

## TERMS & CONDITIONS OF TRADE

### 1. DEFINITIONS

- 1.1. "Apex Interiors (Auckland)" shall mean Apex Interiors (Auckland) Limited, or any agents or employees thereof.
- 1.2. "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Apex Interiors (Auckland).
- 1.3. "Goods" shall mean:
  - 1.3.1. all Goods of the general description specified on the front of this agreement and supplied by Apex Interiors (Auckland) to the Customer; and
  - 1.3.2. all Goods supplied by Apex Interiors (Auckland) to the Customer; and
  - 1.3.3. all inventory of the Customer that is supplied by Apex Interiors (Auckland); and
  - 1.3.4. all Goods supplied by Apex Interiors (Auckland) and further identified in any invoice issued by Apex Interiors (Auckland) to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
  - 1.3.5. all Goods that are marked as having been supplied by Apex Interiors (Auckland) or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Apex Interiors (Auckland); and
  - 1.3.6. all of the Customer's present and after-acquired Goods that Apex Interiors (Auckland) has performed work on or to or in which goods or materials supplied or financed by Apex Interiors (Auckland) have been attached or incorporated.
  - 1.3.7. The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4. "Goods" shall also mean all goods, products, services and advice provided by Apex Interiors (Auckland) to the Customer and shall include without limitation the supply and installation of suspended Ceilings and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods by Apex Interiors (Auckland) to the Customer.
- 1.5. "Price" shall mean the cost of the Goods as agreed between Apex Interiors (Auckland) and the Customer and includes all disbursements e.g. charges Apex Interiors (Auckland) pay to others on the Customer's behalf subject to clause 4 of this contract.

### 2. ACCEPTANCE

- 2.1. Any instructions received by Apex Interiors (Auckland) from the Customer for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### 3. COLLECTION AND USE OF INFORMATION

- 3.1. The Customer authorises Apex Interiors (Auckland) to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods provided by Apex Interiors (Auckland) to any other party.
- 3.2. The Customer authorises Apex Interiors (Auckland) to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3. Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

### 4. PRICE

- 4.1. Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount such Goods are sold by Apex Interiors (Auckland) at the time of the contract.
- 4.2. The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of Apex Interiors (Auckland) between the date of the contract and delivery of the Goods.

### 5. PAYMENT

- 5.1. Payment for the Goods shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice ("the due date")
- 5.2. Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3. Any expenses, disbursements and legal costs incurred by Apex Interiors (Auckland) in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.

### 6. QUOTATION

- 6.1. Where a quotation is given by Apex Interiors (Auckland) for Goods
  - 6.1.1. Unless otherwise agreed the quotation shall be valid for ninety (90) days from the date of issue; and
  - 6.1.2. The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
  - 6.1.3. Apex Interiors reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2. Where Goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods.

### 7. AGENCY

- 7.1. The Customer authorises Apex Interiors (Auckland) to contract either as principal or agent for the provision of Goods that are the matter of this contract.
- 7.2. Where Apex Interiors (Auckland) enters into a contract of the type referred to in clause 7.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

### 8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1. Title in any Goods supplied by Apex Interiors (Auckland) passes to the Customer only when the Customer has made payment in full for all Goods provided by Apex Interiors (Auckland) and of other sums due to Apex Interiors (Auckland) by the Customer on any account whatsoever. Until all sums due to Apex Interiors (Auckland) by the Customer have been paid in full, Apex Interiors (Auckland) has a security interest in all Goods.
- 8.2. If the Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with Apex Interiors (Auckland) until the Customer has 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 deemed to be assigned to Apex Interiors (Auckland) as security for the full satisfaction by the Customer of the full amount owing between Apex Interiors (Auckland) and Customer

- 8.3. The Customer gives irrevocable authority to Apex Interiors (Auckland) to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. Apex Interiors (Auckland) shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, or liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Apex Interiors (Auckland) may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as Apex Interiors (Auckland) reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 8.4. Where Goods are retained by Apex Interiors (Auckland) pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 8.5. The following shall constitute defaults by the Customer:
  - 8.5.1. Non payment of any sum by the due date.
  - 8.5.2. The Customer intimates that it will not pay any sum by the due date.
  - 8.5.3. Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
  - 8.5.4. Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to Apex Interiors (Auckland) remains unpaid.
  - 8.5.5. The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or landlord distains against any of the Customer's assets.
  - 8.5.6. A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
  - 8.5.7. Any material adverse change in the financial position of the Customer.
- 8.6. If the Credit Repossession Act applies to any transaction between the Customer and Apex Interiors (Auckland), the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

### 9. DISPUTES

- 9.1. No claim relating to Goods will be considered unless made within thirty (30) days of delivery.

### 10. LIABILITY

- 10.1. The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Apex Interiors (Auckland) which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Apex Interiors (Auckland), Apex Interiors (Auckland)' liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 10.2. Except as otherwise provided by clause 10.1 Apex Interiors (Auckland) shall not be liable for:
  - 10.2.1. Any loss or damage of any kind whatsoever, arising from the supply of Goods by Apex Interiors (Auckland) to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by Apex Interiors (Auckland) to the Customer; and
  - 10.2.2. The Customer shall indemnify Apex Interiors (Auckland) against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Apex Interiors (Auckland) or otherwise, brought by any person in connection with any matter, act, omission, or error by Apex Interiors (Auckland) its agents or employees in connection with the Goods.
- 10.3. If, contrary to the disclaimer of liability contained in these terms and conditions of trade, Apex Interiors (Auckland) is deemed to be liable to the Customer, following and arising from the supply of Goods by it to the Customer, then it is agreed between Apex Interiors (Auckland) and the Customer that such liability is limited in its aggregate to \$500.00.

### 11. WARRANTY

- 11.1. Manufacturer's warranty applies where applicable.

### 12. CONSUMER GUARANTEES ACT

- 12.1. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from Apex Interiors (Auckland) for the purposes of a business in terms of section 2 and 43 of that Act.

### 13. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 13.1. If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Apex Interiors (Auckland) agreeing to supply Goods and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Apex Interiors (Auckland) the payment of any and all monies now or hereafter owed by the Customer to Apex Interiors (Auckland) and indemnify Apex Interiors (Auckland) against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and payment of all sums due hereunder.

### 14. MISCELLANEOUS

- 14.1. Apex Interiors (Auckland) shall not be liable for delay or failure to perform its obligations if the cause of delay or failure is beyond its control.
- 14.2. Failure by Apex Interiors (Auckland) to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Apex Interiors (Auckland) has under this contract.
- 14.3. If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.4. Where applicable the Construction Contracts Act 2002 applies.
- 14.5. If the Customer defaults in payment then the Customer agrees that where the Goods relate to Customers land, then the amount of such default gives rise to a legal or equitable estate or interest in the Customer's land which entitles Apex Interiors (Auckland) to enter a caveat against the Customer's land pursuant to the Land Transfer Act 1952 and its amendments or any legislation in substitution thereof.