

1. DEFINITIONS

“Company”, “We”, “Our”, and “Us” refers to eSuccess Strategies Limited trading as The Kitchen & Furniture Paintshop or KFPS.

“You” and “Your” refers to the person, company or other entity named on the Quotation and purchasing the Product from Us and includes his/her/it’s successors and assigns.

“Product” includes the goods (including Customised Product) and/or services provided by Us to You in terms of any Accepted Quotation, and includes singular or plural.

“Customised Product” means goods that have been specifically ordered or developed for You in accordance with Your specific requirements. Examples of Customised Product include but are not limited to types and/or colours of paint or covering technology, additives required for adherence, etc.

“GST” means goods and services tax under the Goods & Services Tax Act 1985.

“CGA” means the Consumer Guarantees Act 1993

“PPSA” means the Personal Properties Securities Act 1999.

“Price” means the total amount payable by You to Us for the purchase of the Product as recorded in any Quotation or agreed to by Us in writing.

“Quotation” means Our written description of the Product to be supplied and the Price of that Product, addressed to You.

“Acceptance” means the binding contract formed between You and Us when You accept a Quotation under Section 3 or when we receive instructions from You or your designate for the supply of Product (“Order”), whether or not a Quotation has been issued by Us.

An “Event of Default” means an event where You fail to comply with the terms of any Accepted Quotation or any other contract that You may have with Us, including but not limited to default in payment or costs due; or You commit an act of bankruptcy; or You enter into any composition or arrangement with Your creditors; or a receiver is appointed over any of Your assets.

2. GENERAL

- 2.1 Any Accepted Quotation is governed by these Terms of Trade.
- 2.2 We reserve the right to alter these Terms of Trade from time to time. The current form of these Terms of Trade will be kept on Our website at www.kfps.co.nz and any alterations to these Terms of Trade may (at Our sole discretion) be applied to any subsequent or revised Quotation.
- 2.3 If there is any inconsistency between these Terms of Trade and the terms of any Quotation or any other arrangement between You and Us, these Terms of Trade shall prevail unless otherwise agreed in writing.
- 2.4 Headings used herein are for convenience only and shall not affect the interpretation of any clause.
- 2.5 No variation, modification or substitution of these Terms of Trade will apply unless specifically agreed to by Us in writing.

3. QUOTATIONS

- 3.1 You may request one consultation, one Quotation and one revision of that Quotation from Us without incurring any cost or obligation.
- 3.2 If You request subsequent Quotation revisions You will have to agree to and pay Our fee in advance of receiving any additional revision.
- 3.3 The Quotation will include specifications of all Products to be supplied and the Price of those Products.
- 3.4 We may provide a range of options within a Quotation and You may accept all or any part of a Quotation by confirming Your selection(s) with Us.
- 3.5 Our Quotations (including any revisions) are open for acceptance by You for the period specified in the Quotation (“Acceptance Period”) unless expressly extended by Us in writing.
- 3.6 Quotations are deemed to be accepted and a contract is formed upon any of the following:
 - (a) Your signing and returning the Quotation to Us, either in person, by email or facsimile within the Acceptance Period; or
 - (b) Your written acceptance to Us by email, facsimile or text message within the Acceptance Period; or
 - (c) Your verbal acceptance to Us within the Acceptance Period. In the case of verbal acceptance.
- 3.7 If notice of acceptance of any Quotation or revision is received by Us after the Acceptance Period, then that Quotation shall be treated as an offer from You capable of acceptance by Us and if accepted, shall form a binding contract subject to these Terms of Trade.
- 3.8 Unless consent is granted by Us in writing You are bound to pay the Price, or varied Price if applicable pursuant to these Terms of Trade.
- 3.9 We reserve the right to withdraw a Quotation within the Acceptance Period at any time prior to Your acceptance of the same.
- 3.10 In compiling a Quotation, We shall be entitled to rely on the accuracy of any plans, specifications, and information provided by You, if any. If the giving of a Quotation involves Our providing measurements and quantities, it shall be Your responsibility to verify the accuracy of Our measurements and quantities before You accept such Quotation.

4. ACCEPTANCE OF TERMS

- 4.1 Any Order received for the supply of Product, and/or, as the case may be, the acceptance of a Quotation as under Section 3, shall constitute acceptance of these Terms and Conditions.
- 4.2 Any use of a trade account, including but not limited to trade payment privileges, by You shall constitute acceptance of these Terms and Conditions.

5. PRODUCTS

- 5.1 Some Products are subject to availability. If any Product You select is unavailable at the time of Your acceptance of a Quotation We will provide You with expected time frames for availability of the Product selected (if applicable) and We will advise You of alternative products available and their corresponding prices.
- 5.2 If any Product You select is unavailable within a reasonable period of time after Your acceptance of a Quotation, at Your request, We may consent to the

cancellation of that Product (such consent to be granted at Our sole discretion), however, any such cancellation shall not release You from Your obligation to complete the purchase of all other available Product in the Accepted Quotation or Order.

- 5.3 It is Your responsibility to ensure You select Customised Products carefully as You will not be entitled to cancel, nor obtain any refund if You change Your mind.
- 5.4 We cannot guarantee that the colour of each batch of Product will be identical to or exactly match any physical sample provided.

6. CANCELLATIONS AND VARIATIONS

- 6.1 No Accepted Quotation or Order may be cancelled or varied by You unless in accordance with these Terms and Conditions and first obtaining prior written consent by Us, which shall be at Our sole discretion.
- 6.2 If We consent to a cancellation, it will be subject to You reimbursing the Company for all losses, including the actual cost of any Customised Product already ordered or developed for You by the Company, including but not limited to restocking costs (if any) and payment of a cancellation fee being the higher of \$1500.00 and 50% of the Price of that Product in the case of an Accepted Quotation (prior to the addition of GST).
- 6.3 While We will use Our best endeavours to accommodate any variations or changes to the Product requested by You after Acceptance, We shall not be obliged to give You any reason for not consenting. In this case, You will still be liable to pay the Price for the Products as originally agreed.
- 6.4 If We consent to a variation of an Accepted Quotation, it will be subject to Our issuing a revised Quotation including the varied Product which must be accepted by You in accordance with the terms of the revised Quotation. If You give notice of acceptance of the terms of the revised Quotation, then the revised Quotation shall replace Your original Accepted Quotation and You shall have to pay the Price of the revised Quotation which may also include the costs of reimbursing the Company for any losses, the actual cost of any Customised Product ordered for You and/or any increase in the actual cost of the Customised Product variations. If You reject the revised Quotation or if You do not give notice of acceptance of the terms of the revised Quotation then the original Accepted Quotation shall remain a binding contract and You will be obliged to pay the original Price for the Product as recorded in the original Accepted Quotation and in accordance with these Terms of Trade.

7. PRICE

- 7.1 The Price specified in a Quotation for the Products is based on current rates and costs known to the Company as at the date of Quotation, and remains in effect for the Acceptance Period.
- 7.2 In the event that You request and We consent to a variation to the specifications, colour, quantities or measurements of the Products after Your acceptance of a Quotation, the Price shall be appropriately adjusted in accordance and any estimated delivery date shall be re-scheduled depending on the availability of the varied Product.
- 7.3 All prices are recorded exclusive of GST unless stated otherwise. GST is payable on all Products supplied.

8. PAYMENT

- 8.1 Payment shall be payable as follows:

- (a) settlement of Our invoice for the full amount prior to the delivery of the Product; or
- (b) settlement of Our invoice for the full amount on or before the 20th of the month following delivery of the Product, subject to Our agreeing to extend trade payment privileges to You or You previously making payment in accordance with this condition.

- 8.2 The following payments methods will be accepted by the Company: cash, bank cheque, direct credit and certain credit cards approved by the Company.
- 8.3 We may elect not to sell or pass over Product to You if Our payment requirements are not met.
- 8.4 You may not withhold payment or make any deductions from any sum owing to Us, whether by counterclaim, set off, or otherwise, without Our prior written consent.

9. DELIVERY

- 9.1 We are not a carrier and do not undertake the obligations of a carrier pursuant to the Carriage of Goods Act 1979.
- 9.2 Where You have agreed to collect the Product, delivery takes place at the point at which the Product is available for physical collection by You or Your carrier.
- 9.3 Where We have agreed to deliver the Product:
- (a) Delivery will be deemed complete when the Product arrives at the delivery address specified by You (whether or not You are present at the time of delivery to acknowledge receipt);
- (b) You are responsible for ensuring that the delivery address has sufficient and suitable means of access. If such access is not available, You will be responsible for reimbursing Us for all of Our consequential costs.
- (c) If the Product cannot be delivered or if You refuse to accept delivery, We may (without prejudice to any other remedies available) charge You for any of the following costs incurred:
- (i) Hourly vehicle and driver rates for waiting time;
- (ii) Transportation, unloading, disposal of the Product or any other additional costs incurred in respect of the Product.
- 9.4 We will endeavour to meet any agreed time-frames for delivery of the Product, however timing is not guaranteed and We shall not be liable for any loss or damage (including consequential or indirect loss or damage) if the failure or delay arises from a cause that is unforeseeable or beyond Our control. Late delivery or failure to deliver any Product does not entitle You to cancel any Accepted Quotation, in whole or in part, or withhold any amount due.

10. REMOVAL, ON-SITE LACQUERING AND DELIVERY

- 10.1 Where We have agreed to remove any fixtures and fittings, complete on-site lacquering or other related work and/or deliver any Product, before We commence removal, on-site lacquering and/or delivery You are responsible for ensuring that:
- (a) the site is cleared all items are ready for the removal, on-site lacquering and/or delivery of the Product;
- (b) the site is suitable to safely carry out the removal, on-site lacquering and/or delivery of the Product; and

- (c) free and easy access into the site is available during the removal, on-site lacquering and/or delivery period.

10.2 You are liable to Us for any loss, costs or damages, which We may suffer or incur by reason of failure to carry out any of Your obligations as set out in this clause.

11. WARRANTY OF PRODUCTS

- 11.1 We shall pass on the benefit of any supplier's warranties where applicable.
- 11.2 You are responsible for meeting any qualifications or requirements under any such supplier warranty.
- 11.3 We warrant that it will repair or make good any defects in workmanship of the lacquering (fair wear and tear excepted) within 5 years following delivery of the Product. This warranty is not transferable to third parties.
- 11.4 We do not warrant to repair any damage caused by You.
- 11.5 You must not carry out any remedial work to any alleged defective workmanship or performance of the Product without first obtaining Our written consent to do so.
- 11.6 No warranty claim shall be accepted if any attempt to repair the alleged defective workmanship on the Product is made by any person not authorised by the Company or where the Product has been modified or incorrectly used or maintained.
- 11.7 All warranties implied by customary practice, at law or under statute are excluded to the extent legally permitted.
- 11.8 You acknowledge that no employee or agent of the Company has any right to make any representation, warranty or promise in relation to the Products other than those contained in these Terms of Trade.

12. DEFAULT

- 12.1 If an Event of Default occurs, all amounts outstanding under all current Contracts You have with Us will immediately become due and payable and We may (at Our sole discretion):
 - (a) suspend or terminate all or any part of any Contract between You and Us which remains unperformed;
 - (b) charge default interest at the rate of 3% per month calculated on a daily basis on any payment(s) outstanding from the date payment was due (including default interest charged under this clause) until the date payment is actually received by the Company in full;
 - (c) recover as part of the sum outstanding any discount initially given, whereupon any subsequent payments received shall be offset firstly against any accrued interest and secondly against the outstanding payment(s);
 - (d) enter onto any premises and remove the Product without prior notice (whether or not the Product may have been installed or otherwise) and to remain on any premises where the Product is located in order to collect the Product without being guilty of any manner of trespass;
 - (e) resell any of the Products and apply the proceeds of sale in reduction of any monies owing to Us by You; and/or
 - (f) register a charge over Your land in accordance with these Terms of Trade.

12.2 You agree to indemnify Us against any costs and expenses incurred in repossessing Product and in recovering any outstanding payment(s) from You including actual costs between solicitor and client.

12.3 If We exercise or fail to exercise any right or remedy available to Us, this shall not prejudice Our rights in exercising that or any other right or remedy available to Us.

13. TITLE

13.1 Title in the Product shall not pass to You until payment of the Price (and any other monies owing from time to time whether pursuant to this Contract or any other Contract whatsoever) has been made in full notwithstanding that delivery may have been completed, in which case You hold the Product as bailee for Us on Our behalf.

14. RISK

- 14.1 Risk of any loss, damage, or deterioration of the Products will be borne by You from the date of delivery.
- 14.2 Until title to and property in the Product passes to You in accordance with these Terms of Trade, You will insure the Product against all usual risks for the full insurable value and treat the Product with all proper care. Any insurance claims in respect to, or destruction of the Product are hereby assigned by You to Us. You agree to indemnify Us against any loss or damage to the Product howsoever arising.

15. PPSA

- 15.1 You agree that, for the purposes of the PPSA this Contract constitutes a security interest in the Product supplied from time to time by Us to You (as detailed in each Quotation provided to You) as security for payment of all amounts due under the Contract including any future amounts.
- 15.2 You agree to sign any documents required for Us to perfect Our security interest under the PPSA and authorise Us to sign any such documents as Your attorney.
- 15.3 You agree to treat the security interest in the Product as a continuing and subsisting security with priority over a registered general security interest any unsecured creditors, regardless of whether or not the Product has become fixtures at any time before payment has been made for them.
- 15.4 You agree to waive Your right to:
 - (a) receive a statement of account pursuant to s116 of the PPSA;
 - (b) recover a surplus pursuant to s119 of the PPSA;
 - (c) receive notice from Us, pursuant to s114(1)(a) of the PPSA, that We intend to sell certain goods over which We have a security interest;
 - (d) receive notice, pursuant to s 120(2) of the PPSA, that We intend to retain collateral;
 - (e) object to a proposal by Us, pursuant to s121 of the PPSA, that We intend to retain certain goods over which We have a security interest;
 - (f) not have goods damaged should We remove an accession under s125 of the PPSA;
 - (g) receive notice, pursuant to s129 of the PPSA, of Our removal of an accession;

- (h) apply to the Court for an order concerning the removal of an accession under s131 of the PPSA; and/or
- (i) receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to any security interest We may have in goods supplied to You from time to time.

- (i) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise.
- (ii) any representations, warranties, conditions, or agreement made by any agent or representative, which are not expressly confirmed by Us in writing, and You agree to indemnify Us against any such claim.

16. MORTGAGE

- 16.1 Where You have failed to make payment of any portion of the Price or any other moneys due and payable to the Company on the due date for payment, then You will immediately upon demand give and execute in favour of the Company a registrable Memorandum of Mortgage over any land owned by You to secure the amount owing from time to time from You to the Company under this Contract, such mortgage to be on the current Auckland District Law Society All Obligations form.
- 16.2 You hereby appoint the Company (and every officer of the Company) to be Your attorney for the purposes of giving and executing the Memorandum of Mortgage to secure all amounts owing from time to time from You to the Company under this Contract.
- 16.3 You acknowledge and agree that the appointment of the Company as Your attorney is irrevocable, is made for valuable consideration and You further agree that the production of this Contract to the District Land Registrar shall be sufficient evidence of the appointment of Company as Your attorney.

17. EXTENT OF LIABILITY

- 17.1 Nothing in this contract shall limit or exclude any right You may have under the CGA if You are a consumer in terms of that Act to the extent that the Product is being acquired for a consumer (i.e. non-business) purpose.
- 17.2 We shall not be liable for damages for foreseeable or consequential loss except to the extent that such liability is imposed under the CGA.
- 17.3 The following terms apply wherever the CGA does not apply to this Contract or where the following terms are not inconsistent with that Act:
- (a) Defective Product or defective workmanship of the lacquering shall at Our discretion either be repaired or replaced;
 - (b) Any right which you may have to reject Defective Product shall only be effective within the manufacturer's warranty period, if any, and provided such defect is within the terms of such warranty;
 - (c) Any right which You may have to reject defective workmanship of the lacquering shall only be effective if You notify Us within 5 years following the date of delivery and We are given the opportunity to inspect the Product;
 - (d) No Product shall be returned unless We have agreed in writing in advance;
 - (e) We may, at Our discretion, delay the repair or replacement of any Product for so long as You are in default in relation to any monies owing by You to Us whether pursuant to this Contract or otherwise;
 - (f) We accept no liability for any claim by You or any other person including without limitation any claim relating to or arising from:

17.4 Nothing in these Terms of Trade is intended to have the effect of contracting out of the CGA except to the extent permitted by that Act, and these Terms of Trade are to be modified to the extent necessary to give effect to that intention.

17.5 Where the Products are acquired for business or trade purposes then You acknowledge that the provisions of the CGA shall not apply to such transactions and You will satisfy yourself that the Products are fit and suitable for the purposes for which they are required, and no liability whatsoever shall attach to Us should they not be so fit and suitable.

17.6 The Company shall not be liable for any loss of any kind whatsoever suffered by You as a result of any breach of the Company's obligations under the Contract, including cancellation of the Contract or any negligence on the part of the Company, its agents, employees or contractors, nor shall the Company be liable for any loss, damage or injury cause to You, Your agents, employees, contractors or any other persons. You shall indemnify the Company against any claim by any such person.

17.7 You acknowledge that the Company is not responsible if the Product does not comply with any applicable safety standards or other regulations and that the Company is no liable for any claim, damage or demand resulting from such non-compliance.

17.8 In any event, the Company's liability under any Contract and/or these Terms of Trade shall not exceed the Price of the Product bought and sold under the Contract.

18. DISPUTES

- 18.1 You and the Company agree to use their best efforts to resolve any dispute that may arise under the Contract through good faith negotiations.
- 18.2 No party shall commence any arbitration or litigation in relation to this Contract unless it has notified the other party in writing that there is a dispute (setting out the details of the dispute) and inviting the other party to meet for the purposes of endeavouring to resolve the dispute.
- 18.3 Any dispute arising under this Contract which cannot be settled by negotiation within 28 days of the notice of dispute being served shall be submitted to the arbitration of a single arbitrator in accordance with the Arbitration Act 1996. In the absence of agreement concerning the appointment of an arbitrator, either party may request the President of the New Zealand Law Society (or their nominee) to appoint a suitably qualified independent arbitrator to hear and determine the dispute. The arbitration shall take place in Tauranga. The decision of the arbitrator shall be final.

19. MISCELLANEOUS

- 19.1 If any of the terms herein are deemed to be unenforceable by operation of law then they shall be deemed to be severed from these Terms of Trade to the extent of such unenforceability but the remainder shall remain in full force and effect.

- 19.2 No delay or failure by Us to act or insist on any right under these Terms of Trade shall be regarded as a waiver and every right remains enforceable and may be exercised by Us at any time.
- 19.3 The Company will not be liable for any breach due to any matter or thing beyond the Company's control (including but not limited to fire, flood, earthquake, acts of God, strikes, work stoppages, wars, riots, explosion or accident).
- 19.4 Neither the Contract, nor any rights under the Contract may be assigned by You without the prior written consent of the Company, at the Company's sole discretion.
- 19.5 These Terms of Trade and the Contract shall be governed by the laws of New Zealand.