual property rights (including designs, drawings and documents) be used without the express written approval of the Supplier.
- 17.2 The Buyer warrants that any designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any third party intellectual property rights, and the Buyer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

## 18. DEFAULT AND CONSEQUENCES OF DEFAULT

- 18.1 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Buyer owes the Supplier any money the Buyer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies the Supplier may have under this contract, if a Buyer has made payment to the Supplier, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any

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further costs incurred by the Supplier under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this agreement.

- 18.4** Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any Purchase Order of the Buyer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Buyer will be unable to make a payment when it falls due;
  - (b) the Buyer has exceeded any applicable credit limit provided by the Supplier;
  - (c) the Buyer 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

### **19. CANCELLATION**

- 19.1** Without prejudice to any other remedies the Supplier may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods or Services to the Buyer. The Supplier will not be liable to the Buyer for any loss or damage the Buyer suffers because the Supplier has exercised its rights under this clause.
- 19.2** In the event that the Buyer cancels delivery of Goods or the provision of Services the Buyer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3** Cancellation of orders for Goods made to the Buyer's specifications, or for non-stocklist items, will not be accepted once a Product Order has been placed unless the Supplier agrees otherwise.

### **20. PRIVACY ACT 2020**

- 20.1** The Buyer authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Buyer;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Buyer's creditworthiness; or
    - (ii) for the purpose of supplying and marketing Goods and Services to the Buyer.
  - (b) disclose information about the Buyer, whether collected by the Supplier from the Buyer directly or obtained by the Supplier 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 Buyer.
- 20.2** The Buyer shall have the right to request the Supplier for a copy of the information about the Buyer retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Buyer held by the Supplier.
- 20.3** The Buyer acknowledges and agrees that the Privacy Policy forms a part of the terms and conditions.

### **21. SERVICE OF NOTICES**

- 21.1** Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by sending it by registered trackable post to the address of the other party and the recipient (either the Buyer or Supplier's employee) signing to state the parcel has been received;
  - (c) if sent by email to the other party's last known email address.
- 21.2** Any notice that is posted and signed for per clause 21.1 (b) 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.

### **22. ELECTRONIC TRANSACTIONS ACT 2002**

- 22.1** 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.

### **23. GENERAL**

- 23.1** 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.
- 23.2** 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 courts of New Zealand.
- 23.3** The Supplier shall have no liability whatsoever to the Buyer for anything other than a breach of an express provision of these terms of trade by the Supplier. The Supplier's total aggregate liability under these terms of trade (whether in contract, tort (including negligence), or otherwise) shall be limited to the Price paid by the Buyer for the Goods or Services supplied under these terms of

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trade. The Supplier shall not be liable for any loss of profits, income, savings or any indirect or consequential loss or expense (including loss of profit) suffered by the Buyer.

- 23.4** The Buyer may not assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). The Supplier 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 Buyer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 23.5** The Buyer agrees that the Supplier may amend these terms and conditions by notifying the Buyer in writing. These changes shall be deemed to take effect from the date on which the Buyer accepts such changes, or otherwise at such time as the Buyer makes a further Purchase Order.
- 23.6** Neither party shall be liable to the other for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic or other event beyond the reasonable control of either party.
- 23.7** Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent, and that this agreement creates binding and valid legal obligations on them.