

Terms and Conditions of Trade

1 Definitions

- 1.1 "We", "us" and "our" mean ECC Limited.
- 1.2 "You" and "your" mean any person contracting with us and/or the applicant named in the account application form.
- 1.3 "Goods" means the goods and services which we have agreed to supply and provide to you under the Terms and Conditions of Trade.
- 1.4 "Terms and Conditions of Trade" means these terms and conditions of trade.

2 Terms And Conditions

- 2.1 We agree to supply and you agree to buy the Goods stated on our invoice on the Terms and Conditions of Trade, unless we agree in writing to different terms.

3 Price

- 3.1 The price of the Goods:
- a. is the price listed on our invoice;
 - b. includes any GST; and
 - c. does not include local delivery/freight or installation fees. If applicable, these will be payable by you in addition to the price.

4 Payment

- 4.1 You agree to pay:
- a. A deposit of 50% of the price of the Goods, when you order the Goods;
 - b. For Cash customers: The balance of the price of the Goods and any charges specified in accordance with clause 3.1(c) above, within 14 days of the Goods being available for delivery.
 - c. For Account Customers: The balance of the price and any charges specified in accordance with clause 3.1(c) above, on the 20th of the month following the date of our invoice.
 - d. If the balance of the price of the Goods is not paid within the relevant period specified above, your deposit will be forfeited without prejudice to any other rights or remedies that we have against you, including our right to cancel this contract and seek damages. We are not required to deliver the Goods to you until you have paid in full the price and all applicable charges.

5 Goods for Your Approval

- 5.1 The Goods provided to you for your approval (i.e. "on appro") must be returned to us undamaged, in their original condition and in their original packaging within 7 days of delivery to you. If you fail to do so, you are deemed to have agreed to purchase the Goods on these Terms and Conditions of Trade.

6 Risk and Ownership

- 6.1 The Goods are at your risk as soon as you have collected them, or if we are arranging delivery, as soon as they have been delivered to you. We remain the ownership of the Goods until you have paid us in full the price and all charges owing for the Goods. If you have yet to make full payment of the price and all applicable charges for the Goods to us and are in possession of such Goods:
- a. You must not sell or dispose of the Goods without our prior written consent. If you sell or dispose of the Goods without our prior written consent, you must retain sufficient sale proceeds in order to pay us for the Goods in a separate bank account in trust for us and immediately pay the amount owing to us.

- b. You irrevocably authorise us to enter any of your premises in order for us to repossess any Goods, if there are sums owing by you. We may repossess the Goods even if they are fixed to the premises. We shall not be liable for any damages caused as a result of our repossession and you must meet the costs of such repossession.
- c. If we repossess the Goods we may sell them and apply the proceeds towards the amount you owe us, including all of the costs we incur in repossessing the Goods.
- d. The fact that we retain the ownership of the Goods will not affect our right to make any claim against you for any outstanding amount owing by you.

7 Security Interest

- 7.1 You grant a security interest to us in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods and for any other amounts owing by you to us from time to time ("Monies Owing"). For the purposes of section 36(1)(b) of the Personal Property Securities Act 1999 ("PPSA"), and to ensure maximum benefit and protection for us by virtue of section 36(1)(b)(iii) of the PPSR, you grant to us, as security for Monies Owing, a security interest in all of your present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property"):
- a. in or to which you have rights; and
 - b. which has not been supplied by us to you,
- other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by us to you.

- 7.2 You agree to do anything that we reasonably require to ensure that we have perfected security interest in all the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase price for that part.

- 7.3 We may allocate amounts received from you in any manner we determine, including in any manner required to preserve any purchase money security interest we have in any Goods.

8 Contracting Out of the PPSA

- 8.1 You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing charge statement relating to the security interest under this contract.
- 8.2 You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this contract, or the security under this contract, and waives your rights under sections 120(2), 121, 125, 129, 131 and 132 of the PPSA.

9 Delivery and Goods

- 9.1 We will use our reasonable endeavours to deliver the Goods to you on the delivery date stated on the invoice. However:
- a. We will not be liable to you whatsoever in law or equity if there is a delay in the delivery of the Goods.
 - b. If the goods are unavailable to us, we shall be entitled to cancel your order and we will not be liable to you whatsoever in law or equity. If we do cancel your order, we will refund any deposit you paid in full following the deduction of any amount owing by you.

10 Acceptance

- 10.1 Within 7 days of collection or delivery of the Goods, you must notify us of any alleged defect, shortage in quantity, damage or failure to comply with the invoice description or quote. You must provide us with the opportunity to inspect such Goods within a reasonable time

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if you believe the Goods are defective in any way. If you fail to do so, the Goods shall be deemed to be free from any defect or damage.

11 Default

11.1 If you default in the due payment of any monies payable to us, do any act which would render you liable to be wound up or if a resolution is passed or proceedings commenced for the winding up of you or if a receiver shall be appointed over all or any of your assets, or if any Goods are at risk, we, without prejudice to any other right we have at law or in equity, may, at our option, suspend or terminate this contract, and payment for the Goods supplied and work performed up to the date of such suspension or termination and any other monies payable hereunder shall immediately become due and payable. In any of the foregoing events, we shall not be responsible for, or liable for, any damage caused in enforcing our security interest in the Goods. All costs and expenses incurred by us as a result of any action taken by us in enforcing our security interest in the Goods together with transportation and storage charges shall be payable by you upon demand. Any suspension of this contract by us shall not prevent us from terminating this contract during the period of suspension.

11.2 At any time after a default occurs, we may (whether or not we have exercised any other right) appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods.

12 Collection and Use of Information

12.1 You authorise us to collect, retain and use any information about you for the purpose of assessing your creditworthiness and/or enforcing any rights under this contract.

12.2 You authorise us to disclose any information obtained to any person for the purposes set out in this clause.

12.3 The authorities under this clause are authorities or consents for the purposes of the Privacy Act 1993.

12.4 You shall have the right to request a copy of the information about you retained by us and the right to request us to correct any incorrect information about you held by us.

13 Personal Guarantee

13.1 In consideration for us agreeing to supply the Goods at your request, where you are a company or trust, the directors and/or trustees and/or the person(s) entering into this contract also enter(s) into this contract in their personal capacity and jointly and severally personally undertake as principal debtors to us the payment of any and all moneys owed by you to us and indemnify us against non-payment by you.

14 Cancellation

14.1 You acknowledge that we may utilise some or all of the deposit paid by you on the importation of the Goods and associated costs. You may only cancel your order with our prior written consent. If we consent, we are entitled to deduct all of the costs we have incurred relating to your order from your paid deposit. At our sole discretion, any credit available after such deduction will be paid to you.

15 Quotes

15.1 Our quotes are valid for 30 days from the date of our quotes.

16 Materials and Finishes

16.1 You acknowledge that colours of fabric batches of the Goods may differ from the sample swatch and that stone and timber grains may differ from the sample or picture of the Goods viewed. Accordingly, we are not liable to you for any such differences.

17 Liability

17.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on us, our liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

17.2 To the maximum extent permitted by law, for defective Goods which we have agreed in writing that you are entitled to reject, our liability is limited to either (at our sole discretion):

- a. refunding the purchase price for the goods to you; or
- b. repairing or replacing the relevant Goods.

17.3 Except as otherwise provided by this clause, we shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of the Goods by us to you including consequential loss whether suffered or incurred by you or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Goods supplied by us to you.

18 Consumer Guarantees Act 1993

18.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire the Goods from us for the purposes of a business in terms of sections 2 and 43 of that Act.

19 Miscellaneous

19.1 You may not assign any of your rights or obligations under this contract without our prior written consent.

19.2 We shall not be liable for any default due to any act of God, war, terrorism, fire, flood, drought, earthquake, storm or other event beyond our reasonable control.

19.3 The failure by us to enforce any provision of this contract shall not be treated as a waiver of that provision, nor shall it affect our right to subsequently enforce that provision.

19.4 This contract may be executed in any number of counterparts (including emailed PDF copies) each of which is to be deemed original, but all of which together are to constitute a single instrument. A party may enter into this contract by executing any counterpart.

19.5 The Terms and Conditions of Trade are governed by the laws of New Zealand and are subject to the exclusive jurisdiction of the New Zealand courts.

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