

TERMS & CONDITIONS

Here is a short summary of the key points of our terms of trade. The summary is intended to help you but if the summary is inconsistent with our full terms of trade they are the legally binding version. Please read the full terms of trade as they are what you are agreeing to.

Quotation: This is the basis of our contract with you together with these Terms of Trade.

Price: Once you contract with us our price is fixed except for agreed variations and cost increases caused by matters outside our control resulting in installation and failure to pay on time.

Payment: Once you contract with us you pay 10% of the price, followed by a further 40% before we commence manufacture, a further 50% balance upon installation.

For jobs under \$1000 there will be a 50% deposit due on commencement and 50% balance on completion. For jobs under \$500 payment is to be made in full on commencement.

Security for payment: In order to secure payment we have the right to take a charge over the item and obtain other security until such time as we are paid in full.

Site: You have the responsibility to make the site ready for delivery and installation of the item including obtaining all building and related consents, if applicable.

Delivery: We will deliver the item to the site and install, and final payment will be due then, including any deemed delivery.

Our Product Warranty: We provide a product warranty which is in addition to any non-excludable statutory warranties. The extent of the warranties is subject to explanations, exclusions set out in our contract with you.

PLEASE READ THEM CAREFULLY AS THEY ARE THE BASIS ON WHICH WE ACCEPT YOUR ORDER.

These definitions are part of the Terms of Trade.

DEFINITIONS:

“Customer” or “you” means the persons or entity referred to in our Quotation as our customer.

“Tauranga Kitchens by Graham Strange”, “TK Kitchens”, “us” or “we” means Graham Strange Cabinetmakers Limited trading as Tauranga Kitchens by Graham Strange or any other trade name or brand from time to time.

“Quotation” means the quotation for the supply and installation of the Kitchen/Cabinetry described in the Quotation.

“Kitchen” means the kitchen cabinet, benchtop and other directly related items, including integrated hardware and lighting described in the Quotation but does not include Purchaser Supplied Items.

“Product Warranty” means our Kitchen/Cabinetry warranty.

“Purchaser Supplied Items” means whiteware or brown-ware items (such as ovens, hobs and refrigerators) which you will pay for and supply to us for inclusion in the Kitchen/Cabinetry as described in the Quotation.

“Site” means the physical premises where the Kitchen/Cabinetry is to be delivered and installed and as required includes all accessways.

“working day” means any week day, excluding Saturday and Sunday and any statutory public holidays.

1.1 Amendment: We can amend these terms of trade from time to time by posting the new terms on our website. They will apply to any subsequent contract entered into with us but will not affect a contract already entered into with us which will override any version on the website or any specific variation of our terms of trade used for that contract.

1.2 Quotation: After you contact us concerning an order for a Kitchen/Cabinetry we will scope the job, with a site visit and design work and then provide the Quotation setting out what we will and will not provide and our payment terms. If there is nothing to the contrary in the Quotation, then the payment terms set out in clause 3 apply.

1.3 Contract formation: The Quotation is subject to these terms of trade. The Quotation, the terms of trade and our Product Warranty are the only basis on which we are supplying the Kitchen/Cabinetry to you. No oral or written communication with you will apply unless it is clearly set out in the Quotation. The terms of trade apply if there is any inconsistency between them and the Quotation. Our contract with you is formed when you accept the Quotation within the acceptance period by signing and returning it together with the deposit in cleared funds.

1.4 Design: We will design the Kitchen/Cabinetry to your requirements as accepted by you in the Quotation. If you or a third party at your request provides the Kitchen/Cabinetry design, we will manufacture the Kitchen/Cabinetry to that design but we are not otherwise responsible for it.

1.5 Site Responsibility: Unless specified in the Quotation you are responsible for all planning, building and other consents and permits and for providing the Site to us ready for delivery and prompt installation of the Kitchen/Cabinetry by co-ordinating all other work and trades on Site.

1.6 Variations: If you want to vary our contract you must ask us to do so in writing. If the requested variation affects the price for the Kitchen/Cabinetry or its estimated date for completion then we will advise you in a written variation notice the effect on the agreed price for the Kitchen/Cabinetry by way of increase or reduction, any material effects on our Product Warranty, and any effects on the estimated date for completion of the Kitchen/Cabinetry. You can then agree to the variation by countersigning our variation notice in which case our contract with you is appropriately amended.

2.1 Quotation price: The price for the Kitchen/Cabinetry is as set out in the Quotation and in any agreed variation and is exclusive of GST unless stated otherwise. The price is based on our Site visit and the Kitchen/Cabinetry design and is based on our current rates and costs. The price includes freight and insurance to the point of delivery to the Site. If, after the formation of the contract, you want to vary what is set out in the Quotation as provided for in clause 1.6, and we accept the variation we will adjust the price by reference to our then current rates and costs including any indirect costs such as revised delivery dates.

2.2 Purchaser Supplied Items: Generally: Your or any third-party design is for your account. You are responsible for the procurement, payment, and prompt supply of all Purchaser Supplied Items, if you are supplying them.

2.3 Purchaser Supplied Items Delay: It is your sole responsibility to provide all relevant documentation including model numbers and the specifications of any items to be built into, or information that affects the suitability or construction of the joinery making up the Kitchen/Cabinetry. Any information not confirmed or items to be supplied or selected by you at the date of our contract must be confirmed in writing by you allowing enough time for the items to be ordered and delivered to our factory, or to achieve the agreed installation date. If the unconfirmed items or information are received too late to achieve the installation date, you agree to pay any additional costs incurred by us in fitting or installing the Purchaser Supplied Goods at the Site at a later date.

3.1 Staged Payments of the Price: The plus GST price for the Kitchen/Cabinetry is to be paid by you as follows (unless specifically agreed in the Quotation):

a. 10% Deposit: 10% of the price within 7 days of your acceptance of the Quotation. This payment confirms your order for the Kitchen/Cabinetry in our production planning.

b. 40%: We will give you prompt notice of our intention to commence manufacture of the Kitchen/Cabinetry. We must receive payment of 40% of the price at least 7 days from the invoice date.

c. 50%: Upon installation of the Kitchen/Cabinetry to the Site we must receive the balance of the price (50%) within 7 days.

For jobs under \$1000 there will be a 50% deposit due on commencement and 50% balance on completion. For jobs under \$500 payment is to be made in full on commencement.

d. The price quoted on the glass splashback is an estimate only and based on low ion and Effects 1. The final price will be determined by colour and effects, which can only be finalised once a final colour and effects is agreed by the customer.

Final payment for the kitchen, less the splashback, will be due once the kitchen is fully installed. A final invoice for the splashback will be payable once splashback is installed.

3.2 No deductions: You may not withhold payment, set-off or make any other deductions or any kind from any sum due to us.

3.3 Failure or delay in making payments: Any failure or delay by you in making payments to us will give us the right to suspend our contract with you until you make the payments to us in full or we terminate the contract, payment being a material term.

3.4 Late payment fee and recovery costs: We also may charge you interest on the unpaid money at a daily rate of 4% over the best commercial overdraft rate available from our bankers from time to time as a late payment fee, from the due date until the date of payment

in cleared funds. We may also add to the due sum all costs and charges incurred by us in recovering the unpaid money, including collection and lawyer's fees and all other related costs and expenses of any kind.

4.1 Definitions: All terms in this clause have their meanings in the PPSA and section references are to those sections in the PPSA.

4.2 Purchase Money Security Interest: You grant us a purchase money security interest ("PMSI") in the Kitchen/Cabinetry supplied by us to you and any of its proceeds to secure the purchase price for the Kitchen/Cabinetry and any additional costs related to the contract for its supply to you. You agree that we may register a financing statement under the PPSA to give notice of the PMSI.

4.3 Exclusions and waiver: Nothing in sections 114(1)(a), 133 and 134 apply to the PMSI. You waive your right to receive a copy of the PMSI verification statement and your rights under sections 116, 117, 119, 120(2), 121, 125, 131.

5.1 Agreement to mortgage and caveat: In order to secure any money owed by you to us in respect of the Kitchen/Cabinetry, you agree that we have the right to register a mortgage or a caveat over any real property owned by you, whether or not it is the Site, and to add the costs and expenses of doing so to that money owed by you to us.

5.2 Power to mortgage and caveat: You appoint us irrevocably as your agent and attorney for those purposes.

5.3 Release of mortgage and caveat: We will release any mortgage or caveat once you have paid all the money due to us.

6.1 Immediate payment due: All payments in respect of the Kitchen/Cabinetry will become immediately due to us and we may at our option suspend or terminate our contract with you and exercise any of our rights including those under clauses 4 and 5 in the event that:

- a. You fail to make any payments on their due date;
- b. You breach any other material term of our contract with you after we have given you 10 days written notice of the default and what you need to do to remedy it and you fail to do so within that time;
- c. A receiver, manager or administrator is appointed over your assets or undertaking or any substantial proportion of them;
- d. An application for the appointment of a liquidator is filed against you which remains unsatisfied for a period of 10 days, or any of the conditions necessary to render you liable to have a liquidator exist or a liquidator is appointed;
- e. You go into voluntary liquidation, amalgamate with another company, or acquire your own shares in accordance with the Companies Act 1993;
- f. You suspend payment to your creditors or make or attempt to make an arrangement or composition or scheme with your creditors;
- g. You become insolvent within the meaning of the Insolvency Act 2006 or, become, or are presumed to be, unable to pay your debts as they fall due as defined in section 287 of the Companies Act 1993 or you commit any act of bankruptcy.

7.1 Delivery date: Any delivery date specified by us is only an estimate. It may be affected by delay in making payment, by delay in providing us with the Purchaser Supplied Goods, a failure or delay by you or others in obtaining the required consents or approvals, by a failure by you or others to make the Site available for delivery and installation of the Kitchen/Cabinetry or any other matter outside our control.

7.2 No liability for late or non-delivery: We are not liable for any late or non-delivery unless such failure is a direct result of something we have done or not done.

7.3 Delivery defined: Delivery will be made or be deemed to be made by us when the Kitchen/Cabinetry arrives at the Site, whether in one or more instalments, and if no Site is specified, delivery will occur when the Kitchen/Cabinetry is dispatched from our premises. If you (or your contractors, agents or employees) fail or refuse or indicate to us that you will fail or refuse to take delivery in whole or in part, whether because the Site is not available, is not ready for the Kitchen/Cabinetry, has insufficient access, or delivery cannot occur for any other reason beyond our control, then the Kitchen/Cabinetry will be deemed to have been delivered when we were willing to deliver it.

7.4 Failure to deliver: If you are unable or unwilling for any reason to accept delivery of the Kitchen/Cabinetry on the nominated date then the balance of the purchase price is payable under clause 3.1 d. and we may charge you at our then current daily rates for storage of the Kitchen/Cabinetry for each day that it remains undelivered.

7.5 Risk: The Kitchen/Cabinetry is at your risk once delivered to the Site. You should make sure that you have appropriate insurance cover.

8.1 Site readiness generally: You must make the Site ready for installation of the Kitchen/Cabinetry at its indicated date. If you will fail to do so this will affect the installation date. We are not responsible for any consequent costs and expense which are for your account.

8.2 Site readiness: matters for which we are not responsible: Unless specifically set out in the Quotation, we are not responsible for plumbing, electrical work, appliance installation, ducting, quadding, bench top scribing, silicone work, flooring, tiling, painting, decoration, or any other construction work including (without limitation) the stripping of old tiles or floor coverings and the removal of any existing Kitchen/Cabinetry units, or other obstructions from the Site. You must remove those items and other obstructions from the Site and surrounding area(s) prior to the anticipated delivery date.

8.3 Site readiness: structural matters: We are not responsible for making good any defects in the structure of the walls, ceiling and floor making up the structures on the Site that will support the Kitchen/Cabinetry, for the removal of old cabinetry or other items, or for the installation of Purchaser Supplied Items (unless part of the Kitchen/Cabinetry and dealt with in the Quotation). If any additional works are required to be carried out and we agree to carry them out to remedy any defects, remove cabinetry, install appliances or otherwise complete work that was not included in the Quotation, the costs of obtaining building consents and completing this work will be for your account and charged at our then current rates.

9.1 Mutual responsibilities under the HAS: We will each be responsible for our respective obligations under the HAS and ensure that our workers and officers as defined in the HAS comply with their obligations under the HAS. To the extent that you may have any such responsibilities, so far as is reasonably practicable, you must eliminate or minimise risks to health and safety in respect of the Site. Nothing in this clause 9 limits or reduces your obligations under the HAS or means that we assume any of your obligations under the HAS.

9.2 HAS policies and systems: If you have any HAS responsibilities, you must induct and supervise all persons on the Site and make sure that they are familiar with and comply with your HAS policies and systems (which must incorporate any of our HAS policies and systems and those of any other PCBU under the HAS, to the extent relevant).

10.1 Quotation: The Kitchen/Cabinetry will be manufactured in accordance with the Quotation. It refers to drawing design measurements and component descriptions. The following clauses explain and qualify those items in the Quotation and must be read with the Product Warranty.

10.2 Natural materials: You agree that stone and timber and other source materials for the Kitchen/Cabinetry are made from natural materials that will have variations in colour, grain, texture and shade which are not treated in the Kitchen/Cabinetry supply industry and market as defects in those stone and timber source materials. You agree that those variations are inherent in our use of such products, and that they do not allow you to terminate payment of our contract with you or to obtain any refund or damages for breach of contract or our Product Warranty.

10.3 Samples: Any samples of components or materials for the Kitchen/Cabinetry shown to or inspected by you are acknowledged by you to be only for the purpose of giving you a guide as to the completed Kitchen/Cabinetry and are not a sale by sample.

10.4 Kitchen/Cabinetry size and join marks: Site access and doorways will affect the size of materials used in panels, cabinets, bench tops, marble work and other items making up the Kitchen/Cabinetry. You agree that it may be necessary for us to divide up the Kitchen/Cabinetry and add joins to these items to complete the manufacture and installation of the Kitchen/Cabinetry and that they may be visible as a consequence. Your agreement as to no termination or claims in clause 10.2 also applies to this clause.

11.1 Our Quality Commitment: Unless otherwise specifically provided in the Quotation, we will supply the Kitchen/Cabinetry and any ancillary installation services in accordance with the following:

a. In respect of all externally supplied components of the Kitchen/Cabinetry (such as glass and hardware) in accordance with their manufacturer's or supplier's warranties, if transferable or assignable to you.

b. In respect of the remainder of the Kitchen/Cabinetry, in accordance with our Product Warranty.

c. In respect of the ancillary installation services for the Kitchen/Cabinetry, that they will be carried out by us with reasonable skill and care.

11.2 Qualifications and other obligations, warranties and guarantees: Our supply of the Kitchen/Cabinetry is subject to the implied obligations, warranties and guarantees set out in the following clauses, which contain exclusions of liability to the extent permitted by law:

a. Sale of Goods Act 1908: The provisions of this Act are excluded entirely whether or not in respect of contracts to which the Consumer Guarantees Act 1993 applies.

b. Consumer Guarantees Act 1993: The provisions of this Act are excluded in respect of the supply in trade of the Kitchen/Cabinetry and ancillary services. The provisions of the Act are not otherwise excluded.

c. Fair Trading Act 1986: The provisions of this Act including sections 8, 12A, 13 and 14(1) are excluded in respect of the supply in trade of the Kitchen/Cabinetry and ancillary services.

d. Construction Contracts Act 2002: The provisions of this Act are not excluded but the installation, delivery and payment provisions in our contract with you override its provisions.

e. Building Act 2004 as amended by the Building Amendment Act 2013 (“the Act”) and the Building (Residential Consumer Rights and Remedies Regulations 2014 (“the Regulations”): These contain disclosure requirements and implied warranties for residential building contracts relating to compliance with any building consents and warranties which are also dealt with in our contract and our Product Warranty.

11.3 Further qualifications: Our express and implied obligations to you are also subject to the following:

a. We do not warrant any Purchaser Supplied Items.

b. We do not promise that the Kitchen/Cabinetry will achieve any particular level of performance or usability, which are subjective factors.

c. If you do not follow any operating instructions for the Purchaser Supplied Items their manufacturer’s warranties may not apply.

12.1 Ownership: We own all the intellectual property (including copyright) in the designs for the Kitchen/Cabinetry and if you commission us to produce a design for you by agreeing to these Terms of Trade you assign to us all your copyright (and other intellectual property) irrevocably, for all purposes, throughout the world.

12.2 Indemnity: Where you or someone at your direction gives us a design or instruction to follow, you agree to make sure that we do not incur any losses of any kind (an indemnity) because the design or instruction breaches the intellectual property rights (including copyright of any other person).