

## TERMS AND CONDITIONS OF SALE

These terms and conditions of sale shall apply to all sales by Elite Kitchens and Cabinets Limited to the Customer.

### PART I- GENERAL

#### 1. DEFINITIONS:

**Customer:** the person or entity ordering Cabinetry from Elite, including on a joint and several basis the person(s) who has signed Elite's quotation for the Cabinetry, and any person who has otherwise ordered the Cabinetry.

**Cabinetry:** Kitchen and other cabinetry, and all related goods and services ordered by the Customer and supplied by Elite from time to time including but not limited to the cost of all options selected, variations and extras requested by the Customer.

**Elite:** Elite Kitchens and Cabinets Limited. (NZ Company Number: 5154301)

**GST:** Goods and Services Tax.

**Moneys Due:** Includes the price payable for Cabinetry, delivery charges, GST, interest, and extra packaging charges (if any).

**Installation Date:** The date upon which the Cabinetry is physically received by the Customer on site, and is installed by Elite (if Elite is contracted to install the cabinetry).

**Order** means either a quotation accepted by the Customer which is binding on Elite in accordance with these Terms, or any other order placed by the Customer and accepted by Elite whether verbal or in writing.

**Purchase Price** means the price payable by the Customer to Elite for the Cabinetry (as defined above).

**Substantial Completion** means completion of delivery, or completion of installation if Elite is undertaking installation except any minor adjustments or remedial issues.

#### 2. APPLICABLE TERMS & QUOTATIONS:

(a) Only these terms and conditions of sale, Elite's quotation, plans and specifications signed, or otherwise assented to by the Customer, and those implied terms which cannot be excluded by law, shall bind Elite and shall form a contract between Elite and the Customer, and shall replace any prior, contemporaneous or subsequent agreements whether written or oral, including any terms and conditions emanating from the Customer at any time, which the Customer hereby waives.

(b) These conditions shall only be varied by written agreement between the Customer and Elite.

(c) All quotations provided by Elite shall be valid for acceptance for a period of 30 days from the date of the quotation. Elite shall not be bound by an expired quotation unless otherwise agreed in writing by Elite.

(d) Acceptance of any quotation by the Customer shall only be effective upon the Customer also signing or accepting the quotation plans and specifications, and payment of the deposit payable under clause 5(a). Any delays in acceptance of a quotation may delay manufacture and installation. Elite will not commence manufacture until acceptance of the quotation by the Customer.

#### 3. PRICE, CHARGES AND TAXES:

(a) All delivery charges, GST, and other Government taxes, if any, are payable by the Customer in addition to the price for Cabinetry unless the Purchase Price specifically includes those amounts.

(b) Changes to any government taxes, including GST, after acceptance of a quotation or otherwise placed on order by the Customer which alters Elite's liability for those taxes shall be paid by the Customer in addition to the purchase price.

(c) Interest shall be payable on the daily balances of overdue amounts. The interest rate charged shall be a rate of eighteen per cent (18%) per annum. Interest shall be charged as at the close of business as at the date payment became due until the day of payment. Any payment received will be first credited against interest charges payable. Accrued interest shall be capitalised monthly.

- (d) All Customers shall be responsible for payment of the Purchase Price, and if more than one, then on a joint and several basis.
- (e) The Customer shall indemnify Elite for all reasonable recovery costs (including all legal costs incurred by Elite on a lawyer-client basis) it may incur to secure payment for the Cabinetry, and any other charges, taxes and interest which may become payable, after the payment has become overdue inclusive of debt collection charges and all collection costs of any type.
- (f) Initial consultation work offered on a free or discounted basis is strictly limited to a one hour initial consultation, a drawing and a quotation. All further work shall be chargeable at normal rates charged by Elite and forms part of its quotation for any Cabinetry.

#### 4. DELIVERY AND RISK:

- (a) Elite is responsible for all risk in the Cabinetry and its delivery until the Cabinetry is delivered to the delivery address provided by the Customer whether or not installation is completed. Upon delivery, the Cabinetry shall be at the sole risk and liability of the Customer who shall be solely responsible to protect and insure the Cabinetry.
- (b) Because is dependent on third party suppliers and contractors, all delivery dates are estimates only and Elite is not liable for any loss or damage for failure to deliver by those dates and any delay in delivery shall not entitle either party to treat the contract as repudiated. The parties agree this is an essential term of the agreement between Elite and the Customer and shall not be the subject to any subsequent variation.
- (c) Elite may make part deliveries of any Order and render an invoice to the Customer for the Cabinetry delivered for payment by the Customer.
- (d) Unless otherwise expressly agreed in writing by Elite, the Customer shall be responsible for organising and arranging at its cost the timely removal of any existing cabinetry, and the timely completion of the work by all other trade services including but not limited to plumbing, electrical, painting, tiling, flooring and building trades.
- (e) The Customer shall make all arrangements necessary to take delivery of the Cabinetry whenever they are tended for delivery on or after the delivery date.
- (f) The Customer is responsible for all damage to the Cabinetry not caused by Elite or its employees, or contractors occurring after delivery of the Cabinetry whether or not installation is completed, including but not limited to any damage caused by other tradespersons (or their subcontractors) not directly engaged by Elite. All damage advised after the day of installation shall be deemed to be damage caused by the Customer or its other contractors.
- (g) The Customer is responsible for all risk in and any damage caused to any existing insitu adjacent appliances, benchtops, tiles, cabinetry or any other fixtures and fittings during the installation or repair of Cabinetry. The Customer warrants it has taken out builders risk insurance cover adequate for all risks and that such insurance cover is adequate for the Customer's needs and risks.
- (h) All costs of any Crane or Hiab required to deliver to the site of install any component including but not limited to any benchtops or other heavy or unwieldy items shall be in addition to the quoted Purchase Price, and shall be paid by the Customer immediately upon request by Elite.

#### 5. PAYMENTS OF PURCHASE PRICE:

Unless otherwise specified on a quotation by Elite:

- (a) **A deposit of 50% of the Purchase Price**, upon acceptance of a quotation or an Order being placed, is required before Elite commences any work in relation to the Cabinetry; delays in payment of the deposit will likely delay delivery. **NOTE:** The Purchase Price includes the cost of all options and/or extras requested by the Customer.
- (b) **A further deposit of 45% of the Purchase Price** is payable before delivery of the Cabinetry; any delays in receipt of payment of this deposit by Elite will likely delay delivery and installation. **NOTE:** The Purchase Price includes the cost of all options and/or extras requested by the Customer.
- (c) **Payment of the balance of the Purchase Price** immediately on Substantial Completion of the Cabinetry.
- (d) If the Customer delays delivery of the Cabinetry after Elite has ordered material from third party suppliers or otherwise began construction of the Cabinetry, Elite may invoice the Customer for the Cabinetry as if the delay had not occurred and the Customer shall pay such invoice as if the delay had not occurred.
- (e) Unless otherwise agreed by Elite in writing before a payment is received, all payments received from a customer shall be applied to the oldest debt first in the order they were incurred.

- (f) Any notice from the Customer directing any payment made at anytime to a specific debt shall be not be binding on Elite.
- (g) Elite shall be entitled to set off any debts owed against any sum received or payable by Elite.
- (h) Elite shall be entitled to withhold the supply of any Cabinetry to a Customer where it has any reasonable cause to suspect a future payment may be at risk of not being paid by the Customer.

**6. CANCELLATION OF ORDER:**

- (a) In the event a Customer cancels an Order for Cabinetry prior to work commencing (including design work) or any materials being ordered, Elite will refund the deposit portion of the Purchase Price in full.
- (b) If Elite has commenced work (including any design work) and/or ordered any materials, the deposit will be refunded less any costs incurred by or work done by Elite. Costs, and the value of work, are to be reasonably determined by Elite in its sole discretion.

**7. ACCURACY OF INFORMATION SUPPLIED**

- (a) Elite is entitled to rely on the accuracy of all information, and the quotation, plans and specifications signed by the Customer. In the event of any material inaccuracy Elite will endeavour to adjust the Cabinetry and/or its installation date at the cost of the Customer. Elite may, in consultation with the Customer, deviate from the plans and specifications where reasonably necessary, consistent with good trade practice, due to unavailability of materials, changes to or unexpected building works, or where there are circumstances which make strict adherence to the plans and specifications unsound or impractical.
- (b) Any additional works or supplies undertaken by Elite not specified in its quotation, either at the request of the Customer or are reasonably necessary to completion of a professional installation, shall be payable by the Customer to Elite, at Elite's standard and usual rates and charges, in addition to the Purchase Price.
- (a) Unless otherwise advised by the Customer in writing, Elite shall be entitled to assume the Customers' floors and ceilings are or will on installation of the Cabinetry, be level, and all walls are square to the floors and ceiling. In the event of material differences, Elite will endeavour to adjust the Cabinetry at the cost of the customer.
- (b) The Customer shall inspect the goods within 7 days of the Installation Date, and unless otherwise noted in writing within such period from the Installation Date the Customer shall be deemed to have accepted the Cabinetry as complying with the signed quotations, plans and specifications.

**8. ASSIGNMENT**

Except upon a bona fide sale of Elite's cabinetmaking business, neither party may assign its rights or obligations (including but not limited to any warranty unless required by law to be assignable) under these terms and conditions of sale without the express written consent of the other party.

**9. INTELLECTUAL PROPERTY**

All copyright in all drawings and specifications and other work prepared by Elite shall remain the sole property of Elite. The Customer warrants all designs and other information supplied to Elite will not cause Elite to be in breach of any copyright, patent, design or any other rights or property of any third party. Customers using whole or in part any drawings and/or specifications drawn or developed by Elite, for the supply of Cabinetry or other products by third parties, shall immediately pay Elite the cost of production of such drawings at the rate of \$100.00 per hour plus GST. The costs of production shall include, but not by way of limitation, the time undertaken by Elite for: meeting and all other communications with the Customer; drawing; preparing plans and specifications; preparing quotes; and all attendances with potential third party suppliers

**10. APPLICABLE LAW AND JURISDICTION**

These terms shall be construed and governed by the Laws of New Zealand and Elite and the Customer agree to submit to the exclusive jurisdiction of the courts of New Zealand in the City of Auckland.

**11. PRIVACY ACT 1993**

11.1 The Customer authorises Elite to:

- (a) Collect, retain and use any information about the Customer, for the purpose of assessing the Customers creditworthiness or for marketing products and services of the kind offered by Elite; and

- (b) To disclose information about the Customer, whether collected by Elite from the Customer directly or obtained by Elite from any other source, to any credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 11.2 Where the Customer is a natural person the terms of clause 11.1 are the authorities or consents for the purposes of the Privacy Act 1993.
- 11.3 The Customer has the right to request a copy of the information about the Customer retained by Elite and has the right to request the Seller to correct any incorrect information about the Customer held by Elite.

**12. FORCE MAJURE:**

Elite is not liable for any failure where the failure is due to circumstances which are not directly within Elite's control, including acts of terrorism, natural disaster, acts of God, industrial action, or a failure of a supplier, public utility, carrier, or failure on the part of a tradesperson not engaged by Elite.

**13. INSTALLATION:**

- (a) All installation costs quoted by Elite have assumed and are subject to; level floors and ceilings, square walls, unimpeded access to the site of installation including up not limited to direct vehicle access from Elite's factory to within 10 meters of the site of installation without need for additional carrying or transportation (such as use of lifts, cranes, ferries or barges) or additional unloading and reloading or carrying up more than two levels; that no disassembly of cabinetry is required; there are no measurement changes to the dimensions of the installation site after measurement; no other trades or work being undertaken at the site of installation during installation by Elite; and no other issues or matters that cause installation to be prolonged or delayed. In the event that Elite incurs additional time or costs during delivery or installation, Elite shall be entitled to charge at its standard rates additional sums for installation for the additional time or work required.
- (b) Any installation completion delayed by more than 8 weeks by the Customer or any of its contractors shall be subject to additional charges at Elite's usual rates.

**13A NOTICES**

- (c) Any notice, claim document or other information from Elite to the Customer may be given by Elite by post, fax, email or delivery to any address provided by the Customer to Elite or used by the Customer in any past communication to Elite.
- (d) The Customer hereby consents to any notice, claim, document, or other information being given by Elite to the Customer in electronic form and by means of electronic communication as provided in clause 13A (a) above.

**PART II- WARRANTY**

This Part II provides a 10 year warranty for the Cabinetry on the terms set out below.

**14. WARRANTY:**

- (a) Subject to the exclusions in clause 14 (c) below Elite warrants the Cabinetry only to the Customer and no other person or entity, against defects arising from faulty workmanship and/or materials for a period of **ten (10) years** from the Installation Date.
- (b) Elite will pass on to the Customer to the fullest extent it is able the benefit of any manufacturer's warranties it receives in relation to Cabinetry.
- (c) Elite's warranty does **not apply** where:
  - (i) there has been in the reasonable opinion of Elite neglect, misuse, accident, general wear and tear;
  - (ii) damage has been caused by a leak, flood, water, moisture, vapour, chemicals, sunlight or other intervening cause;
  - (iii) damage caused by poor care and maintainance;
  - (iv) damage is caused by an Act of God;
  - (v) where continued use of the Cabinetry after any defect becomes apparent or reasonably should have been apparent to a reasonable prudent person;
  - (vi) The breaking or peeling of any silicone or other sealants however occurring;

- (vii) the Cabinetry is repaired or altered by the Customer or a third party and such repairs or alterations have not been consented to in writing by Elite;
- (viii) damage is caused by any third party, including but not limited to the action or inaction of another tradesperson;
- (ix) Elite has not received any payment of the Purchase Price on or before such payment was due to be paid;
- (x) damage is caused during installation of the Cabinetry to insitu adjacent appliances, benchtops, titles, cabinetry, other fixtures and fittings or chattels;
- (xi) the Customer has leased, tenanted, or let the property in which the Cabinetry has been installed and Elite has not agreed in writing to extend the its warranty to include such leasing tenanting or letting;
- (xii) the property in which the Cabinetry has been installed has been sold, leased, assigned, transferred or otherwise disposed of to any other person or entity by the Customer and Elite has not agreed in writing to extend the its warranty to such purchaser, leasee, assignee, tranferee, or other person or entity otherwise taking title to such property; and
- (xiii) Yellowing or miscolouring due to sunlight, other light or the absence of light.

**15. SUPPLY FOR BUSINESS PURPOSES:**

Where these terms and conditions would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 ("CGA"), the Customer agrees that where the Cabinetry is supplied to the Customer for business purposes in terms of sections 2 and 43 of the CGA, then the provision of the CGA do not apply to the supply of the Cabinetry to the Customer.

**16. LIMITATION:**

- (a) Neither party shall be liable for any special, exemplary, punitive or consequential loss or damage (including without limitation, loss of profit, loss of opportunity and loss of goodwill) incurred by the other party either directly or indirectly in connection with the supply of Cabinetry or any delay in the supply of the Cabinetry.
- (b) Without limitation, each parties liability to the other arising from the supply of the Cabinetry shall always be limited to a sum equal to the quotation provided by Elite for the Cabinetry to which any liability relates, plus the cost of any additional goods and services provided by Elite.

**PART III- SECURITY OF PAYMENT**

This part III secures payment of the Purchase Price in the event of insolvency or a failure to pay.

**17. RETENTION OF TITLE:**

- (a) Ownership in Cabinetry remains with Elite until full payment is received for all Cabinetry sold by Elite to the Customer. This condition applies regardless of whether:
  - (i) Cabinetry are supplied under these conditions or any other contract;
  - (ii) the indebtedness arises under a written, oral or partly written and oral contract;
  - (iii) the indebtedness is on a current account, trading account or otherwise.
- (b) To the extent permissible by law Elite may stop Cabinetry in transit, enter premises occupied by the Customer, and enter any premises where Cabinetry are held on behalf of the Customer, and recover Cabinetry the subject of any Order if a default in payment for Cabinetry, or insolvency of the Customer, occurs.
- (c) The Customer hereby indemnifies Elite, its officers employees, agents and contractors for any costs of removal, claims, actions and causes of action of any kind in respect of the removal of Cabinetry under 16(b).
- (d) The affixing of Cabinetry to any part of a building does not have the effect of making the Cabinetry a fixture and is severable by Elite.
- (e) If Cabinetry is used in the manufacture of new objects or otherwise mixed then ownership in the object or objects in question automatically passes to Elite as surety for full payment of any moneys due.

**18. PERSONAL PROPERTIES SECURITIES ACT 1999 ("PPSA"):**

- 18.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and a security interest is taken in all Cabinetry supplied by Elite to the Customer (if any) and in all Cabinetry that will

be supplied in the future by Elite to the Customer during the continuance of the party's relationship. Elite may register a financing statement under the PPSA in respect of any Cabinetry.

18.2 The Customer undertakes to:

- (a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which Elite may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Elite for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Cabinetry charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of Elite;
- (d) give Elite not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice); and
- (e) immediately advise Elite of any material change in its business practices of selling the Cabinetry which would result in a change in the nature of proceeds derived from such sales.

18.3 Elite and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.

18.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

18.5 Unless otherwise agreed to in writing by Elite, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

18.6 The Customer unconditionally ratifies any actions taken by Elite under clauses 18.1 to 18.5 under and by virtue of the power of attorney given by the Customer to Elite under clause 19(c).

## **19. SECURITY & CHARGE:**

- (a) Where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of its, and if more than one then their joint and/or several, interest in the said land, realty or any other asset to Elite or Elite's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer acknowledges and agrees that Elite (or Elite's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should Elite elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer shall indemnify Elite from and against all Elite's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause 18 and clauses 19(a) to (b) inclusive hereof the Customer hereby irrevocably nominates, constitutes and appoints Elite or Elite's nominee as the Customer's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as Elite and/or Elite's nominee shall think fit in his/her/its/their absolute discretion against the interest of the Customer in any land, realty or asset in favour of Elite and in the Customer's name as may be necessary to secure the Customer's obligations and indebtedness to Elite and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in Elite's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

## **20. CONSTRUCTION CONTRACTS ACT 2002**

- (1) These terms and conditions constitute a construction contract for the purposes of the Construction Contracts Act 2002
- (2) In the event that the Customer is a residential occupier as defined by the Construction Contracts Act 2002 the Customer hereby expressly acknowledges that:
  - (i) Elite has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
  - (ii) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
  - (iii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or the Customer has not

- complied with an adjudicator's notice that the Customer must pay an amount to Elite by a particular date; and
- (iv) Elite has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (3) If Elite suspends work under clause 20(1), it:
- (i) is not in breach of contract; and
  - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
  - (iii) is entitled to an extension of time to complete the contract; and
  - (iv) Keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (4) If Elite exercises the right to suspend work under clause 20(1), the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to Elite under the Contractual Remedies Act 1979; or
  - (ii) Enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of Elite suspending work under this provision.
- (5) If the Customer is not a residential occupier as that term is defined by the Construction Contracts Act 2002, the Customer, if it disputes a payment claim made by Elite pursuant to section 20 of the Construction Contracts Act 2002 shall provide Elite a payment schedule pursuant to section 21 of the Construction Contracts Act 2002 within seven (7) working days, failing which the consequences of section 22 of the Construction Contracts Act 2002 shall apply.

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