

Definitions

- 1.1 "Company" means Simons Kitchens Ltd, C38, Moorside, Colchester, Co1 2ZF
- 1.2 "Confirmation of Order Form" means the document confirming the order for the Goods and the Installation Work placed by the Customer with the Company.
- 1.3 "Customer" means the person who places the order for the Goods with the Company.
- 1.4 "Delivery Date" means the date notified by the Company to the Customer for the earlier of the commencement of Installation Work or the delivery of the Goods to the Customer's premises, or where the Company is to deliver the Goods in instalments, the date notified as to when the first delivery will take place.
- 1.5 "Goods" means the goods that are the subject of the contract to which these Terms and Conditions apply and which are specified on the Confirmation of Order Form.
- 1.6 "Installation Work" means the preparatory work and fitting and installing of the Goods carried out by the Company at the Customer's premises.
- 1.7 "Utility Services" means one or more of water, electricity, gas and telephone cabling which may be connected to the Customer's premises.

2. General

- 2.1 These Terms and Conditions shall apply to every contract for the manufacture and supply of the Goods and the carrying out of the Installation Work by the Company. Any alterations must be expressly agreed in writing and signed by a duly authorised representative of the Company.
- 2.2 A revised estimate will supersede completely any previous estimate.
- 2.3 A quotation given orally by the Company does not constitute an offer. Orders placed with the Company shall not be binding on the Company or accepted by it unless and until the Confirmation of Order Form is issued by the Company to the Customer and signed and returned by the Customer
- 2.4 For the avoidance of doubt it is expressly stated that only Mrs Claudine Criddle of the Company shall have authority to vary these Terms and Conditions.
- 2.5 The Confirmation of Order Form will be signed and returned by the Customer and the date of being received by the Company shall be referred to as the Acceptance Date.
- 2.6 In the event of any inconsistency between the contents of the Confirmation of Order Form and any drawings provided to the Customer the Confirmation of Order Form shall prevail. Any drawings provided are for illustrative purposes only and should not be relied upon by the Customer.
- 2.7 All prices quoted will remain current for a period of 30 days. After this time has elapsed, the Company will have the right to adjust the prices in line with general price increases.

3. The Price

- 3.1 Subject to the Company not having to incur unforeseen expenditure in carrying out the manufacture and Installation Work the Price shall be the price quoted by the Company on the Confirmation of Order Form. If such unforeseen expenditure is incurred by the Company the Company reserves the right to charge the Customer an amount equivalent to such additional unforeseen expenditure.
- 3.2 In addition to the Price, the Customer agrees to pay to the Company a reasonable sum for:
- 3.2.1 any additions or variations to the Goods requested by the Customer;
 - 3.2.2 any additions or variations to the Installation Work requested by the Customer or which, in the reasonable opinion of the Company, is necessary as a result of additions or variations to the Goods requested by the Customer or in the interest of the Customer's safety;
 - 3.2.3 any cost to the Company incurred as a result of the Customer's failure to carry out its obligations contained in clause 12.
- 3.3 Prior to supplying any additions or variations to the Goods or carrying out any additions or variations to Installation Work at the Customer's request, the Company will, whenever reasonably practicable, provide the Customer with a written quotation of the cost of doing so. Where the Customer requests such additions or variations and the provision of a written quotation is not practical the Customer agrees to pay the relevant price promptly upon request.
- 3.4 The Price is calculated on the basis that the Customer will make payment in cash, by a banker's draft or by a cheque drawn on the account of a clearing bank which is presented to the Company in time for clearance by the due date for payment (as specified in clause 4). If the Customer makes payment by any other means, the Company reserves the right to charge in addition to the Price a sum to reimburse the Company for any additional charges incurred by it as a result of such payment methods being used.
- 3.5 Where the Customer wishes to make payment by credit card and the Company's representative takes the Customer's credit card details over the telephone, payment will not be deemed to have been made until the Customer has signed the credit card voucher sent or an appropriate letter of confirmation out to him/her by the Company. All payments made by credit cards are liable to a 2.5% charge of the payment due to cover administration cost charged by the card companies.
- 3.6 Additional charges may be made by the Company for costs such as for parking, accommodation and travel incurred by the Company during the contract.

4. Payment – 4 Stage Payment

- 4.1 The Customer shall make payment to the Company as follows:
- 4.1.1 The customer shall pay a deposit of 10% of the price together with the full cost of any appliances requested. The customer agrees that the 10% shall be non-refundable in any event.
 - 4.1.2 The customer shall make a further payment of 40% of the balance (the second payment) four weeks prior to installation of kitchen units/furniture.
 - 4.1.3 The customer shall make a further payment of 80% of the remaining balance prior to templating of granite/worktops.
 - 4.1.4 The remaining final balance is due on completion of works together with any additional costs which may have been incurred for works requested by the customer.
- 4.2 The Price includes Value Added Tax, unless stated it is non-chargeable, the Customer shall pay such tax in addition to the payments otherwise due to the Company.
- 4.3 The Customer shall not be able to withhold any payment due to the Company because of any claim of the Customer in respect of any alleged breach of this contract or any other contract.
- 4.4 Should court action prove necessary to recover outstanding sums the Customer will be liable for all legal and professional cost incurred by Simons
- 4.5 All goods are at the risk of the customer as soon as they have been delivered, but the property and ownership of the goods will not pass until payment in full has been received by Simons. The right is reserved to enter the customer's premises to recover goods/services, which remain unpaid past the due date of payment. If goods are left on site while other preparatory work is carried out, storage must be secure, dry and frost-free and the responsibility of the customer.
- 4.6 If VAT on the project is to be charged at a lesser level or is exempt, it is the responsibility of the Customer to provide evidence that the VAT can be reduced or that it is exempt

5. Cancellation and Variation

- 5.1 Save where it is expressly agreed to the contrary, the Customer will have a reasonable period of time, and in any event not more than 28 days from the Acceptance Date, to notify the Company of any changes to the Customer's order. For the avoidance of doubt, where the Company has placed an order with a third party supplier on behalf of the Customer and the Customer subsequently cancels or varies such order and the Company consequently incurs additional cost, the Company may charge such additional costs to the Customer.
- 5.2 Save where it is expressly agreed to the contrary, the Customer must give notice of cancellation to the Company not more than 14 days after the Acceptance Date. When notice of cancellation is received after this date, the Customer shall be liable to reimburse the Company for any charges incurred on a time and materials basis.
- 5.3 In addition to clause 5.2, where notice of cancellation is received by the Company less than 45 days prior to the date notified by the Company for delivery of the Goods, the Company reserves the right to require payment of the Second Instalment.
- 5.4 Any special orders placed with a 3rd party supplier, and which are non-returnable to the supplier, if the Customer decides they no longer require the order, the Company reserves the right to require full payment of the special order.
- 5.5 The delivery date is given as accurately as possible, but is not guaranteed. The Customer shall have no right to cancel the order for failure for any cause to meet the delivery or completion date given. And will therefore have no right to claim compensation for a deadline that is not met.

6. Interest

- 6.1 The Company will charge interest at the rate of 4% per annum over the banking base rate and from time to time in force on all sums overdue for payment until full payment of the amount outstanding is received.
- 6.2 Where the Company incurs any charges as a result of the Customer's failure to make payment in accordance with these Terms and Conditions (which shall include but not be limited to interest charged to the Company and the fees of solicitors and/or collections agencies instructed by the Company), the Company reserves the right to require reimbursement from the Customer of the said charges.

7. Delivery and Installation

- 7.1 Dates and times given by the Company for the delivery of the Goods and the carrying out of the Installation Work shall not be of the essence in the contract between the Company and the Customer.
- 7.2 Any change of specification, variation or addition during the course of contract will be subject to a revision of price and could extend the completion date.
- 7.3 The Company shall not be liable to the Customer for any loss arising from strikes, lock-outs, industrial action, adverse weather, acts of Nature, failure of equipment of machinery or other events outside the reasonable control of the Company which prevent it from delivering the Goods or carrying out the Installation Work in accordance with the contract.
- 7.4 The customer to give the Company reasonable notice before asking for the work to commence and such an instruction will be taken as evidence that the site is ready. If persons are sent to site and the site is not ready, all expenses thereby incurred by Simons shall be paid for by the customer.
- 7.5 The Customer agrees not to commence use of the Goods until the Company has provided confirmation that the Installation Work is complete.

8. Risk and Title

8.1 Until payment in full for all sums owing by the Customer to the Company has been made:

- 8.1.1 the property in the Goods will not pass to the Customer;
- 8.1.2 the Customer shall hold the Goods on trust for the Company and as the Company's fiduciary agent and bailee;
- 8.1.3 the Company reserves the right to repossess the Goods if payment is not made in accordance with clause 4.1.

8.2 Notwithstanding the provisions of clause 8.1, the risk of damage to or loss of the Goods shall pass to the Customer upon removal of the Goods from the Company's vans at the Customer's premises.

8.3 The Company shall use its reasonable endeavours to prevent any damage from being caused to fixtures and fittings in the Customer's premises not forming part of the Goods but cannot accept responsibility for any damage caused to such fixtures and fittings.

9. Descriptions and Illustrations

9.1 All descriptions and illustrations contained in the price lists, advertisements, drawings, plans, brochures and other literature of the Company are for illustrative purposes only and do not form part of the contract between the Customer and the Company.

9.2 The Customer accepts that, where the Goods are made out of a naturally occurring product, variations in shade and colouring may occur and that such variations are outside the control of the Company. Thus, any samples shown to the Customer by the Company are for illustrative purposes only.

9.3 The natural products used by the Company i.e. softwoods and hardwoods, are prone to shrinkage, expansion, cracking and discoloration due to their nature and as such the Company will take all reasonable precautions and care with these materials. If such products are exposed to extreme temperatures or prolonged dampness, and this causes the aforementioned failures, the Company cannot be liable for damage

10. Guarantee Provisions

10.1 Where they are manufactured by the Company, the Goods are guaranteed for a period of 5 years following completion against defects in the materials used or defective workmanship of the Company or its sub-contractors ("the Guarantee Period"). (See 10.4)

10.2 The Goods that are not manufactured by the Company shall be supplied with the benefit of the manufacturer's or supplier's guarantee only (if any).

10.3 The Guarantee provisions are subject to:

- 10.3.1 all payments due to the Company from the Customer being made in full in accordance with these Terms and

Conditions;

- 10.3.2 to the provisions contained in clause 11 below;
- 10.3.3 the Customer treating the Goods with care and attention; and
- 10.3.4 wear and tear of the Goods.

10.4 in the event of any materials or workmanship proving defective, we shall replace or put right, free of charge, any materials or workmanship if require, provided the Customer informs us in writing within 12 weeks of the actual date of completion. The Company shall not be liable for any defects arising from faulty maintenance, general wear and tear or gradual deterioration.

11. The Company's Liability

11.1 The Customer shall examine the Goods and the Installation Work on completion. Save where clause 11.2 applies, any claim in respect of defective goods or workmanship must be notified to the Company within 14 days of completion.

11.2 Where a defect in the Goods or the Installation Work was not reasonably apparent from inspection on completion, the Customer shall notify the Company of the defect within 14 days of appearance, save that the Company shall have no liability in respect of any defect arising outside the Guarantee Period as defined in clause 10.1.

11.3 The Company accepts no liability for any defects in the Goods or the Installation Work:-

- 11.3.1 where payment of all sums due from the Customer to the Company has not been made in full.
- 11.3.2 that are not notified to Company in accordance with clause 11.1 or 11.2.

11.4 The Company's liability (if any) to the Customer in respect of the Goods and Installation Work shall be in all circumstances limited at the Company's option either to a refund of the Price or the replacement of the Goods.

11.5 The Company accepts no liability for indirect or consequential loss incurred by the Customer unless this is covered by a policy of liability in respect of any defect arising outside the Guarantee Period as defined in clause 10.1.

11.6 Nothing in this clause is intended to limit the Company's liability for loss or damage arising from personal injury or death.

11.7 The Company accepts no liability resulting from the Customer's failure to carry out its obligations under clause 12.

11.8 The Company shall not be responsible for carrying out re-decorating work at the Customer's premises that may be required following the Installation Work, unless such redecoration forms part of the contract between the Company and the Customer.

11.9 The Company shall not be responsible for any access and egress points to and from the Utility Services

12. Customer's Obligations

12.1 The Customer shall be responsible for:

- 12.1.1 ensuring that representatives of the Company can gain access to the Customer's premises on reasonable notice prior to delivery of Goods for the purpose of carrying out essential pre-delivery work and between the hours of 7.00am and 6.00pm for the purposes of delivering the Goods and carrying out the Installation Work;
- 12.1.2 clearing and protecting or removing all furniture, carpets and other moveable objects from the area where the installation Work will be carried out and the means of access thereto;
- 12.1.3 emptying all fixed units that the Company will remove as part of the Installation Work;
- 12.1.4 obtaining any agreement, consent, permission or licence of any third party that may be required;
- 12.1.5 all children and animals in the ownership and/or control of the Customer.
- 12.1.6 assuring at all times the security of the customer's premises and all fixtures and fittings contained therein.
- 12.1.7 ensuring the proper maintenance of all access and egress points in the Customer's premises to and from the Utility Services are properly maintained.

12.2 If the Company incurs additional expenditure as a result of the Customer's failure to comply with terms of clause 12.1 the Company may charge such additional costs to the Customer.

13. Lien

13.1 The Company will hold a lien on all the Goods in the Customer's possession, for which the Company has not received payment in full until such payment is received.

14. Subcontractors

14.1 The Company reserves the right to subcontract the provision of the Installation Work where it deems it appropriate to do so.

14.2 The Company shall not be liable for any loss to the Customer caused by the acts or omissions of its subcontractors, save where such loss is the direct result of negligence or wilful default on the part of such sub-contractors.

14.3 For the avoidance of doubt, where the Company subcontracts the provision of the Installation Work, any additional work carried out by the subcontractors, whether at the Customer's request or otherwise, is not included in the Price and is the subject of a separate contract between the Customer and the subcontractor.

15. Intellectual Property

15.1 All copyright and other intellectual property rights in any plans, designs, drawings and specifications provided to the Customer by the Company shall remain the property of the Company.

15.2 The Company shall have the right on notice to the client, to publish, with or without illustrations, any aspect of the project for future promotional or any other such purpose

16. Severability

16.1 If any provision of these Terms and Conditions is held to be invalid or unenforceable in whole or in part this shall not affect the validity of the other provisions of these Terms and Conditions.

17. Waiver

17.1 Any failure by the Company to exercise any rights under these Terms and Conditions shall not constitute a waiver or prevent the subsequent exercise of such rights.

18. Headings

18.1 The headings of these Terms and Conditions are for convenience only and do not affect the construction or meaning of the same.

19. Law and Jurisdiction

19.1 These Terms and Conditions shall be governed by English law and the Customer and the Company shall submit to the jurisdiction of the English courts.