

HBC JOINERY LIMITED - STANDARD TERMS AND CONDITIONS OF TRADE

1 INTERPRETATION

“**HBC**”, “**we**” or “**us**” means HBC Joinery Limited, New Zealand company number 7064213 and includes any subsidiaries, agents or employees thereof.

“**Business Day**” means any day, other than a Saturday, Sunday or public holiday in Auckland, on which banks are generally open for business.

“**Consumer Law**” means the Consumer Guarantees Act 1993 as amended from time to time.

“**Companies Act**” means the Companies Act 1993 as amended from time to time.

“**Customer**”, “**you**” or “**yours**” means any person purchasing Goods and/or Services from HBC, and any other person acting on behalf of, or with the authority of, that person or entity.

“**Goods**” means all goods, products and inventory provided by on behalf of HBC to the Customer from time to time.

“**GST**” has the meaning given in the Goods Tax Act 1985 as amended from time to time.

“**Guarantor**” means a person or entity nominated by the Customer who agrees to guarantee the Customer’s credit account with, and obligations to, HBC.

“**Insolvency Event**” means any of the following events occurring:

- (a) an “act of bankruptcy” under the Insolvency Act 2006;
- (b) the appointment of a receiver, receiver and manager, administrator or liquidator;
- (c) a resolution is passed to wind up or dissolve the Customer or it is deregistered;
- (d) a person enters into possession of all or any part of the assets of the Customer;
- (e) the Customer is or states that it is unable to pay its debts when they fall due or enter into a compromise with creditors; and
- (f) anything analogous or having a substantially similar effect to any of the events specified above;

“**Intellectual Property Rights**” includes all rights in relation to present and future

copyright, confidential information, patents, inventions, registered and unregistered trade marks, registered or unregistered designs, ideas, concepts, know-how or techniques, software and documentation developed or utilised by HBC in relation to the Goods and/or Services, and includes any right to licence and sub-licence any of the above.

“**Order**” means an order placed by the Customer (including in person, by phone, website or in writing) requesting HBC to supply Goods and/or Services to the Customer.

“**PPSA**” means the Personal Property Securities Act 1999 as amended from time to time.

“**Price**” means the cost of the Goods and/or Services as agreed between HBC and the Customer, subject to clause 3.

“**PMSI**” has the meaning given to it in the PPSA.

“**Security Interest**” includes any security interest under the PPSA.

“**Services**” means all services supplied by HBC to the Customer from time to time, including , without limitation, services related to the manufacture and supply of Goods, and all charges for labour and work, hire charges, insurance charges or any other fees or charges associated with the supply of Goods by HBC to the Customer.

2 GENERAL

- (a) All Orders placed by the Customer shall constitute acceptance of these Terms and Conditions.
- (b) These Terms and Conditions shall apply to future Orders made with HBC by the Customer.
- (c) No additional terms, conditions, representations, statements or agreements communicated by our agents or representatives will be effective unless expressly pre-agreed in writing by HBC, nor are we bound in any way by such unauthorised statements.
- (d) An Order may be refused by HBC. An Order will be deemed accepted by HBC on the earlier of delivery of the Order or the time HBC notifies the Customer that it has accepted the Order.

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- (e) If Goods and/or Services are supplied and acquired by Customer in trade, the parties agree, to the maximum extent possible, that the Consumer Law does not apply.

3 PRICE

- (a) HBC may advise the Customer of the Price from time to time by providing a price list, quote or estimate for the Goods and/or Services. If an estimate is provided, or no Price is advised or agreed, the Price will be the current amount charged by HBC for the relevant Goods and/or Services.
- (b) Any Price quoted by HBC is based on the full quantities specified and does not necessarily operate pro-rata for any greater or lesser quantities.
- (c) The Price quoted, estimated or agreed may be increased by the amount of any reasonable increase in the cost of supply of the Goods and/or Services that is beyond the control of HBC between the date the Order is accepted and the date of delivery of the Goods and/or Services.
- (d) Unless otherwise indicated, Prices are exclusive of GST, freight costs, installation and any other applicable taxes and duties and may be subject to increase due to exchange rate fluctuations. Any such items and increases are payable in addition to the Price.
- (e) The Customer acknowledges and agrees to pay HBC, on demand, all costs and losses incurred by us if the Customer, for any reason, does not accept the Order after the date the Order is accepted by us.

4 QUOTATION

- (a) Where a quotation is given by HBC, the quotation shall be:
 - (i) unless otherwise agreed or withdrawn by HBC, valid for one month from the date of issue;
 - (ii) exclusive of GST unless specifically stated to the contrary;
 - (iii) provided upon the basis that reasonable access to the property or premises is available where it includes the provision of Services at it, or the cost of delivery to the property or premises. If such access is not available, an extra charge for handling will be added; and

- (iv) subject to correction for clerical errors or omissions whether in computation or otherwise.

- (b) Unless measured by HBC, sizes, weights dimensions or capacities are based on the specifications supplied by the Customer and additional costs arising from any inaccuracy of such specification shall be payable by you.
- (c) Where Goods and/or Services are required in addition to the quotation, the Customer agrees to pay for the additional cost of such Goods and/or Services.

5 TERMS OF PAYMENT

- (a) You agree to pay HBC:
 - (i) the Price for all Goods and/or Services provided by HBC;
 - (ii) any applicable GST or other charges, duties and taxes in respect of the Goods and/or Services that are invoiced by HBC;
 - (iii) any delivery costs; and
 - (iv) where payment is made by credit card, a surcharge of approximately 3%.
- (b) Unless otherwise agreed in writing, HBC will require a deposit of at least 50% on the Price quoted, estimated or agreed prior to commencing work.
- (c) Unless required earlier by HBC, all amounts are due and payable in full by the 7th day following the date of invoice or on receipt of delivery of the Goods and/or completion of the Services (whichever is the later) by way of direct credit to HBC's nominated bank account from time to time (unless otherwise specified or agreed).
- (d) If payment is not received in accordance with these Terms and Conditions, this will constitute a default and:
 - (i) all money owed by the Customer to HBC will become immediately due and payable;
 - (ii) default interest will accrue on the daily balances of overdue accounts from the day following the due date to the day of payment (both dates inclusive) at 2.5% per month or part thereof, compounding; and
 - (iii) HBC reserves the right to:

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- (A) cancel or withhold any Orders from the Customer until all moneys owed by the Customer are paid to HBC;
 - (B) recover any Goods where title has not passed to the Customer; and
 - (C) withdraw any discount against trade list prices or that which has otherwise agreed to be provided.
- (iv) the Customer agrees to indemnify HBC for all costs that we may incur in connection with a default by the Customer under these Terms and Conditions, including:
- (A) any legal costs (on a solicitor/client basis);
 - (B) debt collection costs, including commissions payable to any collection agency that HBC may choose to engage; and
 - (C) any other costs that HBC may become liable for as a result of the default.
- (e) The Customer may not set off, deduct or withhold payment of any amount due and owing to HBC.
- (f) HBC may apply any payment received in any manner it sees fit.
- (g) HBC reserves the right to withdraw the Customer's credit facilities at its sole discretion at any time.
- (h) Receipt of a cheque, bill of exchange or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6 RISK AND DELIVERY

- (a) Risk in the Goods remains with HBC until the Goods are delivered. Delivery will be deemed complete when the Goods are fully installed by HBC.
- (b) Where title passes to the Customer in accordance with clause 7, the Goods are at the Customer's risk whether delivery has been made or not.
- (c) Delivery shall be made at the place indicated by you and if no place has been indicated then delivery shall be made to your premises. If you fail or refuse to take or accept delivery, then the Goods shall be deemed to be delivered when we were willing to deliver

them, or when 5 Business Days have elapsed after the date of notification that the Goods are ready for dispatch in accordance with these Terms and Conditions.

- (d) The time agreed for delivery shall not be an essential term of these Terms and Conditions, unless you have given written notice to us making it of the essence.
- (e) Where we deliver Goods to you by instalments and we fail to deliver one or more instalment, you shall not have the right to repudiate these Terms and Conditions, but shall have the right to claim compensation as a several breach.
- (f) We will not in any way be responsible for any consequences arising in respect of any delay or non-delivery of an Order or any part of an Order.
- (g) Any other items (such as appliances) held at HBC's premises at the request of the Customer shall be held at the sole risk of the Customer and HBC shall have no liability arising from theft, damage or destruction of such items.

7 RETENTION OF TITLE

- (a) Ownership in Goods (which for the purposes of this clause 7 includes goods of the Customer incorporating Goods, and goods of the Customer in respect of which HBC has provided Services) remains with HBC until HBC receives the full Price. Pending such payment, the following conditions apply:
 - (i) the Customer must designate and keep the Goods in such a way as to indicate that the Goods are the property of HBC and upon request must advise HBC of the location of the Goods;
 - (ii) the Customer must keep the Goods insured against loss and damage;
 - (iii) the Goods shall be held by you as bailee;
 - (iv) if the Goods are attached, fixed, or incorporated into any of your property, by way of any manufacturing or assembly process by you or any third party, title in the Goods shall remain with us until you have made payment for all Goods, and where those Goods are mixed with other property so as to be part of, or a constituent of any new goods, title to these new goods shall be

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- deemed to be assigned to us as security in accordance with clause 12 for the full satisfaction by you of the full amount owing between us and you,
- (v) the Customer irrevocably authorises HBC, without liability, to:
- (A) enter any of the Customer's properties or premises, at any reasonable time, to inspect and/or remove any Goods not paid for in full by the Customer. HBC shall not be liable for costs, damages or expenses or any other losses incurred by you or any third party as a result of this action, nor shall it be liable in contract or in tort or otherwise in any way whatsoever; and
- (B) resell the Goods at such price and upon such terms as it sees fit and the proceeds of such sale, after deduction of all expenses, shall be deducted from the amount due by the Customer to HBC;
- (vi) if the Customer sells or disposes the Goods before the Customer has paid the Price, the Customer acknowledges and agrees that:
- (A) it holds the proceeds of the sale or disposal, and any rights or claims against third parties arising out of such sale or disposal, in a fiduciary capacity for and to the account of HBC until the Customer has paid all sums whatsoever due to HBC; and
- (B) the Customer must take all steps necessary to keep such proceeds separate from other monies, to pay over such proceeds to HBC and to transfer to HBC any such rights or claims to the extent necessary to discharge in full the Customer's indebtedness to HBC,
- (vii) the Customer has no authority to enter into any contract or condition or give any warranty or representation in relation to the Goods which may render HBC liable to any third party for breach of such contract or condition or for inaccuracy of such warranty or representation which may render HBC chargeable to any tax or duty.

- (b) If after 5 Business Days from the date on which the Goods are ready for collection or despatch, delivery is delayed due to the Customer's act, omission, breach or default, HBC may at its election:
- (i) store the Goods at its premises or elsewhere and the cost of storage, handling and insurance shall be payable by the Customer on HBC's demand; or
- (ii) terminate the Order without liability to the Customer.

8 FORCE MAJEURE

- (a) HBC will not be liable for a delay or failure to supply an Order due to any cause beyond its control, such as any act or neglect of any carrier, sub-contractor, manufacturer or supplier of HBC, acts of God, strikes, lock-outs, bans or other industrial disturbances, fire, flood, explosions, civil riot or commotion, government interference or requests, by-laws, rules or regulations or order of any competent authority.
- (b) If the delay continues for a period of 10 Business Days or more, either party may cancel the Order without liability to the other.

9 COPYRIGHT AND INTELLECTUAL PROPERTY

- (a) HBC own, and have copyright in all work, drawings, specifications, models, photographs and documents produced by us in connection with the Goods and/or Services, and you may use them only if paid for in full and for the purpose for which they were intended and supplied to you by us.
- (b) As between the parties, title to, and all proprietary rights in, all Intellectual Property Rights will be vested in and remain with HBC.
- (c) All Intellectual Property Rights in respect of the Goods and/or Services (and all modifications to, and derivative works based upon such items and information) are and will remain the exclusive property of HBC and its licensors, subject only to the express terms of these Terms and Conditions.

10 DEFAULT

- (a) In the event of:
- (i) an Insolvency Event;
- (ii) the Customer failing to make any payment to HBC on the due date; or

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(iii) the Customer not complying with an obligation under these Terms and Conditions within 10 Business Days of HBC notifying the Customer of such non-compliance,

HBC may, without prejudice to any other remedy, elect to do one or more of the following:

- (iv) cease to perform any of its obligations to the Customer;
- (v) terminate the contract with the Customer without incurring any liability at law or in equity and without prejudice to HBC's rights, recover amounts owing to it by the Customer; and/or
- (vi) sell the Customer's ordered Goods elsewhere and recover from the Customer any difference between the quoted price and the re-sale price.

(b) Termination does not affect the accrued rights and obligations of the parties up to the date of termination, including with respect to any payments due to HBC or any indemnities given by the Customer.

11 WARRANTY AND LIABILITY OF SUPPLIER

(a) Other than as specified in these Terms and Conditions, to the extent permitted by law all warranties, conditions, liabilities or representations in relation to the quality or fitness of the Goods and/or Services (other than any being or giving rise to non-excludable rights under any laws of New Zealand) are excluded.

(b) Unless otherwise stated in writing, HBC provides only the following warranties:

- (i) for all Services, we warrant to the Customer that the Services will be performed in a professional manner with due care and attention and in accordance with all applicable laws and regulations; and
- (ii) for all Goods, we only provide the Customer with the same warranties as are received by us from our relevant supplier (such warranties to be promptly provided upon request).

(c) Where any claim is made pursuant to any warranty within these Terms and Conditions:

- (i) the Customer must notify HBC of any alleged damage or defect or potential

claim as soon as possible once it becomes aware of the same, but in any event, within 20 Business Days of the date that installation of the Goods is completed by HBC;

(ii) the Customer must preserve the Goods in the state they were at the time it became aware of such damage, defect or potential claim;

(iii) the Customer must allow HBC access as reasonably required (and upon notice) to inspect the Goods or, if requested by HBC, return any Goods to HBC and/or allow HBC to carry out any necessary remedial services, at HBC's cost; and

(iv) unless otherwise provided in this clause 11 or Consumer Law (if applicable), there is a no return policy on Goods supplied under these Terms and Conditions.

(d) The Goods will be considered to have been supplied in good condition unless the Customer notifies HBC of any alleged damage or defect within 20 Business Days of supply.

(e) HBC will, at its absolute discretion, provide a replacement, or give a credit, for Goods only where:

(i) the Customer has complied with its obligations under these Terms and HBC is satisfied with the Customer's claim in its absolute discretion; and

(ii) the Customer has made a request in writing to HBC within no less than 20 Business Days of supply.

(f) The Customer agrees that to the extent permitted by law:

(i) HBC's liability to the Customer in respect of damaged or defective Goods is limited to replacement, remedy or credit;

(ii) HBC will not be liable for, and the Customer releases HBC from, all liability for any loss or damage of any kind whatsoever whether suffered or incurred by you or another person whether such loss or damage arises directly or indirectly from Goods or Services, or advice provided by us to you, and without limiting the generality of the foregoing of this clause we shall not be liable for any

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consequential loss or damage of any kind (including without limitation any financial loss).

- (iii) HBC's overall liability to the Customer or any of its officers, employees, agents, contractors or other users of the Goods arising out of or in connection with the supply of Goods and/or Services is limited to the value of the Goods and/or Services supplied to the Customer.

12 PPSA

- (a) These Terms and Conditions constitute a security agreement for the purposes of the PPSA.
- (b) **Definitions:** Unless the context requires otherwise, the terms used in these Terms and Conditions have the meanings given to them in, or by virtue of, the PPSA.
- (c) **Consideration:** In consideration of HBC agreeing to supply Goods and/or Services to the Customer, the Customer:
 - (i) grants to HBC, at HBC's discretion, a Security Interest and/or a PMSI in the Goods (which for the purposes of this clause 12 includes goods of the Customer incorporating Goods and goods of the Customer in respect of which HBC has provided Services);
 - (ii) agrees that any Goods supplied to the Customer and any proceeds of sale of such Goods will be subject to:
 - (A) the Security Interest or PMSI granted in these Terms and Conditions; and
 - (B) these Terms and Conditions,
 - (iii) agrees that the Security Interest or PMSI has attached or will attach to all Goods supplied now or in the future to the Customer when the Customer takes possession of the Goods, and that the attachment of the Security Interest or PMSI has not in any way been deferred or postponed; and
 - (iv) agrees to treat HBC's Security Interest or PMSI in the Goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.
- (d) **Customer must take all steps:** HBC may, by notice to the Customer at any time,

require the Customer to take all steps that HBC considers necessary or desirable to:

- (i) ensure that any Security Interest or PMSI arising under it, is enforceable against the Customer or any third party; and
 - (ii) protect, perfect, record, or better secure HBC's position as a first ranking security.
- (e) **Registration:** The Customer acknowledges that HBC reserves the right to register a financing statement in respect of any Goods supplied by HBC to the Customer under these Terms and Conditions and that HBC can require the Customer to pay the cost and expense of registering a financing statement or a financing change statement.
 - (f) **Notices:** The Customer waives the right to receive a copy of any notice, verification statement confirming registration of a financing statement or a financing change statement relating to the Security Interest or PMSI under these Terms and Conditions, unless the notice or statement is required by law and cannot be excluded.
 - (g) **Protection of Goods:** The Customer agrees:
 - (i) not to allow any person to register a financing statement over any of the Goods without HBC's prior written consent;
 - (ii) that the Customer must immediately notify HBC if the Customer becomes aware of any person taking steps to register a financing statement in relation to the Goods; and
 - (iii) to perfect and maintain any Security Interest or PMSI that the Customer may have in the Goods under the PPSA.
 - (h) **Contracting out of enforcement provisions:** The parties agree that nothing in sections 114(i)(a), 133 and 134 of the PPSA are excluded. The Customer waives its rights under sections 121, 125, 129, 131 and 132 of the PPSA.
 - (i) **Insolvency:** If the Customer becomes insolvent, without prejudice to any of HBC's other rights:
 - (i) the Customer's right to dispose of the Goods in the ordinary course of business in accordance with the PPSA and any of the Customer's other rights in respect of the Goods immediately cease; and

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- (ii) the Customer must immediately return the Goods to HBC in which title has not passed as provided for under clause 7.
- (j) **Allocation:** HBC may allocate amounts received from the Customer in any manner it determines, including in any manner required to preserve any Security Interest it has in any Goods.
- (k) **Excepted Property:** The Customer grants a security interest to HBC in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods and for any other amounts owing by the Customer to HBC from time to time, and for the performance by the Customer of all the Customer's other obligations to HBC from time to time, ("Customer's indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for HBC by virtue of section 36(1)(b)(iii) of the PPSA, the Customer confirms and agrees that the Customer intends to and does grant to HBC, as security for the Customer's indebtedness and obligations, a Security Interest in the Goods except only for any such property which is or comprises items or kinds of personal property ("Excepted Property"):
 - (i) in or to which the Customer has rights; and
 - (ii) which has not been supplied by HBC to the Customer,

other than any Excepted Property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by HBC to the Customer.

13 PRIVACY

- (a) In receiving the Goods and placing an Order for the same, HBC may collect and disclose the Customer's information in accordance with this clause 13.
- (b) The Customer authorises HBC to collect, retain and use any information about the Customer for the purpose of assessing the Customer's credit worthiness, enforcing any rights under these Terms and Conditions, or marketing any Goods and/or Services provided by HBC to any other party.
- (c) Where the Customer is a natural person, the authorities under clause 13(b) are authorities

or consents for the purposes of the Privacy Act 1993.

- (d) The Customer has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by HBC.

14 MISCELLANEOUS

- (a) These Terms and Conditions shall be governed and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- (b) Any statement, invoice, notice or other document including any court process ("Notice") may be given or delivered to or served upon the Customer by HBC by dispatch by prepaid post addressed to the Customer at the last address of the Customer known to HBC. The Customer shall be deemed to have received any Notice 3 Business Days after posting.
- (c) The Customer shall not assign any rights or obligations under these Terms and Conditions without the prior written consent of HBC.
- (d) HBC may assign its rights (including the right to payment) to a third party without the consent of the Customer.
- (e) The singular shall include the plural and vice versa, words importing any gender shall include every other gender and where there is more than one Customer, these Customers shall be bound jointly and severally.
- (f) If anything in these Terms and Conditions is unenforceable, illegal or void, then it is severed and the rest remains in force, unless the severance would change the underlying principal commercial purpose or effect.
- (g) HBC may vary these Terms and Conditions, at any time, by updating these Terms and Conditions on its website or by sending a copy of its updated Terms and Conditions to the Customer. The then current Terms and Conditions will apply to any subsequent Order.
- (h) Failure by us to enforce any of the Terms and Conditions contained herein shall not be deemed to be a waiver of any of the rights or obligations we have under these Terms and Conditions.

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- (i) Where a term within these Terms and Conditions are at a variance with your Order or instructions, these Terms and Conditions shall prevail.

anything else until HBC has executed a final release of the obligations of the Guarantor.

15 GUARANTEE

- (a) Where the Customer is a company or trust, the director(s) or trustee(s) signing these Terms and Conditions jointly and severally guarantee to us the payment of the balance of the Customer's credit facility from time to time, and the payment of any and all other monies now or hereafter owed by the Customer to us. Any personal guarantee made by any party shall not exclude you in any way whatsoever from the liabilities and obligations contained in these Terms and Conditions. The Guarantor(s) and Customer shall be jointly and severally liable under these Terms and Conditions.
- (b) In consideration for HBC agreeing to supply Goods and/or Services to the Customer, the Guarantor:
 - (i) guarantees to HBC payment of all moneys payable by the Customer pursuant to and in accordance with these Terms and Conditions;
 - (ii) guarantees to HBC the due and prompt performance and observance of all covenants, obligations, terms and conditions on the part of the Customer to be performed or observed pursuant to these Terms and Conditions.
- (c) The Guarantor covenants with HBC that:
 - (i) no release, delay or other indulgence, given by HBC to the Customer shall release, prejudice or affect the liability of the Guarantor;
 - (ii) HBC shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor;
 - (iii) should there be more than one Guarantor their liability under this guarantee shall be joint and several;
 - (iv) the Guarantor shall be deemed to be a principal debtor jointly and severally liable with the Customer; and
 - (v) the guarantee is a continuing guarantee and operates (and remains in full force and effect) irrespective of any intervening payment, settlement of account or