

TERMS AND CONDITIONS OF SALE 2023

a) Definitions:

- i. **“Winterfield Cabinets”** means T & A Dunn Pty Ltd, trading as Winterfield Cabinets (hereafter referred to as the company) or any person acting on behalf of and with the authority of Winterfields.
- ii. **“The Customer”** means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one, Client is a reference to each Client jointly and severally.

b) The customer hereby warrants that the information comprised in the first scheduled hereto is true & accurate and is supplied for the purpose of obtaining credit.

c) The customer warrants that are the person’s signatures appearing on this Agreement are duly authorised by The Customer to apply for credit and execute this Agreement.

d) The Customer agrees to adhere to the terms and conditions of this Agreement.

e) Entire agreement and precedence:

- i. All terms of the contract between The Customer and the Winterfield Cabinets are contained in these terms and conditions, the plans, the selection documents, and final paperwork provided.
- ii. If there is any inconsistency between these terms and conditions, the plans, the selection documents and final paperwork, the documents shall apply in the following order:
 - i. First, these terms and conditions,
 - ii. Then, the final paperwork document,
 - iii. Then, the selection documents,
 - iv. Then, the plans.

f) Jurisdiction: Notwithstanding any implication of the law to the contrary, all contracts between the Customer and The Company shall be deemed to be made and construed and construed and to be enforceable in and according to the laws of the State of South Australia and by mutual consent to be subject to the jurisdiction of the courts of that State.

g) Claims: Any claim for non-delivery, shortage in supply or damage occurring during the course of completion or any claim for rejects by a customer must be in writing and given to the Manager of The Company within 24 hours of completion.

h) The customer hereby confirms that they understand the pricing and plans provided, and that all details for the joinery are confirmed and shown correctly in the selections documents and plans.

i) Winterfields reserves the right to change the Price:

- i. if a variation to the Materials which are to be supplied is requested; or
- ii. if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
- iii. where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the Site, prerequisite work by any third party not being completed or hidden services, etc) which are only discovered on or after commencement of the Works; or
- iv. in the event of increases to Winterfields in the cost of labour or materials which are beyond Winterfields’ control.

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j) Modifications and Variations:

- i. If following the final site measure the joinery requires a variation or modification to product due to a measurement and/or site issues, Winterfield Cabinets will inform the customer and issue a revision to the joinery design and price.
- ii. Winterfield Cabinets may make minor modifications to the specifications of the joinery without notifying the customer, provided such modifications do not materially affect the appearance, design and quality of the joinery.
- iii. If for any reason Winterfield Cabinets is unable to supply a particular aspect of the joinery, including a specific accessory, Winterfield Cabinets will replace the item with an item of similar quality and value, or refund the amount.

k) Delivery Cancellation:

- i. If you are unable to accept delivery at the site on the agreed delivery date, Winterfield Cabinets will agree a new delivery date with you, and a storage fee of \$50 per day will apply until the kitchen is delivered to you.
- ii. These fees are required to be paid at the same time as the final payment.

l) Termination:

- i. To the extent permitted by law, this agreement may only be terminated by a party as follows:
 - i. By T & A Dunn Pty Ltd giving you notice at the time of the final check measure.
 - ii. If the other party breaches this agreement and does not rectify the breach within 30 days of being notified of the breach, or
 - iii. If the other party enters into bankruptcy or any form of external administration (eg liquidation, receivership etc).
 - iv. If in T & A Dunn Pty Ltd's opinion, the customer no longer wish to take delivery of the joinery and have effectively abandoned the agreement.
- ii. If this agreement is terminated by you prior to delivery of the kitchen in circumstances where T & A Dunn Pty Ltd is not in breach of this agreement, you will forfeit the deposit and any progress payments already made.
- iii. T & A Dunn Pty Ltd may also retain the products that have been purchased or the joinery that has been constructed without compensation to you.
- iv. T & A Dunn Pty Ltd reserves the right to recover from you its reasonable costs incurred in performing its obligations under this agreement to the date of termination where those costs exceed the deposit and/or progress payments.

m) Intellectual Property:

- i. Where Winterfield Cabinets has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in T & A Dunn Pty Ltd, and shall only be used by the Customer at the Company's discretion.
- ii. The Client agrees that Winterfield Cabinets may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Winterfield Cabinets has created for the Customer.

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- n) In the event of the Seller granting credit facilities to the customer then the following terms apply:
- i. All accounts are to be settled within 7 days of the invoice date when the services have been provided.
 - ii. A upfront deposit payment will be required for work to commence the balance to be paid within 7 days of invoiced.
 - iii. That should the customer default in the payment of any monies due under this agreement then all monies due to the company shall immediately become due & payable and shall be paid by the customer within 7 days of the date of demand and The Company shall be entitled to charge interest on all amounts not paid by the due date for payment and the customer undertakes to pay any interest so charged. Such interest shall be calculated daily from the due date of payment until the date the company receives payment at such rate, up to but not exceeding 2.5% per month.
 - iv. Any expenses cost of disbursement incurred by The Company to recover any outstanding monies including debt collection agency fees and solicitor's costs shall be paid by the customer providing that those fees do not exceed the scale of charges as charged by the debt collection agency/solicitor.
 - v. The Company is entitled without notice to terminate any credit arrangement with the customer in the event of the customer defaulting in any of the terms & conditions herein contained.
 - vi. The Company is entitled at any stage during the contingency of this agreement to request such security or additional security as The Company shall in its discretion think fit and shall be entitled to withhold supply of any goods or credit arrangement until such security or additional security shall be obtained or for any reason at The Companies discretion.
- o) Title and Risk:
- i. Risk passes to customer on delivery. All goods & services shall remain the property of T & A Dunn Pty Ltd until all debts due to T & A Dunn Pty Ltd by the customer are paid in full.
 - ii. The customer shall be Bailee of goods in its possession whose title remains with T & A Dunn Pty Ltd.
 - iii. Goods in the customer's possession must be clearly identifiable as the property of T & A Dunn Pty Ltd.
 - iv. If the customer fails to pay, any debt due to T & A Dunn Pty Ltd by the date of payment to T & A Dunn Pty Ltd may retake possession of goods. All T & A Dunn Pty Ltd right to claim damages for the customer for breach of contract.
 - v. The customer irrevocably authorises T & A Dunn Pty Ltd and its servants and agents to enter upon the customer's premises without notice at any time, for the purpose of examination or recovery of goods.
 - vi. The customer shall indemnify T & A Dunn Pty Ltd against any loss of expense arising from the customer breaching this contract.
 - vii. If the customer makes new goods or other goods from or with goods, these new goods are goods for the purpose of this contract.

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- p) These conditions of sale shall not exclude, limit, restrict or modify the rights, entitlements and remedies conferred upon the customer or the liabilities imposed upon T & A Dunn Pty Ltd by any condition or warranty implied but the commonwealth, state or territory Act or Ordinance, rendering void or prohibiting such exclusion, limitation, restriction or modification.
- q) T & A Dunn Pty Ltd shall not be liable to the purchaser by reasons of delays in delivery of goods and or services.
- r) Any legal action taken for enforcement of recovery of monies may be taken out in court having jurisdiction in the state of South Australia and the customer consents to any proceedings being heard in the court where action is commenced.
- s) If any of these terms and conditions is or becomes for any reason wholly or partly invalid that terms and conditions shall to the extent of the invalidity be served without prejudice to the continuing force and validity remaining conditions.
- t) In the case of a Trust Company, we acknowledge that the trustee shall be liable on the account and that in addition the assets if the trust shall be available to meet payment of the account.
- u) Privacy Act: Acknowledgement that credit information may be given to a credit-reporting agency, the customer understands that section 18E (8) (C) of the Act allows T & A Dunn Pty Ltd to give credit reporting agency personal information about the customer. The information which maybe given to an agency is covered by section 18E (1) of the Act and includes: Particulars to identify the customer, payments which become overdue more than 30 days, advice that payments are no longer overdue, cheques of \$100 or more drawn by the customer which a bank has dishonored more than once, in specified circumstances. That in the opinion of T & A Dunn Pty Ltd the customer has committed a serious credit infringement, that the credit provided to the customer by T & A Dunn Pty Ltd has been discharged.
- v) Authority for T & A Dunn Pty Ltd to obtain credit information. To enable T & A Dunn Pty Ltd to assess the customer application for commercial or personal credit, the customer authorises T & A Dunn Pty Ltd as follows: If asked to provide commercial credit, to obtain from credit reporting agency credit report containing personal credit information about the customer. This is in accordance with section 18K (1) (b) of the Act. If asked to provide personal. To use a credit report containing information about the customers commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person. This is in accordance with section 18L (4) of the act.
- w) The authority to exchange information with other credit providers. In accordance with section 18N (1) (b) of the act, the customer authorises T & A Dunn Pty Ltd to give & receive from the credit providers named overleaf or that may be named in credit report issued by a credit reporting agency, information in T & A Dunn Pty Ltd possession or the other credit providers possession about the customers creditworthiness, credit standing, credit history & credit capacity. The customer understands that the information may be used to (a) Assess an application for credit by customer, (b) Assist T & A Dunn Pty Ltd in avoiding default on the customers credit obligations, (c) Notify other credit providers of a default by the customer, (d) Assess customers creditworthiness.

Signature

Print Name

Position Held in Company

Date