

BENCH TOP CITY PTY LIMITED ABN 30 007 440 986
TERMS AND CONDITIONS OF SALE

1. Interpretation

Agreement means these terms and conditions.

BTC means Bench Top City Pty Ltd (ABN 30 007 440 986) of 46 Kitchen Rd, Dandenong, Victoria. **Care Guidelines** means the cleaning and care instructions for the Goods published on BTC's website. **Credit Facility** means the BTC Credit Facility and Director's Guarantee and Indemnity (if credit is approved) for the Customer.

Customer means the customer under this Agreement. **Goods** mean the goods to be supplied under this Agreement.

GST means the goods and services tax that applies in accordance with a *New Tax System (Goods and Services) Act 1999* (Cth).

Insolvency Event means, if a Customer:

- (a) informs BTC or its creditors, that it is insolvent or unable to proceed with its obligations in accordance with the Agreement, for financial reasons;
- (b) passes a resolution that it be wound up or allows a winding up order to be made against it (unless such winding up is solely for the purpose of reconstruction or amalgamation, the terms of which have been previously been approved by BTC);
- (c) becomes insolvent or bankrupt or has a receiving order made against it or enters into a composition or deed of company arrangement with its creditors or any class of them;
- (d) allows a manager, controller, receiver, liquidator or an administrator to be appointed or carries on business under a manager, controller, receiver or administrator.

Price means the price stated on the invoice for the Goods, unless the price is otherwise agreed in writing signed by both parties.

2. Supply

Upon confirmation of order by BTC, BTC will supply the Goods and the Customer will accept and pay BTC the Price of the Goods on the terms set out in this Agreement.

3. Quotations and Orders

Price lists and quotes are provided for information only and are not offers capable of acceptance by the Customer. BTC reserves the right to alter or update any price list or quotation at any time prior to delivery of the invoice for the Goods.

4. Payment and Credit

- (a) For Customers who have an approved and active Credit Facility:
 - (i) payment shall be made within 30 days of the date of the invoice; and
 - (ii) BTC may require payment of a deposit prior to delivery.
- (b) For all other Customers:
 - (i) BTC shall invoice on delivery of the Goods and payment shall be made cash upon delivery, unless otherwise agreed in writing.
 - (ii) BTC may require payment of a deposit prior to delivery.
 - (iii) On request, the Customer shall provide a bank guarantee of such amount as agreed in writing in terms acceptable to BTC as security for performance of the Customer's obligations under this Agreement. BTC shall release and return the security within 14 days of payment of the Price.
 - (iv) BTC may invoice progressively where Goods are delivered in instalments.

5. Risk and Title in the Goods

- (a) Risk in the Goods passes to the Customer on delivery.
- (b) Title in the Goods will pass to the Customer upon full payment for the Goods. The Customer acknowledges and agrees that BTC holds a purchase money security interest for the purpose of the Personal Property Securities Act (2009) (Cth) until full payment has been made for the Goods.

6. Delivery

- (a) Any delivery date notified by BTC is an estimated date only.
- (b) BTC shall not be liable for any loss or damage suffered by the Customer by reason of any non delivery or delay in delivery of the Goods.
- (c) Delay in delivery of the Goods shall not entitle the Customer to terminate the Agreement and the Customer shall not be excused from paying for the Goods by reason of any such delay.
- (d) BTC may deliver the Goods in instalments.
- (e) BTC is not obliged to agree to any request to store the Goods or to postpone the date for delivery. BTC may agree to such a request on terms, including immediate payment of part or all of the Price and payment of reasonable storage charges.
- (f) If BTC has requested a deposit or bank guarantee under clause 4, then delivery shall not occur until such deposit or bank guarantee (in terms acceptable to BTC) has been submitted.

7. Care of the Goods

The Customer acknowledges and agrees that it is aware of the Care Guidelines. To the extent permitted by law, BTC is not liable to the Customer for any defect in the Goods caused or contributed to by the Customer's failure to comply with the Care Guidelines.

8. Warranty

- (a) At the date of delivery the quality of the Goods shall comply with the relevant specification for the Goods published on BTC's website or as otherwise available from the manufacturer.
- (b) For the purpose of clauses 8 and 11 the quality of the Goods shall not be treated as defective if compliant with the relevant specification.
- (c) On delivery, the Customer shall immediately carry out an inspection of the Goods and shall

sign the delivery docket to acknowledge receipt of the Goods in good order.

- (d) The Goods shall be subject to a defects liability period of 1 year commencing on the date of delivery of the Goods.
- (e) During the defects liability period, the Customer may notify BTC in writing of any defect in the Goods and BTC shall (in its discretion) either rectify or replace the defective part of the Goods within a reasonable time. The Customer shall bear all costs of removal and reinstallation of the Goods. To the extent permitted by law and subject to clause 11, BTC's liability arising out of or in connection with defective Goods shall be limited to (in its discretion) rectification or replacement of the defective part of the Goods.
- (f) The Customer acknowledges and agrees that:
 - (i) images in brochures provided by BTC and on the BTC website; and
 - (ii) samples provided by BTC, may not provide a reliable or accurate representation of the colour, pattern or quality of the Goods due to limitations in colour reproduction, the size of the sample, changes in technical specification, technical errors and human error. The Customer agrees that it may request an inspection of the Goods at BTC before the Goods are cut to match the Customer's requirements. To the extent permitted by law, BTC makes no representation that the Goods will match any image or sample provided.
- (g) Without limiting clause 7, the Customer acknowledges and agrees that BTC is not liable for damage or defects due to:
 - (i) failure to comply with the Care Guidelines;
 - (ii) failure to store the Goods in a proper manner after delivery;
 - (iii) installation, repair or alteration of the Goods carried out by third parties;
 - (iv) fair wear and tear.

9. Sunset Date

- (a) All claims under clause 8 concerning defects must be notified within 1 year from the date of delivery of the Goods.
- (b) Any other claims arising out of or in connection with the Goods and this Agreement shall be notified in writing to BTC within 30 days from the date of delivery of the Goods.
- (c) To the extent permitted by law, BTC shall have no liability to the Customer for claims under clause 8 or other claims under this Agreement which are notified after the dates described in clause 8(a) or clause 8(b), as applicable.

10. Termination or Suspension for Convenience

BTC may terminate this Agreement or suspend deliveries of the Goods at its convenience. Upon termination or suspension of deliveries for convenience, BTC shall not be liable for any claim, loss, damage or expense suffered or incurred by the Customer.

11. Return of Goods

11.1 Defective Goods

BTC will accept returns of defective Goods if the Customer notifies of its intention to return the Goods within 7 days of the date of delivery and returns the Goods to BTC within 21 days after the date of delivery.

11.2 Non Defective Goods

BTC may, in its discretion, accept returns of non defective Goods if the following conditions are satisfied:

- (a) the Goods are returned within 7 days from the date of delivery;
- (b) the Customer supplies the invoice number and date of purchase;
- (c) the Goods are in original condition and undamaged; and
- (d) the claim for credit is supported by the carrier's consignment note or equivalent receipt of delivery.

BTC is not obliged to exercise its discretion in favour of the Customer and may withhold its consent to any return in its absolute discretion.

Non defective Goods which have been made to order shall not be returnable. The Customer agrees and acknowledges that a restocking fee will be payable at the rate advised by BTC from time to time. The restocking fee of 15% of the Price will be deducted from any credit offered for the Goods.

12. Payment

12.1 Payment

- (a) The Price and any other fees or amounts payable under this Agreement are exclusive of GST.
- (b) The Customer must pay interest on any overdue invoice at the rate fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic).
- (c) The Customer must pay all costs and expenses (including legal costs, debt collection expenses and mercantile agent's fees) which BTC may incur in attempting to recover any overdue amounts.

12.2 Fees

- (a) Unless otherwise agreed in writing, payments made by credit card may be subject to a credit card administration fee of 2% of the Price.
- (b) Where a cheque or payment of a credit account is dishonoured by a Customer's bank, a fee of \$20.00 shall apply.

12.3 Set Off

The Customer acknowledges that:

- (a) BTC may set off any credit amount owing to the Customer against any debit due by BTC to the Customer;

- (b) the Customer is not entitled to withhold payment of any money in respect of any set off or claim the Customer might have against BTC.

13. Default

If the Customer:

- (a) fails to pay for the Goods on the due date; or
- (b) suspends or cancels delivery of the Goods without prior written approval of BTC;
- (c) suffers an Insolvency Event; or
- (d) otherwise breaches this Agreement and fails to rectify such breach within 7 days of notice then BTC may:
 - (e) terminate the Agreement on notice; and/or
 - (f) sell the Goods to a third party.

14. Limit of Liability

- (a) The Australian Consumer Law (and other legislation) may imply certain conditions and warranties into this Agreement that cannot be excluded or modified. This Agreement does not exclude or modify any of those conditions or warranties if to do so would contravene that law or make any part of this Agreement void.
- (b) To the extent permitted by law, BTC excludes all warranties and conditions that may be implied into this Agreement and limits its liability for a breach of any implied condition or warranty that cannot be excluded to the lower of \$1000 or 50% of the Price.
- (c) BTC's overall liability to the Customer:
 - (i) under, arising out of, or in connection with the supply of the Goods;
 - (ii) otherwise at law or in equity including:
 - (A) by statute to the extent permitted by law;
 - (B) in tort for negligence or otherwise;
 - (C) in contract; and
 - (D) on any other basis whatsoever shall not exceed the lower of \$1000 or 50% of the Price.
- (d) Despite any other provision of this Agreement, BTC has no liability in respect of loss of profits and consequential loss:
 - (i) under, arising out of, or in connection with the supply of the Goods;
 - (ii) otherwise at law or in equity including:
 - (A) by statute to the extent permitted by law;
 - (B) in tort for negligence;
 - (C) in contract; and
 - (D) on any other basis whatsoever.
- (e) This clause shall survive termination or expiry of this Agreement.

15. Copyright and trade marks

All printed, punched and stamped parts and samples provided by BTC remain the property of BTC. BTC reserves the right to exercise copyright and other standard industrial rights covering all patterns, stamps and samples designed by BTC and third parties working for BTC, even where the Customer bears the cost of these.

16. General

- (a) This Agreement and the supply of Goods by BTC to the Customer is governed by the laws of the State of Victoria.
- (b) The parties irrevocably submit to the authority of the Courts having jurisdiction in the State of Victoria.
- (c) The Vienna Convention for the International Sale of Goods is hereby excluded.
- (d) For Customers who have an approved and active Credit Facility with BTC, the terms and conditions of the Credit Facility shall be incorporated into this Agreement. This Agreement constitutes the entire agreement between the parties and all previous dealings, representations and arrangements are hereby expressly excluded.
- (e) If any part of this Agreement is held to be void, unenforceable or unlawful, this Agreement will be read and enforced as if the void, unenforceable or unlawful provisions have been deleted.
- (f) No failure to exercise or any delay in exercising any right, power or remedy by BTC operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on BTC unless made in writing signed by BTC.
- (g) The Customer is not entitled to assign or transfer this Agreement (including any warranty).