

TERMS AND CONDITIONS OF TRADE

To the fullest extent legally permissible all dealings between Commercial Furniture Solutions (CFS) and any Customer ("Customer") relating to any goods and/or services are subject to the following terms and conditions of trade ("these Terms") unless otherwise agreed in writing:

1. Price and Payments

- Full payment for an order is required upon order being placed unless credit terms have been granted or otherwise notified by CFS in writing.
- CFS may apply a payment received from the Customer to any accounts owed by the Customer (including interest, part payment of an invoice, administration, collection and other costs) in any order.
- Payment can be made either by Direct Credit (EFT) into CFS's account or by Cheque or Cash.
- All payments must be made without, retention, deduction or set-off of any kind.
- The Customer may be charged administration charges if:
 - it requests alterations to an order, and/or
 - it fails to provide accurate and correct billing and delivery details at the time it places its order.
- All prices quoted by CFS exclude GST.
- Quotations remain valid and capable of acceptance for 30 days from the date they are issued.
- Any discount offered by CFS is at its complete discretion and will only be available provided the Customer is not in breach of any part of "these Terms" and is not in default in any of its dealings with CFS.
- Interest is payable on overdue accounts at the rate prescribed under the Penalty Interest Rates Act 1983 (Vic) plus an additional 2%.

2. Finishes and Upholstery

- The Customer must supply details of requested finishes when placing its order.
- Unless otherwise specified, all upholstery is based on plain, non-directional fabric of 135cm width with no allowance for pattern matching.

3. Delivery

- CFS accepts no responsibility for delivery if the Customer nominates its own carrier.
- CFS reserves the right to charge for any delivery.
- The Customer shall be deemed to have accepted delivery and liability for the goods immediately CFS notifies that they are ready for collection or when they are delivered to a carrier or to the Customer's business premises or site, whether attended or not.
- A certificate purporting to be signed by an officer of CFS confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket.
- CFS will not be liable for delay, failure or inability to deliver any goods.
- Frustrated Delivery: If delivery requires more than one attempt, the Customer agrees to pay all costs relating thereto plus a loading of 10% or fee of \$50 whichever is the greater to cover administration costs.
- Delivery dates stated are subject to the availability of materials from outside suppliers and CFS will not be liable for any claim whatsoever arising from failure to deliver.
- Where CFS agrees to deliver the delivery costs quoted by CFS are for single delivery to ground floor at one metropolitan location during normal business hours. All other delivery requirements (e.g. multi-level, after hours, weekend, regional deliveries etc) may incur extra charges.
- Delivery locations must be clear and free from obstruction and unrestricted lift facilities if required by CFS must be available at no charge.
- Unless otherwise stated, the placement of goods and/or de-bagging of goods are not included.
- Short deliveries or damaged goods, should they occur, must be notified to CFS within 24 hours of the delivery/ installation taking place.
- When a Customer requests a delayed delivery this must be done in writing on all or part of any order beyond the delivery date that has previously acknowledged, the order will be held free of charge for 7 days. After, that period, the Customer will be invoiced for warehousing at a rate not less than 2% per month, based upon the total invoice value of the goods held by CFS, with a minimum storage charge assessed by CFS at its sole discretion. At the same time the Customer will be invoiced for the goods held by CFS and risk will pass to the Customer.

4. Cancellation and Returns

- The Customer shall at no time cancel or change the whole or part of any order placed without CFS's prior approval;
- If CFS elects to take back goods, those goods must be in "as new" saleable condition and upon terms agreed and a re-stocking fee of not less than 20% of invoice value will apply.
- Custom made or custom processed goods, or goods acquired by CFS specifically for the Customer, will not be returnable.
- Any goods which are accepted by CFS as defective provided that the defects are not due to abuse, misuse, installation of the goods or from fair wear and tear may be returned and will be replaced free of charge or be the subject of a credit from the invoiced value. "Free of charge" does not include labour, transport of material costs.
- Any deposit by the customer is non-refundable.

5. Property

- Property in goods shall not pass until payment in full of all monies owed to CFS on any basis ("Full Payment").
- CFS reserves the right to take possessions and dispose of goods as it sees fit at any time until Full Payment and the Customer grants permission to CFS to enter any property where any goods are, in order to do so and with such force as necessary.
- Immediately upon delivery the Customer accepts liability for the goods.
- A certificate signed by an officer of CFS identifying goods and certifying that monies are owing to CFS shall be conclusive evidence of CFS's title thereto.
- Upon sale or disposition of goods prior to Full-Payment, the Customer agrees to hold all proceeds upon trust for CFS in a separate bank account, not to mix the proceeds with any other moneys, and immediately account to CFS for them even if CFS may have granted any credit facility and/or time to pay.
- Until Full Payment the Customer agrees:
 - to keep all goods as fiduciary for CFS and store them in a manner which shows CFS as owner;
 - only to sell goods in the usual course of business; and
 - sale on terms, at cost or less than cost shall not be "in the usual course".
- The Item 5 is not intended to create a charge and shall be read down to the extent necessary to avoid being a charge.
- If the Customer uses or incorporates any goods in any production, process or manufacture or combines them with anything to create a finished or combined new thing for disposition then upon such disposition prior to Full Payment, the Customer agrees to hold such part of the proceeds thereof and until payment is received by the Customer, the part of any applicable book debt as equals the costs of the goods used and/or incorporated therein at the prices invoiced by CFS to the Customer upon trust for CFS until Full Payment.

6. Limitation of Liability

The customer agrees:

- To limit any claim it makes to the cost of replacement of Products or of acquiring equivalent products;
- That CFS shall not be liable for any loss or expense arising after seven days from delivery or at all once Products have been unpacked, affixed and/or otherwise used or applied after which there shall be deemed to be unqualified acceptance;
- That to the fullest extent legally permissible CFS shall not be liable for any damages for personal injury, any damages to property and/or any contingent, consequential, direct, indirect, special or punitive damages whether due to negligence or otherwise and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly;
- That to the fullest extent legally permissible no other term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any way extending to, otherwise relating to or binding upon CFS other than these Terms is made or given by or on behalf of CFS other than by these Terms save and except to the extent otherwise required by law, and
- That risk remains with customers for any goods stored or housed by CFS and that CFS will not accept liability for any loss or damage that may arise as a result. Customer should use its own discretion whether goods should be insured.

7. Orders

The Customer agrees that:

- If any dispute arises concerning any order including any measurement, quality, quantity, identity or authority the internal records of CFS will be conclusive evidence of what was ordered.
- each order it places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due; and
- when any order is placed the Customer shall inform CFS of any facts which might reasonably affect any decision to accept the order and/or grant credit and that any failure to do so shall be deemed to create and constitute and inequality of bargaining position, the taking of an unfair advantage of CFS and to be unconscionable, misleading and deceptive.

8. Variation

Variation of any order, dealing or arrangement must be agreed in writing.

9. Exclusions

The Customer agrees that:

- No dealing between CFS and the Customer shall be or be deemed to be a sale by sample;
- The Customer shall rely on its own knowledge and expertise in selecting Products for any purpose and any advice or assistance given by or on behalf of CFS shall be accepted by the Customer's risk and shall not be deemed to have been given as expert or advisor nor to have been relied upon;
- Products are sold subject to each and every manufacturer's trading terms and conditions and are protected by each and every manufacturer's warranty and CFS shall not be liable to the extent that the manufacturer is liable under a manufacturer's warranty unless otherwise required by law; and
- CFS shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of any Products and/or otherwise which are not precisely and accurately communicated in writing directly to the appropriate personnel at CFS prior to the entry by CFS into any relevant sale contract.

10. On-Sale

The customer agrees that upon on-sale of any goods to inform any third party involved of these Terms and in particular the provision of item 5 and 5(f).

11. Defaults

Upon default or breach of these Terms by the Customer CFS may inter alia retain all monies paid, cease further deliveries, recover from the Customer any loss of profits arising and at CFS's election take immediate possession of Products not paid for without prejudice to any other rights CFS may have without CFS being liable in any way to any person.

12. Product and Services

- CFS disclaims any responsibility or liability whatsoever relating to suitability for any particular purpose or process.
- The Customer agrees to check all goods prior to use, alteration or any application thereof whether in relation to suitability for any particular purpose process or otherwise.
- CFS may update, modify, make substitution or alter any of its goods or any components of raw materials incorporated in or used in forming any part of any good as part of its ongoing business. The Customer agrees to accept current goods in substitution for any goods ordered providing they are not materially different.

13. Other Terms and Conditions

No term and conditions sought to be imposed by the Customer upon CFS shall apply.

14. Recovery Costs

The Customer will pay all costs and expenses of CFS, its legal advisers, mercantile agents and others acting on its behalf in respect of anything instituted or being considered as a result of any breach of these Terms or breach of any dealings with CFS.

15. Attornment

For the purpose of giving effect to the Customer's obligations under these Terms the Customer hereby irrevocably appoints any solicitor for CFS from time to time, as its attorney.

16. Jurisdiction

All contracts made with CFS shall be deemed to be made in Victoria and the parties submit to the jurisdiction of the appropriate Courts in or nearest Melbourne.

17. Credit

CFS can vary or withdraw any credit facility or limit at any time at its discretion and without any liability to the Customer or any other party.

18. Waiver

If CFS elects not to exercise any rights arising as a result of breach of these Terms it should not constitute a waiver of any rights relating to any subsequent or other breach.

19. Security for Payment

The Customer:

- agrees on written request to charge in favour of CFS:
 - by way of a fixed charge, all its books of account goodwill documents of title and current and later acquired real and intellectual property; and
 - by way of a floating charge the whole of the Customer's other undertaking property and assets with Full Payment.
- grants a lien to CFS over any of its property in the possession or control of CFS until Full Payment

18. Force Majeur

CFS shall not be or be deemed to be in fault or breach of any contract as a result of Force Majeur. Force Majeur shall include any cause beyond reasonable control of CFS including strikes and lockouts.

19. Specifications

- All illustration, drawing or specification supplied including on its websites by CFS ("Specs") are drafts and approximates.
- Any tangible or intellectual property rights in Specs shall remain the property of CFS and may be recalled at any time.
- Specs are to be treated at all times as confidential and not made use of without the prior written consent of CFS.

20. Intellectual Property

Customer acknowledges CFS retains all proprietary rights, title and interest in the Goods including all trade names used by CFS. Customer shall not permit any of the Goods or CFS's trade names to be copied, reproduced, or manufactured by its employees, agents or any third party without CFS's prior written consent.

21. Set Off Or Counter Claim

No Set-off, retention or Counter Claim will be made or applied by the customer until payment in full of all bona fide invoices raised by CFS (whether current or overdue) and this clause may be pleaded as a bar to any action taken prior to such payment in full

22. Partial Delivery/Forward Orders

If the Customer places forward orders or requests partial or instalment delivery, the Customer agrees:

- to pay for so much of any order as is from time to time delivered by CFS; and
- that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment.

23. Indemnity

The Customer indemnifies CFS against any claim or loss arising from or related in any way to any contract or dealing between CFS and the customer or anything arising there from or arising as a result of or subsequent to any breach of these Terms

24. Warranty Policy

Save and except as required by law no warranty is given where CFS is not the manufacturer of Products other than the warranty offered by the manufacturer and to the fullest extent legally permissible CFS's liability shall in all cases be strictly limited in accordance with Items 6 & 9 of these Terms. Where CFS is or might be deemed to be a manufacturer then the CFS Standard Warranty and the schedule of periods applicable are available upon request from CFS's Head Office at 1 Kingston Park Court, Knoxfield VIC 3180.

25. Severability

Any part of the Terms being whole or part of a clause shall be capable of severance without affecting any other part of the Terms.

26. Credit Information

The Customer irrevocably authorises CFS and its servants and agents to make such enquiries from time to time as CFS may deem necessary to obtain information and/or investigate the creditworthiness of the Customer including enquiries with persons nominated as trade references, bankers of the Customer, any other credit provider, any credit reporting agency, any land titles office, the ASIC, ITSA and/or any similar body and/or related information service ("the Sources") and including personal credit and consumer credit information and property, business and/or solvency information. The Customer by this clause irrevocably authorises the Sources to disclose anything about the Customer which is in the Sources' possession and the Customer agrees that CFS may disclose any information it has about the Customer to any interested person (subject only to any obligations CFS may have under the Privacy Act 1988).

27. Notice

The Customer agrees that it shall be deemed to have notice of any change of these Terms immediately any change is adopted by CFS and whether or not the Customer has actual notice thereof. The Customer shall be bound by any terms and conditions of trade which may be adopted by CFS immediately they are so adopted and notwithstanding any other purported or pre-existing terms and conditions which might otherwise have applied.