

Infinity Cabinetmaking - TERMS AND CONDITIONS

The parties agree:

1. Definitions and Interpretation

1.1 Definitions

Additional Charge means any fees or charges for additional work performed or expenses incurred by Cabinet Maker at the Client's request.

Agreement means this agreement between the Client and Cabinet Maker.

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

Defects mean:

- a) to perform the home building work in a proper and
- b) workmanlike manner in accordance with the contract; or
- c) to supply materials that are of merchantable quality and reasonably fit for the purpose for which the owner required the home building work to be performed; not being a failure for which the Cabinet Maker's liability is limited and/or excluded pursuant to this Agreement.

Goods mean any goods supplied by the Cabinet Maker including those supplied in course of providing Services.

PPSA means the *Professional Property Security Act 2009* (Cth) and any regulation made at any time under the PPSA as amended from time to time.

Services mean the services to be provided by Cabinet Maker to the Client at the Client's request from time to time and these terms and conditions.

Terms and conditions mean these terms and conditions.

Site means the place of where Goods and Services are carried out, the Client's property.

2. General

- a) These terms and conditions apply to all transactions between the Client and the Cabinet Maker relating to the provision of Goods and Services at the Property.
- b) The Client acknowledges receipt of a copy of the 'Notice for the Homeowner' pursuant to Section 4(2) of the *Home Building Contracts Act 1991* (WA).'

3. Quotations

- a) The Cabinet Maker may provide the Client with a Quotation, which is valid for thirty (30) days from the date of issue.
- b) The Cabinet Maker may amend any details in a Quotation by notice in writing to the Client, which will supersede the previously provided details.
- c) A Quotation includes charges towards delivery or installation of the Goods.

4. Client Responsibilities

- a) The Client is responsible for plumbing or electrical services, and the supply or installation of appliances unless stated otherwise.

- b) Unless otherwise specified, engineering and certification is the responsibility of the Client
- c) The Client takes all responsibility for existing floors, window treatments, paint work to walls and ceilings.
- d) The Client takes responsibility for all products (new or used) supplied by themselves including appliances, plumbing and electrical products.
- e) Should the Client use their own Tradespeople, the Client takes all responsibility for these works and
- f) If the Clients and/or their own Tradespeople cause the Cabinet Maker any unnecessary delay, the Cabinet Maker is entitled to charge for their additional time due to the delay, at the current hourly rate.
- g) The Client will make themselves available to the Cabinet Maker, at the Work Site during normal working hours to discuss planning details and answer any questions the Cabinet Maker may have.

5. Orders

The Cabinet Maker can proceed with the works detailed within the Quotation, Planning Diagrams and subsequent Variations. The Quotation becomes the Order once the Client has completed their final measure appointment.

6. Variations

- a) The Client may request that the Order be varied by providing a request in writing to the Cabinet Maker with the revised Order superseding the Order.
- b) The Cabinet Maker may decline to agree to the Variation request, but in the event the Cabinet Maker agrees, the Cabinet Maker shall inform the Client of the costs to be incurred on account of the Variation.
- c) The Cabinet Maker has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the Variation.

7. Invoicing and Payment

- a) The Client shall pay the Cabinet Maker the Total Cost in the manner set out in the Quotation and subsequent Variations, in accordance with *Home Building Contracts Act 1991* (WA).
- b) The balance is payable on completion of the works and final invoice issued, three (3) days NETT.
- c) If any invoice is due but unpaid, the Cabinet Maker may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- d) The Client is not entitled to retain/withhold payment of monies owing to the Cabinet Maker notwithstanding any default or alleged default by the Supplier of these terms and conditions.
- e) The Client is to pay the Cabinet Maker interest at the rate of 10% per year on all overdue amounts owed by the Client to the Cabinet Maker, calculated daily. All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees, internal costs and expenses of the Cabinet Maker, are to be paid by the Client as a debt and payable under these terms and conditions.
- f) The Client is aware the Cabinet Maker can lodge an absolute caveat in respect of the Work Site to protect the Cabinet Maker's interests herein.
- g) The Client and the Cabinet Maker agree to comply with their obligations in relation to Goods and Services Tax (GST) under the *A New Tax System (Goods and Services*

Tax) Act 1999 and any other applicable legislation governing GST.

- h) The Client shall pay any additional charges in respect of Costs incurred by the Cabinet Maker as a result of reliance on inadequate or incorrect information provided by the Client to provide the Goods or Services within the specified time frame (if any).

8. Acceptance of Goods

- a) Subject to the guarantees under the Australian Consumer Law, the Client must advise the Cabinet Maker in writing of any fault in Goods or Services or failure of Goods or Services to accordance with the Client's Order within five (5) Business Days of delivery. Failing which, the Client is deemed to have accepted the Goods or Services.
- b) The Client hereby acknowledges that timber is a natural product and may vary in colour, texture, shade, finish and may contract and expand naturally. The Cabinet Maker will accept no responsibility for gaps that may appear during prolonged dry periods.
- c) The Client hereby acknowledges the Cabinet Maker takes no responsibility for slight imperfections or colour variations due to directional lighting on bench tops and cabinetry. Should the lighting levels vary within an area, this can reflect slight colour variations.

9. Access

The Client shall ensure that the Cabinet Maker has clear and free access to the Work Site at all times to enable them to undertake the works (including any underground work). The Cabinet Maker shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the Cabinet Maker's negligence.

10. Retention of Title

- a) The risk of loss of, or damage to, the Goods will pass to the Client on delivery and the Client must insure the Goods on or before delivery.
- b) The Client holds the benefit of the Client's Insurance on trust for the Cabinet Maker and must pay the Cabinet Maker the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed prior to ownership passing to the Client.
- c) Title to any Goods delivered to the Client will not pass to the Client until the Client has paid all amounts that it owes to the Cabinet Maker in full.

11. Recovery of Goods

If the Client does not pay the Cabinet Maker the amount the Client owes the Cabinet Maker for the Goods and Services when due, the Cabinet Maker may re-take possession of the Goods. The Cabinet Maker may enter any land or premise for the purpose of re-taking possession. If the Cabinet Maker retakes possession of any Goods, the Cabinet Maker may deal with the Goods as they see fit.

12. Personal Property Securities Act 2009

12.1 Definitions

In this clause:

- a) **PPSA** means the *Personal Property Securities Act 2009* (Cth);

- b) Words and phrases that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context indicates otherwise.

12.2 Security Interest

The Client agrees that these terms constitute a security interest for the purpose of PPSA and creates a security interest in all Goods that have been supplied and that will be supplied in the future by the Cabinet Maker to the Client.

12.3 Accessories and Commingling

If any Goods become an accession to or other property or become part of a product or mass, then:

- a) The Cabinet Maker's security interest continues in the other property, product or mass; and
- b) References to the Goods in clause 11.2 and this clause 11.3 include the other property, product or mass.

12.4 Consent to Registration

The Client consents to the Cabinet Maker perfecting any security interest that it considers this document provides for by registration under the PPSA. The Client agrees to do anything the Cabinet Maker reasonably asks to ensure that the security interest:

- a) Is enforceable, perfected and otherwise effective; and
- b) Has priority over all other security interests.

12.5 The Client and the Cabinet Maker agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement by these terms and conditions.

12.6 The Client waives its rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.

12.7 Waiver of Notices and Information Requests

- a) To the extent the law permits, the Client waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA. However, this does not prevent the Client from giving a notice under the PPSA.
- b) The Client agrees not to exercise its right to make any request of the Cabinet Maker under section 2756 of the PPSA. However, this does not limit the Client's right to request information other than under section 275.

12.8 Enforcement of Security Interest

- a) To the extent the law permits, the Cabinet Maker need not comply with, and the Client may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of.
- b) If the Cabinet Maker exercises a right, power or remedy in connection with this document or a security interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Cabinet Maker states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

13. Security and Charge

In consideration of the Cabinet Maker agreeing to supply the Goods and Services, the Client charges all of its rights, title and

interest (whether joint or several) in any personal or real property capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of money).

14. Intellectual Property Rights

- a) All Intellectual Property Rights in any works created by the Cabinet Maker on behalf of the Client vests in and remains the property of the Cabinet Maker.
- b) The Client agrees that the Cabinet Maker may (at no cost) use all Intellectual Property, which the Cabinet Maker has created for the Client, for the purpose of marketing or entry into any competition.

15. Default by the Client

- a) Each of the following occurrences constitutes an event of default:
 - (i) the Client breaches or is alleged to have breached these terms and conditions for any reason (including, but not limited to, defaulting on any payment due under these terms and conditions) and fails to remedy that breach within 14 days of being given notice by the Cabinet Maker to do so;
 - (ii) the Client being a natural person, commits an act of bankruptcy;
 - (iii) the Client, being a corporation, is subject to:
 - (A) a petition being presented, an order being made, or a meeting being called to consider a resolution for the Client to be wound up, deregistered or dissolved;
 - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* (Cth) being appointed to all or any part of the Client's property and undertaking;
 - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - (D) any assignment for the benefit of creditors;
 - (iv) the Client purports to assign its rights under these terms and conditions without the Cabinet Maker's prior written consent; or
 - (v) the Client ceases or threatens to cease conduct of its business in the normal manner.
- b) Where an event of default occurs, except where payment in full has been received by the Cabinet Maker, the Cabinet Maker may:
 - (i) terminate these terms and conditions;
 - (ii) terminate any or all Orders and credit arrangements (if any) with the Client;
 - (iii) refuse to deliver Goods or provide further Services;
 - (iv) pursuant to clause 10 above, repossess and re-sell any Goods delivered to the Client, the payment for which has not been received; or
 - (v) retain (where applicable) all money paid by the Client on account of Goods or Services or otherwise.
- c) In addition to any action permitted to be taken by the Cabinet Maker under paragraph 14(b), on the occurrence of an event of default all invoices will become immediately due and payable.

16. Termination

- a) In addition to the express rights of termination provided in these terms and conditions, a party may terminate these terms and conditions by giving seven (7) days written notice to the other party.

- b) In the event that the Client terminates these terms and conditions, the Client shall be liable for any and all direct or indirect loss incurred by the Cabinet Maker as a result of the termination.

17. Exclusions and Limitations of Liability

- a) All information, specifications and samples provided by the Cabinet Maker in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, 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.
- b) Subject to the guarantees given by the Australian Consumer Law, the Cabinet Maker's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.
- c) The Cabinet Maker guarantees the Client against faulty Goods and a Defect for a period of four (4) months from the delivery and installation of the Goods, whichever is later ('Defect Liability Period'). The Cabinet Maker will make good any Defect(s) notified to the Cabinet Maker, in writing, within the Defect Liability Period.
- d) Should a fault in the Goods or a Defect occur during the Defect Liability Period, the Client must notify the Cabinet Maker in writing as soon as possible. If the Client fails to notify the Cabinet Maker within a reasonable time of becoming aware of the alleged issue, the Cabinet Maker is not responsible for any damage that results from the Client's delay in notification.
- e) Any fault in Goods or Defect reported by the Client, which is deemed not to be faulty or defective, the Client can incur a \$100 + GST call out fee, with an additional hourly rate charge of \$100 + GST.

18. Indemnity

- a) The Client indemnifies and keeps indemnified the Cabinet Maker, its servants and agent in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Client) against the Cabinet Maker is liable, in connection with any loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms and conditions including.
- b) This includes, but is not limited to, any legal costs incurred by the Cabinet Maker in relation to meeting any claim or demand or any party/party legal costs for which the Cabinet Maker is liable in connection with any such claim or demand.
- c) This provision remains in force after the termination of these terms and conditions.

19. Force Majeure

- a) If circumstances beyond the Cabinet Maker's control prevent or hinder its provision of the Goods or Services, the Cabinet Maker is free from any obligation to provide the Goods or Services while those circumstances

continue. The Cabinet Maker may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

- b) Circumstances beyond the Cabinet Maker's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, pandemics, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computer, other information technology systems or essential machinery.

20. Dispute Resolution

- a) If a dispute arises between the Client and the Cabinet Maker, then subject to the rights of either party to apply to the Building Commissioner or any other Statutory Authority, the following procedure applies:
 - (i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
 - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
 - (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within five (5) Business Days (or other period as agreed).
- c) Either party may give to the other notice of such dispute or disagreement, and at the
- d) Expiration of five (5) Business Days and in the absence of any settlement the matter shall be referred by either party to:
 - (i) a single arbitrator appointed by mutual consent; or
 - (ii) in the event that agreement of the appointee is not reached, a single arbitrator who shall be appointed by the President or their nominee of the Cabinet Makers Association of WA (Inc).
- e) If the parties are unable to resolve their dispute with the assistance of such mediation their dispute shall then including all questions, disputes or differences which arise between the parties with respect to this agreement or its subject matter are to be referred to a single arbitrator under and subject to the *Commercial Arbitration Act 2012* (Western Australia) or any re-enactment or statutory modification of that law for the time being in force.
- f) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.
- g) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, 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.

21. Miscellaneous

- a) These terms and conditions are governed by the laws of the State of Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.
- b) These terms and conditions and any Quotes and written Variations agreed to in writing by the Cabinet Maker represent the whole agreement between the parties relating to the subject matter of these terms.
- c) In entering into these terms and conditions, the Client has not relied on any warranty, representation or statement, whether oral or written, made by the Cabinet Maker or any of its employees or agents relating to or in connection with the subject matter of these terms and conditions.
- d) If any provision of these terms and conditions at any time is or becomes void, voidable or enforceable, the remaining provisions will continue to have full force and effect.