



INTERNATIONAL CABINETS PTY LTD

CONDITIONS OF CONTRACT FOR GOODS AND WORKS

1. INTERPRETATION

1.1 Definitions

The following terms are specified in the Quotation/Purchase Order:

Client
Completion Date
Contract Price
Delivery Date
Goods
Materials
Site
Works

1.2 A reference to:

“**Company**” means International Cabinets Pty Ltd;
“**Contract**” has the meaning given in clause 3.3;
“**Party**” is a reference to either the Client or the Client and
“**Parties**” is a reference to both of them;
“**Quotation**” is a reference to the quotation prepared by the Company for the supply of the Goods and/or performance of the Works either as a lump sum fixed price, schedule of rates or cost plus or a combination of these; and
“**Schedule**” is a reference to the Schedule attached to the Quotation.

2. CONDITIONS OF CONTRACT

2.1 This document together with the Quotation embody the sole Contract which apply to all supplies of Goods by the Company to the Client, including any contract, order or any other sale, and will supersede all prior conditions and agreements between the Parties.

3. ORDER AND ACCEPTANCE

3.1 The Company has made an offer to the Client to supply the Goods and/or perform the Works by providing the Quotation.

3.2 The Contract is made on the acceptance in writing by the Client of the Company’s Quotation within the period specified in the Quotation.

3.3 The Contract consists of:

- (a) the Quotation;
- (b) the Schedule, if applicable; and
- (c) this document.

3.4 The Company may accept, in its sole discretion, electronic acceptance from the Client in compliance with clause 3.2.

4. IMPLIED TERMS

4.1 Subject to clause 4.2, to the extent permitted by law, all implied warranty, terms and conditions are excluded.

4.2 Nothing in clause 4.1 is intended to exclude any guarantees under the *Competition & Consumer Act 2010* (“Australian Consumer Law”). If the Client is a consumer as defined under the Australian Consumer Law then:

- (a) the Goods and/or the Works come with guarantees and protections that cannot be excluded under the Australian Consumer Law; and
- (b) to the extent to which any provision of the Contract is inconsistent with those guarantees and protections, then to the extent of inconsistency, such provisions of the Contract do not apply.

5. PRICING

5.1 In consideration of the Company supplying the Goods and/or performing the Works, the Client must pay the Company the Contract Price, which may be adjusted in accordance with the provisions of the Contract.

5.2 The Client agrees to pay the Company the Contract Price in accordance with any agreed terms of payment set out in the Schedule to the Quotation, or if no terms are set out in the Schedule, then progressively as the Works are completed and invoiced by the Company.

5.3 The Client agrees that the Contract Price may be adjusted by the Company to reflect any changes to the cost to the Company in supplying the Goods and/or performing the Works arising from:

- (a) statutory charges, taxes, rates, levies or imposts which the Company is required to pay in relation to the supply of the Goods and/or performing the Works; or
- (b) currency exchange rates.

5.4 The following provisions are included in this Contract only if the *Home Building Contracts Act 1991* (WA) does not apply:

The Client agrees that the Contract Price may be adjusted by the Company for the rise and fall in the costs of labour and materials incurred by the Company:

- (a) in supplying the Goods, if the Goods are not supplied within 3 months from the date of the Contract; and/or
- (b) in performing the Works, if the Works are not completed within 12 months from the date of the Contract.

6. PAYMENT TERMS, RETENTION AND SET-OFF

6.1 Payment shall be made to the Company by the Client in accordance with the terms as set out on the invoice.

6.2 If the Works or estimated time of completion does not exceed one (1) calendar month, the Company will submit an invoice on completion of the Works.

6.3 If the Works or estimated time of completion exceeds one (1) calendar month, the Company may, in its sole discretion, submit progress claim invoices to the Client at regular intervals, as and when the Company has performed any of its obligations over that period.

6.4 Without prejudice to its rights, the Company is entitled to charge interest on all amounts not paid by the Client under the Contract, at a rate of 2% above the NAB commercial lending rate calculated on a daily basis on all amounts not paid within the time specified in the Company’s tax invoice or payment claim.

6.5 The Client is not entitled to set off any amounts owing or due to the Company.

7. VARIATIONS

7.1 The Client may seek a quote for a variation to the Goods and/or the Works (including Materials) by a request in writing.

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- 7.2 The Company may agree or refuse the Client's request for variation in its discretion. included, all amounts of consideration expressed or described in any Quotation or agreement shall be exclusive of GST.
- 7.3 If there is a variation, the Company will provide the Client with a revised quotation setting out the adjustments to the cost of the Goods and/or the Works and change to the Delivery Date and/or the estimated Completion Date. 10.2 The GST must be paid by the Client when the other consideration is payable to the Company.
- 7.4 On acceptance by the Client of the variation quote:
(a) the Contract Price will be adjusted;
(b) the Completion Date will be adjusted; and
(c) the Goods and/or the Works will be varied in accordance with the variation quote.
- 8. SUITABILITY OF GOODS AND/OR MATERIALS**
- 8.1 The Client must provide the Company with all necessary information (including dimensions) within such adequate time that the Company may specify in order for the Company to be able to supply the Goods by the Delivery Date or the Materials for the performance of the Works by the Completion Date.
- 8.2 The Client acknowledges that it has taken all due care to ensure that the Goods and/or the Materials are the correct type, size, rating, standard, quality, colour, finish and meet its requirements and specifications (including any drawings).
- 9. WORKS**
- 9.1 The Company will carry out the Works in a proper and workmanlike manner and in accordance with the plans and specifications (if any), all relevant Australian Standards and laws in force at the date of the performance of the Works.
- 9.2 The Company will supply the Materials which will be of suitable standard for the purpose of which they are intended. Unless otherwise specified, all Materials will be new.
- 9.3 The Company will complete the Works with due care and skill on or around the Completion Date and in accordance with the agreed works program (if any).
- 9.4 The Company will be entitled to an extension of time to complete the Works if an event occurs which is outside of its control which causes a delay to the completion of the Works (including acts of God, strikes, lockouts, industrial disturbances, fire). The Company will notify the Client of the revised estimated Completion Date, if necessary.
- 9.5 The Client must provide the Company with clear and uninterrupted access to the Site until the Goods have been supplied and the Works performed in full.
- 9.6 The Client must remove any items from the Site including furniture and personal goods to ensure there is clear and safe access for the Company to perform the Works and to protect the Client's property from damage.
- 9.7 The Client must ensure that at all times during the performance of the Works, the Site complies with all legislation, including the *Occupational Safety and Health Act 1984* (WA). The Company may vary the Contract Price to include any additional costs and expenses incurred by it if it needs to take any action to ensure that the Site complies with all legislation required during the performance of the Works.
- 10. GST**
- 10.1 Goods and Services Tax ("GST") will be charged on Goods that attract GST at the applicable rate and unless expressly included, all amounts of consideration expressed or described in any Quotation or agreement shall be exclusive of GST.
- 11. DELIVERY OF GOODS**
- 11.1 The Company agrees to deliver the Goods to the Client at the Site, and on the Delivery Date, as specified in the Quotation.
- 11.2 Delivery of the Goods shall be deemed to have been effected when:
(a) the Company or the Company's nominated carrier delivers the Goods to the Site or another address otherwise decided upon in writing; or
(b) the Company or the Company's nominated carrier delivers the Goods to a third party nominated in the Order or in writing by the Client; or
(c) the Client or the Client's nominated carrier, herein deemed to be the Client's agent, takes possession of the Goods as per the Client's nomination in the Order.
- 11.3 Delivery of the Goods may not be refused by the Client after a Quotation has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point nominated by the Company or the Company's ordinary place of business.
- 11.4 The Client shall make all arrangements necessary to accept delivery of the Goods whenever they are tendered for delivery.
- 11.5 The Company will be entitled to an extension of time to the Delivery Date if an event occurs which is outside the Company's control which causes a delay to the supply of the Goods (including failure by the Client to supply relevant information as required). The Company will notify the Client of the revised Delivery Date.
- 12. RISK**
- 12.1 The Goods supplied by the Company to the Client shall be at the Client's sole risk immediately upon delivery to the Client or the Client's carrier, as agent, as the case may be.
- 13. RETENTION OF TITLE TO THE GOODS PENDING PAYMENT**
- 13.1 Legal and beneficial ownership of the Goods shall remain with the Company and shall not pass to the Client until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Client on any credit account with the Company or pursuant to the Contract.
- 13.2 Until ownership of the Goods has passed to the Client:
(a) the Client holds the Goods as fiduciary and bailee for the Company;
(b) the Goods must be stored separately and in a manner that enables them to be identified and cross-referenced to particular invoices; and
(c) the Company, its employees or agents, are entitled to enter the Client's premises between 9.00am and 5.00pm on any business day to inspect the Products.
- 14. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPS ACT")**



INTERNATIONAL CABINETS PTY LTD

CONDITIONS OF CONTRACT FOR GOODS AND WORKS

- 14.1 Words in italic shall have the meaning and definitions set out in the PPS Act.
- 14.2 The Client acknowledges that by virtue of the Contract the Company has a *security interest* in the Goods and their *proceeds* for the purposes of the PPS Act.
- 14.3 The Client acknowledges that the Company may do anything it considers necessary, including but not limited to registering on the PPSR any security interest in the Goods which the Company has in order to *perfect* the Company's security interest as a first priority interest under the PPS Act. The Client agrees to do all things including signing any document which the Company reasonably requires to assist the Company to undertake the matters set out above.
- 14.4 The Client waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a financing *statement*, *financing change statement* or a *verification* statement in relation to any registration on the PPSR.
- 14.5 The Client and the Company agree that, pursuant to section 115 of the PPS Act, that the following provisions in the PPS Act are contracted out of insofar as they require the Company to give any notice or statement or allow any period of time or grant any opportunity to remedy to the Client:
- (a) sections 95 (removal of accession), 96 (retention of accession);
 - (b) section 125 (disposal or retention of collateral);
 - (c) section 129 (disposal by purchase);
 - (d) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
 - (e) subsection 132(4) (statement of account if no disposal);
 - (f) section 135 (notice of retention);
 - (g) section 142 (redemption of collateral); and
 - (h) section 143 (reinstatement of security agreement).
- 14.6 Solely to preserve their confidentiality, to the extent allowed under section 275 of the PPS Act, the Client and Company agree that neither will disclose information if requested by a third party under section 275(1).
- 14.7 The Client agrees that any rights of the Company under the Contract are in addition to and not in substitution for its rights under the PPS Act.
- 14.8 The Client undertakes to give the Company not less than 14 days prior notice of any proposed change in the Client's name or any other change in the Client's details (including, but not limited to, changes in its address, phone or facsimile number and trading name).
- 15. DEFECTS**
- 15.1 The Client must notify the Company in writing of any major or material omissions or defects in Materials or workmanship of the Goods and/or in the Works or Materials ("Defects") which become apparent within one (1) month of delivery of the Goods and/or the performance of the Works.
- 15.2 Defects exclude any damage caused by the Client or any third party.
- 15.3 The Company will make good at its cost any Defects notified by the Client pursuant to clause 15.1.
- 15.4 The Company has no liability for Defects which arise after one (1) month from the date the Works are completed or
- which the Client has failed to notify the Company within the one (1) month period from the date the Works are completed.
- 15.5 Notwithstanding the above, in the event that the *Home Building Contracts Act 1991* (WA) applies to the Contract, the one (1) month period referred to in clause 15.1 and 15.4 above, is hereby extended to four (4) months.
- 16. INSURANCE**
- 16.1 The Company shall arrange a public and products liability policy to cover the Company's liability arising from:
- (i) personal injury to or death of any person arising out of or in connection with or in the course of the Works, other than due to the negligent act or omission by the Client or any person for whom the Client may be responsible; and
 - (ii) injury or damage whatsoever to any property, real or personal, which may be occasioned by or arise out of the performance of the Works and which is due to any negligence of the Company, its employees, agents or sub-contractors.
- 16.2 The Company shall arrange a workers compensation policy to cover its 'workers' in accordance with applicable legislation in the State of Western Australia.
- 16.3 Materials and goods supplied shall be at the risk of the Client once delivered to the Site.
- 17. NO LIABILITY FOR THIRD PARTY INSTALLATION**
- 17.1 Where the Contract does not include installation by the Company, the Company shall not be liable to remedy any damage or rectify any defects to the Works arising from any work carried out on the Site by the Client or the Client's employees and agents.
- 18. DEFAULT**
- 18.1 If the Client breaches a material term of the Contract, then for such period as the Client is in breach, the Company may:
- (a) suspend the performance of the Works and repossess any unfixed portions of the Works not yet paid by the Client; and/or
 - (b) withhold delivery of the Goods.
- 18.2 The Client may terminate this Contract by written notice to the Company if:
- (A) the Company is placed under administration, liquidation or is declared bankrupt; or
 - (b) the Company breaches a material term of the Contract and does not remedy the breach within 10 working days of being notified by the Client to do so.
- 18.3 The Company may terminate the Contract by written notice to the Client if:
- (c) the Client is placed under administration, liquidation or is declared bankrupt; or
 - (d) the Client breaches a material term of the Contract and does not remedy the breach within 10 working days of being requested by the Company to do so; or
 - (e) asbestos, contamination or other toxic substances which pose a risk to health and safety are present at the Site.



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CONDITIONS OF CONTRACT FOR GOODS AND WORKS

- 18.3 If the Company terminates the Contract, then in addition to any other rights and remedies it may:
- (a) repossess any unfixed or remove any fixed portions of the Works not yet paid for by the Client or to set off any amount due and payable by the Client; and/or
 - (b) withhold delivery of the Goods.
- 19. INDEMNITY**
- 19.1 The Client must indemnify the Company, its directors, officers and employees from and against liability for all loss, damage or injury to persons or property arising directly or indirectly with the Contract or in connection with the Site, and which has been caused by the Client, its servants, employees, agents or contractors, including for any loss suffered by any of them.
- 20. BREACH**
- 20.1 The Client must pay to the Company all costs incurred by the Company, including legal fees, on a full indemnity basis in consequence of or in connection with any default by the Client under the Contract and in the enforcement or attempted enforcement by the Company of any of its rights or remedies in relation to any default.
- 21. DISPUTE RESOLUTION**
- 21.1 In the event of any dispute or disagreement between the Client and the Company at any time relating to the Contract, then either party may give to the other notice of such dispute or disagreement, and at the expiration of **five (5) working days** and in the absence of any settlement the matter shall be referred by either party to:
- (a) a single arbitrator appointed by mutual consent; or
 - (b) in the event that agreement of the appointee is not reached, a single arbitrator who shall be appointed by the President or his nominee of the Cabinet Makers Association of WA (Inc.).
- 22. INTELLECTUAL PROPERTY**
- 22.1 The supply of Goods to the Client does not grant the Client any intellectual property rights in or related to the Goods or the Company's or any manufacturer's trade-marks, all of which remain the exclusive property of the Company or the manufacturer.
- 23. ASSIGNMENT**
- 23.1 The Client may not assign or subcontract the Contract for the purchase of Goods or its rights or obligations under an agreement the subject of the Contract.
- 24. FORCE MAJEURE**
- 24.1 The Company will have no liability to the Client in relation to any loss, damage or expense caused by the Company's failure to complete the Works as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war or the inability of the Company's suppliers to supply necessary materials or any other matter beyond the Company's control.
- 25. PRIVACY CONSENT**
- 25.1 The Company may give information to third parties about the Client, its guarantors, directors or proprietors for the following purposes:
- (a) to obtain a consumer credit report about the Client, its guarantors, directors or proprietors;
 - (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Client, its guarantors, directors or proprietors;
 - (c) for registration on the PPSR or other public records or registers; and
 - (d) to obtain commercial credit information about the Client, its guarantors, directors or proprietors from a credit reporting agency.
- 26. WAIVER**
- 26.1 The failure or indulgences by the Company to exercise, or delay in exercising, any right, power or privilege available to it under an agreement the subject of the Contract will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power and the Company shall be entitled to require strict compliance at all times.
- 27. PROPER LAW**
- 27.1 The Contract is governed by and will be construed in accordance with the laws of the State of Western Australia.
- 27.2 The Parties agree to submit to the non-exclusive jurisdiction of the Courts of the State of Western Australia.
- 28. GENERAL PROVISIONS**
- 28.1 The Contract represents the entire agreement between the Parties and no agreement or understanding varying or extending the terms of the Contract shall be legally binding upon either party unless in writing and signed by both Parties or allowed by the Contract.
- 28.2 The Company may serve any notice or Court document on the Client by hand or by forwarding it by post to the address of the Client last known to the Company, or where a fax number or an email address has been supplied by the Client on the Order, by sending it to that number or address. Such notices shall be deemed to be given:
- (a) where delivered by hand, on the day of delivery;
 - (b) where sent by post, two (2) business days after the day of posting; and
 - (c) where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.
- 28.3 If any term of an agreement the subject of the Contract shall be invalid, void, illegal or unenforceable, it shall be severed from the agreement and the remaining provisions shall not be affected, prejudiced or impaired by such severance.
- 28.4 The Company may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the Client's agreement or consent.
- 28.5 In the event that the Client sells or otherwise disposes of its business (or any part thereof), the Client shall be responsible to immediately notify the Company in writing of such sale to enable the account to be closed. If the Client fails to so notify then the Client shall be jointly and severally liable with the third party acquiring the business (or part thereof) to the Company for the payment of Products subsequently sold to the third party on the Client's account before the Company received such notice as if the Client had ordered the Products itself.