

**Joblin Holdings Ltd., Trading as BespOak Kitchens**

**STANDARD TERMS AND CONDITIONS OF CONTRACT**

**1. Preliminary**

These are Joblin Holdings Ltd (the "Seller") Standard Terms and Conditions, which will apply to the contract whereby you as the Customer (the "Customer") order and purchase the items of the Products (as set out in the Order) from the Seller.

**2. The Contract**

2.1 The Terms of the Contract between the Seller and the Customer for the sale and supply of items of the Products Ordered are contained collectively in all of the following:

1. the duly completed Order;
2. these Standard Terms and Conditions;
3. the Acceptance; and
4. the relevant parts of the Seller's then Current Price List.

2.2 The Contract date is the date the Seller communicates Acceptance to the Customer. An Order once placed where Acceptance has been communicated may only be cancelled by the Customer if the Seller agrees in writing to its cancellation. Cancellation may be conditional on the Customer paying the reasonable and actual costs and expenses incurred by the Seller up to the date of cancellation.

2.3 Where the Products have to be made or adapted to the Customer's particular specifications or requirements then the Customer must also pay for all work in progress up to the date of cancellation.

**3. Defined Terms**

In these Standard Terms and Conditions and any related documents, unless the context otherwise requires, the following words and phrases mean:

**"Acceptance"** means the occurrence of any one of the following:

1. the signed Acceptance by the Seller of the Order; or
2. the Acceptance by the Seller of a deposit for the Products in which event the Acceptance will be deemed communicated without any further steps being required; or
3. the Delivery of the Products in which event the Acceptance will be deemed Communicated without any further steps being required.

**"Communicates"** means all tenses of the verb and any act of communication and includes written communications, electronic communications and facsimile communications but does not include oral communications unless confirmed in writing electronically or by facsimile.

**"Current Price List"** means the price list published by the Seller from time to time as the current prices of the Products to its Customers, inclusive of GST.

**"Delivery"** means delivery at the purchaser's nominated location for installation or such other place as the Seller and the Customer may in writing agree as the place of delivery for the Products Ordered.

**"GST"** means Goods and Services Tax as defined under the GST Act.

**"GST Act"** means Goods and Services Tax Act 1985.

**"Installation"** means (where applicable) the installation of the Products at the site of installation as agreed in writing by the Seller and the Customer.

**"Intellectual Property"** means all copyright in all designs, plans and drawings of the Products, all Designs whether registered or unregistered, all trade marks and logos whether registered or unregistered, all patents granted and patents pending and all know-how and information pertaining to the manufacture of the Products.

**"Lifetime Guarantee"** means of unlimited duration.

**"Order"** means an Order placed by the Customer by way of acceptance of a sales contract for the purchase of an item or items of the Products duly completed and signed by the Customer and Communicated to the Seller containing:

1. the Price of the items of Products Ordered;
2. the Customer's full details; and
3. the full details of the Products Ordered.

**"Parties"** means the Seller and the Customer.

**"Person"** means any individual, company or entity not being a Party and not being an employee of a Party.

**"Price"** means the purchase price of the Products inclusive of GST determined by reference to the Seller's Current Price List and as set out in the Order.

**"Products Ordered"** means the Products ordered by the Customer and identified on the Sales Contract as signed by the Customer.

**"Specifications"** means any Seller's specifications applicable to an item of the Products and where applicable any specifications for Installation.

**"Tax Invoice"** means a tax invoice that complies with the GST Act.

#### **4. Price**

4.1 The Seller agrees to sell and the Customer agrees to buy the Products ordered by the Customer for the Price.

4.2 The Seller will render a Tax Invoice to the Customer prior to Delivery. This may be emailed to the Customer.

#### **5. Price and Partial Delivery**

Where there is partial Delivery of the Products, then the Seller will be entitled to be paid by the Customer that proportion or percentage of the Price that relates to those Products delivered on that partial Delivery.

#### **6. Delivery**

6.1 If the customer signs the delivery docket as accepted with no damage, they are allowed a 24 hour time frame in which to report a claim for any unseen damage to items.

6.2 If goods are signed for without any notes, it is assumed that everything is delivered and in perfect condition. The Seller will then not be liable for any missing or damaged items.

#### **7. Warranties**

7.1 The Seller warrants to the Customer that:

1. the kitchen cabinet Products Ordered will conform in all material respects with any Specifications, given that being a natural timber product, dimensions may vary minimally due expansion or contraction due variation in ambient conditions.
2. A lifetime guarantee is provided for all kitchen cabinets against faulty materials and factory workmanship. Cabinet hardware (eg drawer runners) shall be covered by the respective manufacturers' warranty.
3. No warranty shall apply to cabinets that have been modified by any person in any way other than that which has been expressly approved in writing by the Seller.
4. Appliances and worktops where supplied shall be covered by their respective manufacturers' warranties.
5. Warranties are transferable. Fair wear and tear are excepted. At the Seller's sole discretion, the Seller may repair or replace any faulty item.

7.2 The Seller will not be responsible for any damage to the Products which occurs at any time after Delivery unless the Customer can provide reasonable evidence that the damage was a direct result of any fault or defect;

1. in the manufacture of the Products Ordered;
2. in the materials or components used in the manufacture of the Products Ordered;
3. in the packing of the Products Ordered;
4. in the products ordered which the Customer can show was caused prior to Delivery.

7.3 The Seller will not be liable to the Customer for any damage or destruction of the Products caused by:

1. any failure by the Customer to properly or safely store the Products;
2. any failure by the Customer to properly move the Products after Delivery;
3. any failure by the Customer to properly install the Products;
4. any failure by the Customer to use the Products for their purpose;
5. any use by the Customer or any other Person of the Products contrary to their specifications;
6. any unauthorised modification to the Products.
7. any act or omission by the Customer or any Person after Delivery;

7.4 Subject to the express terms of this Contract and to any statute or regulations which cannot be excluded contractually, the Parties expressly agree that the Seller does not accept any liability whatsoever in respect of any loss or damage (including injury, death, loss of profits or repudiation, economic loss and consequential loss or other damage) however caused (including the Seller's negligence) which may be suffered or incurred or which may arise either directly or indirectly in respect of any use of the Products;

7.5 Where any Person suffers loss, damage or injury (including personal injury) as a direct or indirect result of any failure referred to in Clause 7.3 above or as a direct or indirect result of any misuse of the Products then the Customer hereby indemnifies the Seller against any liability (including costs) of the Seller to that Person.

#### **8. Payment for the Products**

1. 50% deposit of full sale value on acceptance of Order.
2. Balance in full prior to collection or delivery of Products ordered.

8.1 Any failure by the Customer to make such payment when required by the Seller entitles the Seller to suspend the order /manufacture of the Products Ordered.

#### **9. Refund of Deposit**

1. The Seller shall refund the Customer's deposit in full, should the Seller be unable to meet their side of the contract for reasons other than listed in clause **11.** below.
2. Both parties agree that the deposit is refundable in full or in part, in accordance with **Clause 2.2** above.

#### **10. Variations**

1. This Contract does not oblige the Seller to accept any variation in the Products to be supplied.
2. The Seller will however (without obligation) consider any variations sought by the Customer.
3. The terms of any variation will not be binding unless and until they are agreed in writing and signed by the Seller and the Customer. They will then and only then constitute a variation to this Contract.
4. If no agreement is reached as to a sought variation, then the Products will be made and supplied in accordance with the terms of the Contract and the Customer will accept the Products as so made and ordered.

#### **11. Time of Delivery and Delay**

1. The Seller will take all reasonable commercial endeavours to ensure that the Products Ordered are Delivered on the agreed date for Delivery set out in the Sales Contract.
2. Where there is a schedule of times for Delivery referred to in the Sales Contract then the Seller will take all reasonable commercial endeavours to ensure that the Products are Delivered on the agreed scheduled dates for Delivery.
3. If the Seller is unable to Deliver the Products to the Customer by the date or dates of Delivery set out in the Order, then the Seller must promptly notify the Customer in writing to that effect with estimates of the revised time for the Delivery of the Products Ordered.
4. Provided the Seller has used all reasonable commercial endeavours to Deliver the Products to the Customer in accordance with the date or dates for Delivery in the Order, the Seller will not be liable to the Customer for any delay in Delivery of the Products or any part thereof.
5. The Customer acknowledges that the Seller may be dependent upon various supplies of materials and components from third parties in order to be able to Deliver the Products to the Customer by the agreed date or dates for Delivery. Any delay in the manufacture of the Products Ordered caused by any shortage or unavailability of materials or components may give rise to a delay in Delivery and the Customer acknowledges and agrees that in such circumstances the Seller will not thereby be in breach of its Delivery obligations.
6. The Seller reserves the right to invoice the Customer and receive payment for the Products even though Delivery has not occurred through the Customer's failure to take Delivery of the Products Ordered.

#### **12. Title**

1. Unless otherwise agreed in writing by the Seller and the Customer, title in the Products Ordered will not pass to the Customer until the Products are fully paid for by the Customer.

Where the Products have been Delivered to the Customer prior to having been fully paid for, the Customer will hold the Products until full payment has been made as a bailee at will for the Seller.

2. Where the Products are to be Installed by the Customer, the Customer acknowledges and agrees that in the event that payment is not made in accordance with this Contract then no Installation will take place without the Seller's prior written consent until the Products have been fully paid for.
3. The Parties agree that the full risk of damage, loss or destruction to the Products will pass to the Customer on Delivery of the Products even if title has not passed to the Customer at the time of such damage, loss or destruction. In the event that the Products are damaged, lost or destroyed after Delivery but before title has passed, the Customer will continue to be liable to the Seller to pay any balance of the Price.

### **13. Suspension of Delivery**

The Seller may suspend Delivery of the Products without being in breach of this Contract:

1. where the Customer must make a pre-payment or instalment and fails to pay any pre-payment or instalment of the Price for Products Ordered until such payment is made;
2. the Customer fails to inspect the Products Ordered promptly upon being required by the Seller to do so but only until such inspection occurs;
3. whilst any dispute between The Customer and the Seller remains unresolved;
4. the Customer owes any money to the Seller on any account whatsoever;
5. in the reasonable opinion of the Seller, the Customer will be unable to pay the Price or balance of the Price to the Seller.

13.2 The Seller must give 7 days' prior written notice to the Customer of its intention to suspend Delivery and the reasons for such suspension.

### **14. Installation**

1. Where installation of the Products Ordered **is not part** of this Contract. Installation of the Products Ordered is the Customer's exclusive responsibility and the Seller will not be responsible for any damage done to the Products Ordered during, or as a consequence of, their Installation or during or as a consequence of the Customer taking Delivery of the Products Ordered at the site of Installation and attempting to Install them.
2. Where installation of the Products Ordered **is part** of this contract, unless otherwise stated in writing, installation costs quoted by the Seller assume and are subject to; level floors, plumb walls with square corners, and unimpeded vehicle access to the site of installation without the need for additional transportation (e.g. cranes), no changes to the dimensions of the installation post site measurement ; and no other issues causing installation to be prolonged or delayed. In the event that the Seller incurs additional time or costs during delivery or installation, the Seller shall be entitled to charge at its standard rates additional sums for the additional time or work required.

### **15. Ownership of Intellectual Property**

1. Nothing in the Contract between the Parties gives the Customer any interest or right to the Intellectual Property in the Products Ordered which Intellectual Property the Customer acknowledges is exclusively owned by the Seller.
2. All copyright in all manuals, diagrams, drawings, plans and specifications that are provided to the Customer with the Products Ordered remains the sole and exclusive property of the Seller and such items are not to be reproduced without prior written permission of the Seller.

### **16. Waiver**

1. The failure by either the Customer or the Seller to exercise or enforce any rights conferred hereunder shall not, except where there is an express term to the contrary, be construed or deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or other times thereafter.
2. A waiver of any right must be in writing signed by the Party waiving that right.

### **17. Governing Law**

1. This Contract shall be governed by and construed and interpreted in accordance with the laws of New Zealand in which the Seller has its principal place of business.
2. Any dispute will be subject to the exclusive jurisdiction.

**18. Interpretation**

1. Where words importing the singular number or the plural number are used they include the plural number and singular number respectively and where words are used importing the neuter, female or masculine gender they include if applicable the masculine, feminine or neuter gender respectively.
2. Any reference to the Seller or the Customer includes their respective lawful successors and assigns.
3. The reference to any statute, by-law, code of conduct or standard is a reference to any and all applicable amendments, vacations or replacements thereof.

**19. Disputes**

1. In the event of any dispute arising between the Seller and the Customer as to any Party's rights or obligations under the Contract or as to whether either Party has breached or failed to meet its obligations then both Parties agree to meet together and in good faith seek to resolve the dispute.
2. If notwithstanding this clause the dispute remains unresolved either Party may take such actions as it thinks fit to enforce its rights against the other.

**20. Whole Agreement**

1. The content of the documents in Clause 2 constitute the whole of the terms of this Contract. Except to the extent the law provides as mandatory requirement a term to be implied, no term is to be implied into this Contract.
2. All prior representations, undertakings and statements made by either Party to the other and not expressly included in this Contract are hereby expressly excluded from this Contract and each Party expressly hereby states that it has not relied in any way on such prior representations, undertakings or statements in deciding to enter into this Contract.