

PART A – TERMS OF SALE

THE TERMS OF THIS PART A ONLY APPLY WHERE BURGESS PROVIDES THE PURCHASER WITH A HIA SUPPLY AND INSTALL CONTRACT

IF PART A APPLIES, THE TERMS OF PART A AND THE TERMS OF THE HIA SUPPLY AND INSTALL CONTRACT FORM THE CONTRACT BETWEEN BURGESS AND THE PURCHASER. PART B DOES NOT APPLY.

1. APPLICATION

- 1.1 The following terms and conditions (**Terms**) apply to all contracts, dealings, arrangements and communications between Tenlaw Pty Ltd trading as Burgess Kitchens & Cabinet Makers (**Burgess**) and you, the purchaser of goods and / or services from Burgess (**Purchaser**) where the quoted services **INCLUDE installation services**, and where Burgess provides a HIA supply and install contract for the Purchaser to sign.
- 1.2 These Terms may not be varied by the Purchaser except in writing signed by Burgess' properly authorised representative. Any variations or additions which are made by the Purchaser to the quote or the HIA supply and install contract are not effective unless countersigned by Burgess's properly authorised representative.
- 1.3 The Purchaser agrees that any quote provided by Burgess and these Terms may be varied, added to, or amended by an authorised officer of Burgess at any time by written notice to the Purchaser.
- 1.4 Any placement of an order or provision of a correctly completed HIA supply and install contract to Burgess after the Purchaser has received notification of any variation to the Terms made by Burgess, will be deemed acceptance of the varied Terms.

2. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) (PPSA)

- 2.1 All terms defined in the PPSA have the same meaning where capitalized in these Terms.
- 2.2 The Purchaser grants Burgess a Purchase Money Security Interest in all goods supplied by or on behalf of Burgess to secure the payment by the Purchaser for the goods and services provided by Burgess. The Purchaser also hereby charges in favour of Burgess, and grants a Security Interest to Burgess in, all of the Purchaser's right, title and interest (whether existing or future) in any property (including but not limited to real estate) both presently owned by the Purchaser and that which the Purchaser may hereafter acquire either in its own right or by way of a beneficial interest (**Property**), to secure payment of the money and obligations owed to Burgess (**Charge**).
- 2.3 The Purchaser agrees upon request by Burgess, to deliver to Burgess an executed mortgage over any Property or instrument of encumbrance in registrable form that incorporates Burgess' standard covenants as prepared by Burgess' solicitors, and as Burgess may require to be executed by the Purchaser.
- 2.4 In the event that the Purchaser should neglect or fail to deliver the requested instrument or security, the Purchaser hereby irrevocably appoints Burgess and any solicitor nominated by Burgess severally to be the Purchaser's lawful attorney to execute, obtain and/or register a mortgage or caveat, withdrawal of caveat or other security to support the Charge in respect of the Property.
- 2.5 The Purchaser contracts out of and waives its rights under the following provisions of the PPSA, to the extent permitted, sections 95, 96, 117, 118, 121(4), 129, 130, 132(2), 132(3)(d), 132(4), 134(2), 135, 136(3)-(5), 137(2), 138, 142, 143 and the right to receive any notice under the PPSA.
- 2.6 The Purchaser is liable for the costs associated with Burgess registering a security interest on the Personal Property Securities Register.
- 2.7 The Purchaser agrees that where Burgess has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

PART B – TERMS OF SALE

THE TERMS OF PART B ONLY APPLY WHERE BURGESS DOES NOT PROVIDE THE PURCHASER WITH A HIA SUPPLY AND INSTALL CONTRACT

IF PART B APPLIES, THE TERMS OF PART B FORM THE CONTRACT BETWEEN BURGESS AND THE PURCHASER. PART A DOES NOT APPLY.

1. APPLICATION

- 1.1 The following terms and conditions (**Terms**) apply to all contracts, dealings, arrangements and communications between Tenlaw Pty Ltd trading as Burgess Kitchens & Cabinet Makers (**Burgess**) and you, the purchaser of goods and / or services from Burgess (**Purchaser**) where the quoted services **EXCLUDE installation services** and where a HIA supply and install contract has not been executed by Burgess and for or on behalf of the Purchaser.
- 1.2 These Terms may not be varied by the Purchaser except in writing signed by Burgess' properly authorised representative. Any variations or additions which are made by the Purchaser to the quote or on a purchase order are not effective unless countersigned by Burgess's properly authorised representative.
- 1.3 The Purchaser agrees that any quote provided by Burgess and these Terms may be varied, added to, or amended by an authorised officer of Burgess at any time by written notice to the Purchaser.
- 1.4 Any placement of an order or provision of a correctly completed HIA supply and install contract to Burgess after the Purchaser has received notification of any variation to the Terms made by Burgess, will be deemed acceptance of the varied Terms.

2. ORDERS

- 2.1 The Purchaser may submit an order to Burgess pursuant to a quote (**Order**).
- 2.2 Only written acceptance by Burgess (which acceptance can be by issuing a tax invoice) of the Purchaser's Order will complete a contract.
- 2.3 If an Order is accepted, Burgess agrees to provide the goods and services specified in the Order.

3. CANCELLATIONS & RETURNS

- 3.1 The Purchaser may not cancel Orders after the Order has been accepted by Burgess, unless Burgess agrees otherwise in writing, in its absolute discretion.
- 3.2 Once an Order has been accepted by Burgess the Purchaser must pay for such goods in accordance with these Terms. To the extent permitted by law:
 - (a) if Burgess elects at its discretion to take back goods, they must be in new and saleable condition and upon terms agreed; and
 - (b) custom made or custom processed goods or goods acquired by Burgess specifically for the Purchaser will not be returnable.
- 3.3 To the extent permitted by law, the Purchaser agrees that, unless Burgess otherwise determines in writing, it will not be entitled to a refund if seeking a refund after Burgess has delivered the goods or provided the services, which the Purchaser acknowledges is reasonable.

4. LIMITATION OF LIABILITY

- 4.1 Burgess will not be responsible for loss caused to the Purchaser or delays in performing its obligations due to causes beyond Burgess' control, including but not limited to strikes, lockouts, fires, riots, war, embargoes, civil commotions, or acts of God.
- 4.2 Burgess will not be responsible for transport, insurance, packing, storage, handling, demurrage or other charges. If any charges are included in the price of the goods, the Purchaser must pay any increase in charges after the date that the relevant Order is accepted by Burgess, though Burgess will use reasonable endeavours to contact the Purchaser before incurring the higher charges.
- 4.3 Burgess will not be liable to the Purchaser or any third parties for any prospective profits or special, indirect or consequential damages or for any expense resulting from use by the Purchaser or others of defective goods.
- 4.4 To the extent permitted by law, Burgess excludes all liability whatsoever to the Purchaser or any third parties arising out of or in any way connected with the goods for any contingent, consequential, direct, indirect, special or punitive damage or losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort.
- 4.5 The Purchaser agrees that Burgess' maximum liability is the invoiced price of the goods and services.

5. WARRANTIES & INDEMNITIES

- 5.1 All warranties and conditions whether implied by statute or otherwise are excluded to the extent permitted by law.
- 5.2 Burgess gives no warranties either express or implied as to merchantability, fitness for purpose or otherwise with respect to the goods and services other than as required by any applicable legislation.
- 5.3 Where the Purchaser is a consumer for the purposes of the Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**), the goods comes with guarantees that cannot be excluded. The Purchaser is entitled to a replacement or refund for a major failure and compensation for any other reasonable foreseeable loss or damage. The Purchaser is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 5.4 For the purposes of clause 5.3 if the Purchaser is a consumer within the meaning of that term in the *Competition and Consumer Act 2010* (Cth) and the Australian Consumer Law, Burgess makes each guarantee required of a supplier to a consumer under Part 3-2 of the Australian Consumer Law but only to the extent required by the nature of the goods and services and the nature of the Purchaser.
- 5.5 To the extent permitted by law, and subject to clause 5.4, Burgess' liability to the Purchaser, whether for a breach of these Terms or otherwise, will, at the discretion of the Purchaser, be limited to the supply of equivalent goods and services or the replacement of the goods supplied to the Purchaser, or the performance of the services again.
- 5.6 To the maximum extent permitted by law, the Purchaser indemnifies and agrees to hold Burgess, its officers and employees (**Those Indemnified**) harmless against and from all Claims which may arise as a result of or in connection with Burgess' supply of the goods or provision of services. Burgess holds the benefit of this indemnity on trust for Those Indemnified and Those Indemnified will be entitled to rely on the indemnity and have the Purchaser pay for all costs (including but not limited to legal costs on a solicitor and own client or indemnity basis) prior to Those Indemnified having incurred and paid such costs.
- 5.7 For the purpose of these Terms, Claims means in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

6. PAYMENT

- 6.1 The Purchaser must pay for all goods and services within 7 days of the date that the tax invoice is raised (or such other period as nominated by Burgess).
- 6.2 Payment not received when due will incur interest charges on the unpaid amount at the rate of 18% per annum, calculated on a monthly basis, until received by Burgess in full.
- 6.3 Without limiting any other rights available to Burgess, if Burgess does not receive payment by the due date or the Purchaser fails to comply with any other obligation in these Terms:
 - (a) the balance of any money owing by the Purchaser to Burgess shall immediately become due and payable without demand;
 - (b) Burgess may suspend credit extended to the Purchaser; and

- (c) Burgess may withhold the delivery of goods already ordered.
- 6.4 If Burgess does not receive payment by the due date or the Purchaser fails to comply with any other obligation in these Terms, the Purchaser will be liable for all costs and expenses suffered or incurred by Burgess, which will be recoverable from the Purchaser as a liquidated debt, including but not limited to:
- (a) legal costs (on a full indemnity basis);
 - (b) mercantile agents fees; and
 - (c) any other costs and expenses incurred by Burgess in exercising or attempting to exercise its legal rights against the Purchaser.
- 6.5 All payments required to be made by the Purchaser under these Terms will be made free of any set-off, or counterclaim and without deduction or withholding.
- 6.6 Notwithstanding clause 6.5, Burgess may, in its sole discretion, deduct or set off any amount due to Burgess by the Purchaser from time to time from any monies which may become payable to the Purchaser by Burgess.

7. DELIVERY

- 7.1 To the extent permissible by law, Burgess accepts no responsibility for delivery but may elect to arrange delivery at its discretion and without any liability and at the Purchaser's costs and responsibility in all things.
- 7.2 Burgess reserves the right to charge for any delivery.
- 7.3 The Purchaser will be deemed to have accepted delivery and liability for the goods upon collection of the goods from Burgess, or when the goods are delivered to a Purchaser's business premises or site whether attended or not.
- 7.4 Once the Purchaser has been invoiced or otherwise notified that goods are ready for collection or installation, the Purchaser agrees to pay all costs of holding or handling goods.

8. RISK AND OWNERSHIP

- 8.1 Property in and title to goods will remain with Burgess until the later of:
- (a) in respect of goods listed on an invoice given to the Purchaser, payment for those goods has been received by Burgess in full; and
 - (b) in respect of all other goods supplied by Burgess to the Purchaser, payment has been received by Burgess in full; and
 - (c) any moneys owing to Burgess by the Purchaser has been paid by the Purchaser and received by Burgess in full (**Debts**).
- 8.2 The Purchaser irrevocably grants to Burgess, its agents and servants, an unrestricted right and licence, without notice, to enter the premises occupied by the Purchaser to identify and remove any of the goods which are the property of Burgess at its option without in anyway being liable to the Purchaser or any persons claiming through them if:
- (a) The Debts are not paid in accordance with these Terms and any other contract or arrangement between Burgess and the Purchaser;
 - (b) Burgess receives notice of or reasonably believes that:
 - (i) the Purchaser may be insolvent (within the meaning of the *Corporations Act 2001* (Cth)); or
 - (ii) the Purchaser has entered into any arrangement or composition with its creditors, gone into liquidation, or has appointed a receiver, a receiver and manager or administrator.
- 8.3 For the avoidance of doubt, Burgess' interest in the goods constitutes a Purchase Money Security Interest (as defined in section 14 of the *Personal Property Security Act 2009* (Cth) and its regulations (**PPSA**)).

9. PPSA

- 9.1 All terms defined in the PPSA have the same meaning where capitalized in these Terms.
- 9.2 The Purchaser grants Burgess a Purchase Money Security Interest in all goods supplied by or on behalf of Burgess to secure the payment by the Purchaser for the goods and services provided by Burgess. The Purchaser also hereby charges in favour of Burgess, and grants a Security Interest to Burgess in, all of the Purchaser's right, title and interest (whether existing or future) in any property (including but not limited to real estate) both presently owned by the Purchaser and that which the Purchaser may hereafter acquire either in its own right or by way of a beneficial interest (**Property**), to secure payment of the money and obligations owed to Burgess (**Charge**).
- 9.3 The Purchaser agrees upon request by Burgess, to deliver to Burgess an executed mortgage over any Property or instrument of encumbrance in registrable form that incorporates Burgess' standard covenants as prepared by Burgess' solicitors, and as Burgess may require to be executed by the Purchaser.
- 9.4 In the event that the Purchaser should neglect or fail to deliver the requested instrument or security, the Purchaser hereby irrevocably appoints Burgess and any solicitor nominated by Burgess severally to be the Purchaser's lawful attorney to execute, obtain and/or register a mortgage or caveat, withdrawal of caveat or other security to support the Charge in respect of the Property.
- 9.5 The Purchaser contracts out of and waives its rights under the following provisions of the PPSA, to the extent permitted, sections 95, 96, 117, 118, 121(4), 129, 130, 132(2), 132(3)(d), 132(4), 134(2), 135, 136(3)-(5), 137(2), 138, 142, 143 and the right to receive any notice under the PPSA.
- 9.6 The Purchaser is liable for the costs associated with Burgess registering a security interest on the Personal Property Securities Register.
- 9.7 The Purchaser agrees that where Burgess has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

10. COSTS

- 10.1 The Purchaser must pay for its own legal, accounting and business costs and all costs incurred by Burgess relating to any default by the Purchaser.

11. TAX

- 11.1 Any quoted prices provided to the Purchaser are exclusive of GST.
- 11.2 Any GST payable on a supply made by Burgess to the Purchaser is to be paid by the Purchaser and the Purchaser indemnifies Burgess in respect of GST payable on all Orders made by or on behalf of the Purchaser. In these Terms 'GST' has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*.

12. BREACH

- 12.1 If the Purchaser breaches these Terms then without limiting any other rights available to Burgess, Burgess may:
- (a) terminate any agreement under these Terms with the Purchaser;
 - (b) refuse to supply any goods to the Purchaser; and
 - (c) repossess and deal with any goods held by the Purchaser in accordance with these Terms.

13. GENERAL

- 13.1 All rights and remedies of Burgess under these Terms are in addition to Burgess' other rights and remedies and are cumulative not alternative. Where there is more than one Purchaser, each Purchaser is jointly and severally liable to Burgess.
- 13.2 The Purchaser acknowledges that these Terms are the only terms governing the supply of goods by Burgess to the Purchaser, unless expressly stated otherwise by Burgess.
- 13.3 These Terms will be governed by the law in force in the State of Queensland, and the Purchaser irrevocably submits to the exclusive jurisdiction of the Courts of that State.
- 13.4 Burgess is entitled to apply or appropriate any money received at any time by Burgess from or on behalf of the Purchaser towards the satisfaction of any liability or obligation of the Purchaser on any account including appropriating any payment or part thereof between accounts and/or to a more recent liability instead of an older liability of the Purchaser and/or applying any payment or part of it first in satisfaction of any liability or obligation of the Purchaser not covered by these Terms.
- 13.5 If any provision of these Terms or its application to any person or circumstance is or becomes invalid, illegal or unenforceable, the provision shall so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down, the provision or part of it shall be deemed to be void and severable and the remaining provisions of these Terms shall not in any way be affected or impaired.