

**HUSH INTERIORS LIMITED**  
**TERMS AND CONDITIONS OF SALE & HIRE**

**1. Definitions**

- 1.1. "Customer" means any person purchasing or hiring Goods, its agents and employees, and permitted successors and assigns.
- 1.2. "Goods" means all suspended ceilings, wall partitioning systems, thermal insulation, acoustics, and pinboards, and any other Goods or services supplied by the Supplier to the Customer.
- 1.3. "Guarantor" means the guarantor of the Customer as per the signed guarantee document.
- 1.4. "Supplier" means Hush Interiors Limited and includes its permitted successors and assigns.

**2. Terms of Quotation**

**2.1. Limits of Quotation**

- 2.1.1. The quotation includes only the Goods and services which are specified in writing in the particular quotation.
- 2.1.2. Any changes or extras required by the Customer in addition to the quotation will be requested in writing and will be at the Customer's cost.

**2.2. Acceptance**

- 2.2.1. The quotation is open for acceptance for 30 days from the day on which it is dated (the acceptance period) unless withdrawn by the Supplier before the expiry of the acceptance period.
- 2.2.2. After the expiry of the acceptance period the quotation is subject to the Supplier's confirmation and the Supplier reserves the right to change the quotation.
- 2.2.3. All orders are subject to acceptance by the Supplier.

**2.3. Cancellation**

- 2.3.1. Following the Customer's acceptance of the Supplier's quotation by placing an order the Customer will be liable for all design costs, materials ordered, work carried out or services rendered and all the Supplier's other costs in relation to the order.
- 2.3.2. No purported cancellation of any order by the Customer will be effective unless and until accepted by the Supplier in writing.

**2.4. Availability of Materials, Plant, Licences, Permits and Authorities**

- 2.4.1. The quotation is based on the assumption that:
  - (a) all materials and plant needed for the order will continue to be available to the Supplier on existing terms; and
  - (b) the Supplier will be able to secure all licenses, permits and authorities required from any governmental or other agency either inside New Zealand or overseas which are essential to the Supplier's performance of its obligations.
- 2.4.2. The Supplier reserves the right to cancel any order before commencing work in the event of any change to its disadvantage.
- 2.4.3. All "ex stock" quotations are subject to availability of the item quoted.

**2.5. Contract Time**

- 2.5.1. The Supplier will not be liable to the Customer for any loss or damage caused by delay due directly or indirectly to causes beyond its control.
- 2.5.2. Time for completion of the order will run from the Supplier's receipt of all instructions and technical information from the Customer necessary to complete the order.
- 2.5.3. The Customer will indemnify the Supplier against any loss incurred by the Supplier as a result of delays caused by the Customer.

**2.6. Specifications**

- 2.6.1. All specifications of any kind submitted with the quotation are sufficiently accurate only for the purpose of quotation.
- 2.6.2. The Supplier reserves the right to rectify any inaccuracy in any quotation specification which becomes apparent when detailed specifications are prepared following acceptance.

**2.7. Inspection**

- 2.7.1. The Customer will not be entitled to inspect incomplete work in detail without the Supplier's specific prior agreement.

**2.8. Customer's Property**

- 2.8.1. Any property the Customer supplies to the Supplier to facilitate any work will be at the Customer's sole risk.

**2.9. Errors and Omissions**

- 2.9.1. The Supplier reserves the right to correct any clerical errors or omissions in any quotation at any time, including but not limited to any errors in computation in any quotation, whether or not the correction results in an increase or decrease in the price or any other change to the quotation or any order placed on the basis of the quotation.

### 3. **Price**

- 3.1. All supplies are made at the prices ruling at delivery date and the Supplier reserves the right to pass on to the Customer any change in price after the date of any quotation. Prices are subject to change without notice.
- 3.2. All prices are exclusive of Goods and services tax or any other taxes which are payable by the Customer in addition to the price quoted by the Supplier.

### 4. **Payment**

- 4.1. The price of the Goods together with sales tax thereon shall be paid to the Supplier without any deduction whatsoever, on or before the 20<sup>th</sup> day of the month following invoicing.
- 4.2. If full payment is not made by the Customer to the Supplier by the due date then:
  - 4.2.1. the Customer will be in default under this agreement and the Supplier may exercise all of the rights and remedies set out in it and otherwise available at law; and
  - 4.2.2. the Customer will pay interest on the default monies at the rate of 2.5% per month payable on a daily basis from the due date; and
  - 4.2.3. the Customer will be liable for all expenses (including Solicitor - own client legal costs) incurred by the Supplier as a result of the default; and
  - 4.2.4. the Supplier may withhold the further supply and cancel this agreement pursuant to clause 12 below.

### 5. **Delivery**

- 5.1. The Supplier will make every effort to keep to delivery schedules, but will not be liable for any delivery delays whatsoever.
- 5.2. Where the Goods are agreed as being erected or installed by the Supplier at the Customer's premises then the point of delivery will be at those premises. The Customer authorises the Supplier to bring the Suppliers' vehicle onto the Customer's property to deliver, install and remove the Goods.
- 5.3. Where delivery is agreed as being by rail, sea or road, delivery will be complete when the Supplier offers the Goods for carriage. The Customer's refusal or default to accept delivery will be deemed to constitute delivery. Any special delivery arrangements requested by the Customer will be at the Customer's cost.
- 5.4. If the Customer fails to take delivery of Goods on the agreed date it will pay the reasonable costs of storage incurred by the Supplier.
- 5.5. The Supplier shall not be responsible for any damage done to anything during any delivery, installation or removal.

### 6. **Risk & Insurance**

- 6.1. Risk in any Goods supplied to the Customer will pass to the Customer when the Supplier parts with possession of the Goods in accordance with this agreement, whether or not ownership has passed to the Customer.
- 6.2. The Customer undertakes to insure the Goods for their full insurable value when takes delivery of the Goods under the terms of this agreement, and to hold the insurance policy in trust for the Supplier until all money owing to the Supplier by the Customer has been paid to the Supplier.

### 7. **Liability on Claims**

- 7.1. The Supplier's total liability for any loss arising from any defect or non-compliance of the Goods or any other breach by the Supplier of its obligations under this agreement will not in any circumstances exceed the invoiced price of the Goods.
- 7.2. The Supplier will not be liable for any consequential indirect or special loss of any kind or any loss caused by the Customers servants, agents or any other persons whatsoever.
- 7.3. The Customer will indemnify the Supplier against any claim by the Customer's servants, agents or any other persons in respect of any loss arising from any defect in or non-compliance of the Goods or in respect to any other matter whatsoever.
- 7.4. No warranty, condition or guarantee either express or implied is given by the Supplier as to the quality, state or condition of any Goods or as to their appearance, content or fitness for any particular purpose. The Customer acknowledges that it has relied on its own judgment in purchasing the Goods.
- 7.5. The Supplier will not be liable for any damage whatsoever caused either to the Goods or as a result of malfunction of the Goods if:
  - 7.5.1. the Goods are fitted or installed by unqualified trades-people or in an untradesmanlike manner; or
  - 7.5.2. the Goods are stored, handled, installed or transported otherwise than in accordance with the Supplier's use and handling procedures and installation specifications; or
  - 7.5.3. the Goods are in any way adapted to a use for which they are not specifically intended or are repaired using components not recommended or approved by the Supplier.
  - 7.5.4. the Goods have been subject to excessive wear and tear in improper or abnormal operation
  - 7.5.5. access is not granted to inspect or carry out repairs on defective equipment within a reasonable time.

## 8. **Ownership and Title**

- 8.1. Property and title in the Goods remains in the Supplier until all money the Customer owes to the Supplier (whether under this agreement or otherwise) has been paid in full to the Supplier or until property and title in the Goods has passed to a third party in accordance with this clause.
- 8.2. When dealing with the Goods the Customer acts as a principal as between the Customer and any third party but acts as an agent as between the Customer and the Supplier.
- 8.3. The Customer is a fiduciary for the Supplier and has a fiduciary duty to account to the Supplier for the Goods. If the Goods are sold the Customer receives the proceeds of sale as a trustee for the Supplier.
- 8.4. The Customer will store the Goods separately so that they are identifiable as the Supplier's property and keep separate records for the Goods. If the Goods are sold the Customer will place the proceeds of the sale in a separate bank account for the benefit of the Supplier.
- 8.5. If the Customer is in default under this agreement or any of the circumstances referred to in clause 12 below arises, or the Supplier reasonably believes such a circumstance is likely to arise, the Customer will at the Supplier's request:
  - 8.5.1. re-deliver the Goods to the Supplier or do anything reasonably necessary to allow the Supplier to retake possession of them and will give access to any land where any Goods supplied by the Supplier are located to facilitate repossession of Goods; and
  - 8.5.2. instruct any third parties who owe money in respect of the Goods to pay that money directly to the Supplier; and
  - 8.5.3. make any records available which may assist the Supplier to trace the proceeds of sale of the Goods.
- 8.6. The Customer agrees that if it fails or is unable to give access to any land for the purpose of Clause 8.5.1, the Supplier or its agent may enter (by force if necessary) any premises where the Goods are reasonably thought to be stored. The Customer irrevocably grants the Supplier the right to repossess and resell the Goods and to enter premises pursuant to this clause.
- 8.7. The Goods will not become fixtures on any land while the Customer owes any money to the Supplier, regardless of the degree to which and purpose for which they are fixed to the land (subject to the prior rights of any mortgagee of the land).
- 8.8. The Customer agrees not to mix the Goods with any other Goods before payment is made in full. If the Supplier's Goods become mixed with any other Goods, property or materials in such a way that they cease to exist as separate Goods, the original ownership of the new Goods created by that mixing will vest immediately on creation in the Supplier as co-owner of the new Goods with the owner of any other materials which became part of the new Goods. The co-ownership will be calculated proportionally to the value of the various component materials. The Supplier's ownership of the new Goods is otherwise on the same terms as the ownership of the Goods originally supplied.
- 8.9. The Customer has no right to assert against the Supplier that it owns the Goods or the proceeds of sale or any part of them. If the Supplier repossesses the Goods or the proceeds and after deduction of all money the Customer owes to the Supplier (including any interest due and including any expense occurred by the Supplier in enforcing its rights including legal expenses as between Solicitor and client) there is a surplus, the Supplier will pay that surplus to the Customer.

## 9. **Personal Properties Securities Act 1999 ("PPSA")**

- 9.1. The Customer grants a security interest over all Goods purchased from the Supplier and their proceeds as security for payment for those Goods.
- 9.2. The Customer will provide such information and do such acts and execute such further documents as in the opinion of the Supplier may be necessary or desirable to enable the Supplier to perfect under the PPSA the security interest created by this agreement as a first priority interest or with such other priority as the Supplier may agree in writing. Unless otherwise specified, the security interest granted in the Goods has the same priority in relation to all secured money, including future advances.
- 9.3. The Supplier may do all things which it thinks desirable to remedy any default by the Customer or otherwise protect the Goods or the security interest created by this agreement.
- 9.4. The Customer agrees sections 114(1)(a), 133 and 134 of the PPSA shall not apply to this agreement or the security under this agreement.
- 9.5. The Customer waives their right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by this agreement.
- 9.6. The Customer agrees that none of their rights as debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 shall apply to this agreement.
- 9.7. The Customer also agrees, where the Supplier has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 9.8. The Customer must not change their name without first notifying the Supplier of the new name not less than 7 days before the change takes effect.
- 9.9. The Customer must not allow or permit the creation of a lien over any of the Goods.
- 9.10. Where the context permits the expression "Goods" includes a product or mass into which they are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass.

## 10. **Warranties and Consumer Guarantees Act**

- 10.1. Where supply is for business purposes within the meaning of the Consumer Guarantees Act 1993, pursuant to Sections 2 and 43 the provisions of that Act will not apply to this agreement.
- 10.2. Where supply is other than for business purposes the provisions of Clauses 7 and 8 above will have no effect and the provisions of the Consumer Guarantees Act 1993 will apply.
- 10.3. Where the Customer supplies the Goods on to a person acquiring them for business purposes it will be a term of the Customer's contract with its Customer that the Consumer Guarantees Act 1993 will not apply in respect of the Goods.
- 10.4. No warranty or condition will be implied against the Supplier by any statute, at common law or otherwise and no representation, expressed condition, warranty or variation of these terms and conditions will be binding on the Supplier unless it is in writing and signed on behalf of the Supplier.
- 10.5. Any Goods returned under warranty must be returned in compliance with the requirements of clause 7 above.
- 10.6. No repair facilities or spare parts will be available in respect of the Goods, and the Supplier expressly contracts out of the statutory warranty contained in Section 12 of Consumer Guarantees Act 1993. The supplier intends this exclusion to apply to Goods first supplied to consumers in New Zealand.
- 10.7. The Customer gives the following warranties to the Supplier:
- 10.7.1. the Customer will inform its Customers of the Supplier's exclusion of the statutory warranties implied by the Consumer Guarantees Act 1993 in relation to supplies for business purposes and to repairs and spare parts;
- 10.7.2. the Customer will not store, handle or install the Goods otherwise than in accordance with the Supplier's published use and handling procedures and installation specifications;
- 10.7.3. when or before the Customer enters into a contract for supply with any of its own Customers it will draw its Customer's attention to the Supplier's published use and handling procedures and installation specifications;
- 10.7.4. where the Customer offers its own express warranty to its own Customers the Customer will inform its own Customers at or before the time of entry into a contract for supply with it's Customers that any warranties the Customer gives do not in any way bind the Supplier;
- 10.7.5. if the Customer fails to comply with any of the warranties contained in this clause then it will indemnify the Supplier against any loss whatsoever arising from that failure.

## 11. **Information and Privacy Act**

- 11.1. For the purpose of facilitating the efficient running of the Supplier's business, the Customer authorises the Supplier:
- 11.1.1. to collect all information it may require from any third parties and authorises those third parties to release that information to the Supplier; and
- 11.1.2. to hold all information given by the Customer or any third parties to the Supplier; and
- 11.1.3. to use that information, including giving information to any other person to facilitate collection of debts from the Customer.
- 11.2. The information will be collected, held and used on the condition that:
- 11.2.1. it will be held securely at the Supplier's head office at 35 Carlyle Street, Sydenham, Christchurch; and
- 11.2.2. it will be accessible to any of the Supplier's employees and agents who need access to it for the efficient running of the Supplier's business; and
- 11.2.3. the Customer may request access to and correction of it at any time.

## 12. **Termination**

- 12.1. This agreement (including any unperformed obligations of the Supplier) will be terminated by the Supplier's written notice to the Customer that no further supplies will be made due to:
- 12.1.1. the Customer's default under Clause 4; or
- 12.1.2. the Customer
- (a) becoming insolvent; or
- (b) being subject to the appointment of a receiver, receiver and manager, liquidator or statutory manager; or
- (c) committing an act of bankruptcy; or
- (d) making a scheme of arrangement with its creditors; or
- (e) being unlikely to be able to meet its obligations to the Supplier, in the opinion of the Supplier; or
- (f) materially altering the nature of its business or transferring effective control or ownership of its business to any other entity; or
- 12.1.3. the Supplier being unable to make further supplies through any reason beyond its control; or
- 12.1.4. the Supplier deciding in its sole discretion that the Goods are unsafe, damaged, or at risk of damage; or
- 12.1.5. the Customer relocates the Goods to another location without first receiving the Suppliers consent in writing to the same.

## 13. **Customer Covenants**

- 13.1. The Customer acknowledges that it has received, or will receive, the Goods in good working order and clean condition and acknowledges it is fit for the purpose.

- 13.2. The Customer agrees that it will keep the Goods at their premises in good repair and for these purposes the Customer agrees to make the Goods available at any time for inspection by the Supplier or the Supplier's agent. The Customer shall not carry out repairs to the Goods, or relocate the Goods, without the express consent of the Supplier.
- 13.3. The Customer expressly acknowledges that the Goods are a chattel on the land, and not a fixture.
- 13.4. The Customer will indemnify and keep indemnified the Supplier from and against all claims, proceedings, damages, losses, liability, expenses, and costs, for which the Supplier is held liable, or which it incurs (including all legal costs on a solicitor/client basis) as a result of the Customer's use of the Goods.
- 13.5. The Customer has obtained all necessary resource consents from the relevant Local Authority or other competent authority and has informed the Supplier of all matters relating to such consents.
- 13.6. The Customer acknowledges that the quote has been provided on the basis that the Customer has suitable structural support for the suspension points that comply with the New Zealand Standards from which to hang the suspended ceiling from.

#### 14. **Dispute Resolution**

- 14.1. Any dispute from the contents of these terms and conditions are to be dealt with, where applicable, under the relevant provisions of the Construction Contracts Act 2002 or any enactment in substitute thereof.
- 14.2. Where the Construction Contracts Act 2002 does not apply, neither the Customer or the Supplier are to commence any proceedings relating to that dispute until the following procedure has been complied with:-
  - 14.2.1. The party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
  - 14.2.2. The parties will endeavour, in good faith, to resolve the dispute referred to in the notice by using informal dispute resolution techniques.
  - 14.2.3. If the parties do not agree on a dispute resolution technique within 14 days after the date notice of a dispute was given, the dispute is to be mediated according to the standard mediation Deed of LEADR New Zealand Incorporated (Lawyers Engaged in Alternative Dispute Resolution), and the Chair of LEADR (or the Chair's nominee) will select the mediator and determine the mediator's remuneration.
  - 14.2.4. A party seeking urgent interlocutory relief may, by notice to the other party, elect not to comply with the provisions of this clause, but only to the extent of the relief sought, and only for the period required to dispose of the application for interlocutory relief.
  - 14.2.5. Pending resolution of the dispute, these terms and conditions will remain in full effect without prejudicing the parties' respective rights and remedies.

#### 15. **Waiver and Forbearance**

- 15.1. All the Supplier's rights will remain in full force despite any delay in enforcement. The Supplier will not be deemed to have waived any condition unless that waiver is in writing and signed by a duly authorised officer of the Supplier. Any waiver will apply only to the particular matter in respect of which it is given.

#### 16. **Assignment**

- 16.1. The Supplier is entitled at any time to assign to any other person all or part of any debt the Customer owes to the Supplier. The assignee will be entitled to claim full rights of set off or counter claim against the Customer, its charge holders or successors in respect of the debt or part of the debt which is assigned.
- 16.2. The Customer may not assign any of its rights under this agreement whatsoever.

#### 17. **Entire Contract**

- 17.1. The Supplier and the Customer agree that subject to the provisions of statutory enactments, these terms and conditions express the complete agreement between them. There has been no representation made by either party to the other except as expressly set out in this document. There is no inconsistency with the terms of any order that may be lodged by the Customer. Any inconsistent order will be of no effect. This agreement is subject to change by written notice from the Supplier to the Customer.

#### 18. **Non-merger**

- 18.1. The agreement and obligations of the parties and the agreement evidencing them will not merge with termination under Clause 12.