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The Benchtop Specialists

TERMS AND CONDITIONS

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1. Definitions

- 1.1 **“Conditions”** means these Terms and Conditions of the Supplier and includes any variations or annexures applicable hereto.
- 1.2 **“Customer”** means the Customer or any person acting on behalf of the and with the authority of the Customer.
- 1.3 **“Estimates/Quote”** shall mean the estimate or quotation offered by the Supplier to the Customer which the Customer accepts and, as a consequence of such acceptance, the Supplier agrees to continue with the supply of Goods
- 1.4 **“Goods”** means all Goods and/or Services supplied by the Supplier to the Customer and are as described on any invoice, estimate, quote, work authorisations.
- 1.5 **“Guarantor”** means that person (or persons), or Directors of the Customer (if a Proprietary Company), who expressly agrees to be liable for the debts and obligations of the Customer hereunder on a principal-debt basis.
- 1.6 **“Order”** means the acceptance of a Quote/Estimate for the provision of goods by the Supplier to the Customer.
- 1.7 **“Supplier”** means South West Solid Surfaces Pty Ltd (ACN 141 179 875) trading as South West Solid Surfaces.
- 1.8 **“Supplier Cost”** shall include all acquisitions by the Supplier from a third party to fulfil an Order by the Customer.
- 1.9 **“Price”** means the cost of the Goods as agreed between the Supplier and the Customer, subject to Condition 5.

2. Acceptance

- 2.1 On receipt of an Order, whether verbal or otherwise, from the Customer, the terms hereof are accepted and no other terms and conditions, representations or warranties apply.
- 2.2 Upon the Customer receiving the Estimate/Quote and confirming acceptance, verbally or in writing, or upon the Customer accepting goods from the Supplier, the Customer is bound by these Terms and Conditions and a contract exists.
- 2.3 The Terms and Conditions are irrevocable and cannot be changed other than:-
 - (a) in writing;
 - (b) with the written consent of the Supplier; or
 - (c) both.
- 2.4 A representation made by an agent or representative of the Supplier or a person not authorised to make any representation or statement, is not binding on the Supplier.

- 2.5 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price and performance of the Customer's obligations.
- 2.6 The Customer undertakes to give the Supplier not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice).
- 2.7 Where the Customer is a corporation or a trust, then the execution of any order by an officer of the corporation or trust, binds the corporation or trust and requires the Customer to provide such guarantees as may be required by the Supplier for payment and compliance with the Customer's obligations under the order and these Terms and Conditions.

3. Estimate/Quote

- 3.1 The Customer agrees and acknowledges that any Estimate/Quote provided by the Supplier to the Customer have been prepared by the Supplier in reliance on the information, specifications and drawings provided by the Customer.
- 3.2 The Customer agrees and acknowledges it is solely responsible for providing the correct information, specifications and drawings to the Supplier for the purposes of the Supplier providing the Customer with an Estimate/Quote for the supply of the Goods.
- 3.3 Any Estimate/Quote provided by the Supplier to the Customer is only valid for a period of thirty (90) days from the date of the estimate.
- 3.4 An Estimate/Quote is based upon the specifications provided by the Supplier or as referred to in the Estimate/Quote and the Supplier is not responsible, liable or obliged to provide any other Goods unless otherwise agreed in writing by the Supplier.

4. Goods

- 4.1 The Supplier is not responsible or liable for any defects, shortages in quantity, errors, or omissions in the Goods if the Goods are supplied to the Customer in accordance with the Estimate/Quote provided to and accepted by the Customer.
- 4.2 Any variation of the specifications howsoever, but not limited to colour, shapes and sizes, must be supplied by the Customer in writing to the Supplier and the Customer agrees to pay the additional prices and costs caused by the variation as notified by the Supplier.
- 4.3 The Goods shall be deemed of merchantable quality if they are made and delivered in accordance with the specifications provided by the Customer and as contained in any Estimate/Quote or invoice.
- 4.4 All Goods supplied (Solid Surface) may have a slight variation in colour if purchased at different times (e.g. months or years) due to different batch numbers and manufacturing processes from the Supplier. These colours may again vary slightly from the sample chips displayed in the Supplier's showroom.

- 4.5** It is the responsibility of the Customer to ensure that all bench tops have adequate support (including any extra battens or steel that may be required) and that cabinets are level.

5. Price and Payment

- 5.1** At the Supplier's sole discretion the Price shall be either:
- (a)** as indicated on an Estimate/Quote or invoice provided by the Supplier to the Customer in respect of Goods supplied; or
 - (b)** Once a Supplier has provided an Estimate/Quote, the same shall be valid for thirty (90) days. If the Customer accepts the Estimate/Quote after thirty (30) days then the Supplier has the right to reconsider and resubmit an Estimate/Quote.
- 5.2** Before any work is undertaken by the Supplier, the Customer shall pay a deposit by way of cleared funds to the Supplier as stated in the Estimate/Quote. The non-payment of the deposit within seven (7) days from the date of acceptance of the Estimate/Quote shall entitle the Supplier to terminate the Agreement and refuse to provide or supply the Good.
- 5.3** Subject to Condition 8.2, the Customer agrees the deposit is non-refundable to the Supplier for any reason not attributable to any wilful negligence, act or failure to act unless agreed otherwise by the Supplier in writing.
- 5.4** Any payment under these Terms and Conditions must be in cleared funds. For the avoidance of doubt, if paid by bank cheque or Electronic Funds Transfer, until the funds are credited to the account of the Supplier, payment has not been made.
- 5.5** The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that tax is expressly included in any estimate given by the Supplier.
- 5.6** Any non account Customer who has over paid will be refunded either by same way of transaction. Any thirty (30) day account holders who have over paid will have these funds go into credit being deducted off any current invoices and/or future transaction.

6. Delivery of Goods/Installation/Check Measures

- 6.1** Delivery of the Goods shall be made to the Customer's address as shown on the Estimate/Quote. The Customer is responsible to ensure on the day nominated for delivery, at the time of delivery, access is available and there is someone authorised in writing by the Customer to accept delivery if the Customer will not be present. The non-compliance with this clause by the Customer will result in a further delivery cost if the goods are returned to the Supplier and then re-delivered at another time. The delivery cost will be in accordance with the Supplier's standard costs of delivery.
- 6.2** Delivery will be made to the Customer only. If the Customer is unable to take delivery, the Customer may by writing nominate another person to take delivery, ensuring that person is at the Customer's premises at the day nominated for delivery.

- 6.3** If, on the date nominated for delivery, the Customer is unable to attend at the address for delivery and does not provide or nominate a third party in writing to accept delivery of the Goods, then all costs incurred by the Supplier in returning to the Supplier's place of business and redelivering Goods on another day will be borne by the Customer. Redelivery of the Goods will be at the Supplier's discretion.
- 6.4** Deliveries other than to ground level may require a hoist or other equipment and will incur additional cost.
- 6.5** Although care will be taken by installers, the Supplier will not be held responsible for any damage to surrounding areas during installation. Some cutting may be required onsite, this produces a fine dust and the Supplier recommends all areas (draw runners and mechanical fittings) be covered and/or protected to avoid any possible damage.

7. Risk and Security

- 7.1** Whilst the Supplier retains property in the Goods until payment is made for the Goods in full, nonetheless all risk for the Goods passes to the Customer on delivery.
- 7.2** Where payment has not been made for the Goods at the time of delivery, then the Customer agrees with the Supplier, in order for the Supplier to protect the Supplier's title to the Goods, the Supplier shall, at the Customer's expense, be entitled to register this Agreement as a security interest on the Personal Property Securities Register ("PPSR") and grants to the Supplier the following:
- (a) A security interest shall be taken in respect to the Goods until payment is made for the balance of purchase price then outstanding.
 - (b) The Goods cannot be sold by the Customer, whether intermingled with the other of the Customer's Goods or kept separate.
 - (c) If the Goods are sold then the proceeds of the sale shall be held separately and the Customer shall act as the trustee for the Supplier as to the unpaid balance of the purchase price, regardless of whether the Goods are sold in situ or separately.
 - (d) The Customer authorises the Supplier to register a security interest on the PPSR and agrees to provide all of the relevant information:
 - (i) full name of the Customer or any company comprising the Customer;
 - (ii) the address for providing notice for the purpose of registration on the PPSR;
 - (iii) dates of birth;
 - (iv) any other details required by the Supplier for the purpose of registering and perfecting the security.
- 7.3** Upon payment by the Customer in full the Supplier will, as soon as reasonably practicable, discharge the security and provide evidence of the same to the Customer.

8. Errors and Omissions

- 8.1** The Customer shall inspect the Goods on delivery and shall within five (5) business days from the date of delivery notify the Supplier of any alleged damage, defect, shortage in quantity, errors, or omissions not in compliance with the invoice or Estimate/Quote (“Defects”). The Customer shall at all times afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods to be defective in any way. If the Customer fails to comply with these provisions within the time specified, the Goods shall be conclusively presumed to have been made and supplied correctly in accordance with the invoice or estimate and these Conditions and accordingly to be free from any Defect.
- 8.2** Where the Supplier receives material from a third party supplier (“the Third Party”) which is incorporated into the Goods for the benefit of the Customer and in accordance with the Customer’s specification, the Supplier only offers the same warranty received by the Supplier from the Third Party and is not liable to the Customer for any loss or damage incurred by the Customer, including consequential loss, as a result of a defect in the Goods supplied by a third party.
- 8.3** The Customer indemnifies and will hold harmless, the Supplier from and against any and all loss or damage suffered by the Supplier for any alleged Defects caused by the Customer providing inaccurate or incorrect information in the specification and drawings of the Goods.

9. Customer Disclaimer

To the extent permitted by law, the Customer hereby disclaims any right to rescind or cancel these Conditions or to claim restitution arising out of any misrepresentation by the Supplier and the Customer acknowledges that he/she/it buys the Goods relying solely upon his own skill and judgement.

10. Trade Practices Act 1974, Fair Trading Acts and other Applicable Legislation

Nothing in these Conditions is intended to have the effect of contracting out of any applicable provision of the Commonwealth Trade Practices Act 1974, the Fair Trading Acts or any other applicable legislation in each of the States and Territories of Australia, except to the extent permitted by those Acts, where applicable. In the event that any provision contained in these Conditions is contrary to any of those Acts (or their replacements), then that provision shall be excised from these Conditions, but without in any way limiting or affecting the validity or enforceability of the remaining Conditions.

11. Cancellation or Variation

- 11.1** The Supplier may vary these Conditions or cancel delivery of the Goods at any time before the Goods are delivered for any reason by giving written notice to the Customer outlining the cancellation. The Supplier shall not be liable for any loss, consequential or otherwise, or damage whatsoever suffered or incurred by the Customer, and arising from such cancellation.
- 11.2** The Customer may, with the written consent of the Supplier, cancel the supply or delivery of the Goods. In the event the Customer cancels the supply or delivery of the Goods and in the absence of any agreement by the Supplier releasing the Contract in whole or part, the Customer shall remain liable to the Supplier for payment of all of the Supplier’s costs incurred up to the time of cancellation.

12. Default & Consequences of Default

- 12.1** Interest on overdue invoices shall accrue daily from the date when payment becomes due until the date of payment at a rate of 1.5% compounding interest per calendar month.
- 12.2** If the Customer defaults in payment of any invoice, the Customer shall indemnify and hold harmless the Supplier from and against any and all of the Supplier's costs and disbursements relating to such default, including on a solicitor and own client basis and in addition all of the Supplier's nominees costs of collection.
- 12.3** Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any of its obligations (including those relating to payment), the Supplier may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Conditions. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier exercised its rights under this Condition.
- 12.4** if any account remains unpaid at the end of the second month after supply of the Goods an immediate amount at the discretion of the Supplier between \$100.00 (minimum) or 100% of the amount overdue (maximum), may be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under Condition 11.1.
- 12.5** In the event that:
- (a)** any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b)** the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c)** a receiver, administrator, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer;
- then without prejudice to the Supplier's other remedies at law:
- (i)** the Supplier shall be entitled, without notice, to cancel all or any of the remaining part of any Order and will lodge a proof of debt in respect to all work done to the date of cancellation and for which payment has not been made;
 - (ii)** all amounts owing to the Supplier shall, whether or not due for payment, immediately become due and payable; and
 - (iii)** the Supplier shall not cancel an Order until it has given at least SEVEN (7) days notice to the Customer outlining the default and requiring remedy.

13. Title and Repossession

13.1 If the Customer has failed to pay the full amount owing in respect to any Estimate/Quote or Order and the Goods have been delivered and installed at the Customer's address or premises, then the Customer grants an irrevocable right of entry to the Supplier's workmen to enter the Customer's premises and to remove the Goods, whether the same be affixed to other Goods or material belonging to the Customer or not, and the Supplier will not be liable to the Customer for any damage occasioned by the removal PROVIDED the Supplier shall have given seven (7) days' notice in writing of its intention to take such action. To the fullest extent required, the Customer cannot restrain the Supplier from entry and the Supplier is entitled to exercise such force as is necessary to gain entry if it is not willingly provided by the Customer to remove the Goods, causing as little damage as is practicable (considering the state of the Goods at the time) in the removal.

13.2 The Customer must not give away or sell the Goods to any other person or entity until the Customer has paid in full all amounts owing to the Supplier for the particular Goods in agreement and acknowledgement that the Supplier retains ownership and property in and to the Goods.

14. Security and Charge

Despite anything to the contrary contained herein or any other rights which the Supplier may have howsoever:

14.1 In order to further and better secure the Supplier in relation to monies owing, the Customer agrees the Estimate/Quote or Order constitutes a binding agreement and grants to the Supplier an equitable charge over property owned by the Customer for the purpose of securing the unpaid balance of any Order. The Customer consents to the registration of a subject to claim caveat at Landgate Western Australia as equitable mortgagee.

14.2 Should the Supplier elect to proceed in any manner in accordance with this Condition or any part thereof, the Customer and/or Guarantor (if applicable) shall indemnify the Supplier from and against any and all of the Supplier's costs and disbursements incurred in so proceeding including legal costs on a full indemnity basis.

14.3 To give effect to the provisions of Condition 14.1 (a) and (b) inclusive hereof, the Customer and/or the Guarantor (if any) do hereby irrevocably nominate, constitute and appoint the Supplier or the Supplier's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute any relevant mortgages and charges (whether registrable or not) including such other items and Conditions as the Supplier and/or the Supplier's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Supplier and in the Customer's and/or Guarantor's obligations and indebtedness to the Supplier and further do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Supplier's absolute discretion which may be necessary or advantageous to give effect to the provisions of this condition.

15. Guarantee and Indemnity

- 15.1** Where the Customer is a corporation registered pursuant to the provisions of the Corporations Act or its acts as trustee of a trust, then the directors of the corporation, in its capacity as trustee of a trust, shall, by acceptance of the Estimate/Quote or by the Order, guarantee performance by the Customer of all of the Customer's obligations hereunder and agree and undertake to:
- (a)** Guarantee to the Supplier the due and punctual observance and performance of the Customer's obligations under these Conditions; and
 - (b)** Indemnify the Supplier and keep the Supplier indemnified against all losses, expenses, claims, and damages incurred or reasonably expected to be incurred by the Supplier by reason of any breach of the Customer's obligations under these Conditions.
- 15.2** The Guarantor/s obligations under these Conditions are an irrevocable and continuing guarantee and indemnity, and the Guarantor/s will not be wholly or partially released from the obligations of this Condition by any matter or thing.
- 15.3** These Conditions are enforceable against the Guarantor/s and the Guarantor/s are liable under these Conditions notwithstanding any claims that the Supplier is estopped from enforcing any term of these Conditions, or that the Customer has any other defence against an action by the Supplier to enforce any term of these Conditions, and binds the Guarantor until the Customer is released from the Customer's obligations under these Conditions.
- 15.4** The Guarantor/s obligations under these Conditions are principal obligations and are not ancillary or collateral to any other obligation or instrument.
- 15.5** If the Supplier is unable to recover from any person any money owing under these Conditions, or to enforce a remedy for any other breach of the Customer's obligations, the Guarantor/s also agree to pay the Supplier on demand the loss, damage, costs and expenses suffered or incurred by the Supplier in respect of the breach of those covenants and the other provisions of these Conditions apply as far as is possible to the indemnity conferred on the Supplier by this Condition.
- 15.6** This guarantee and indemnity:
- (a)** continues until the Customer has performed all the Customer's obligations; and
 - (b)** extends to claims by the Supplier for any liability arising from the repudiation of these Conditions and any default under these Conditions by the Customer, and any action taken by the Supplier as a result of a default including the Customer's terminating these Conditions.
- 15.7** If a payment to the Supplier in connection with these Conditions is void or voidable under laws relating to insolvency or protection of creditors the Supplier remains entitled to the rights against the Guarantor/s which the Supplier had under this Condition before that payment was made.
- 15.8** If the Guarantor comprises more than one (1) person, the obligations of each Guarantor are joint and several.

15.9 The Supplier may assign the rights under, and the benefit of, the obligations of the Guarantor under these Conditions.

16. Privacy Act 1998

16.1 The Customer and/or the Guarantor/s agree for the Supplier to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.

16.2 The Customer and/or the Guarantor/s agree that the Supplier may exchange information about Customer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a)** To assess an application by Customer;
- (b)** To notify other credit providers of a default by the Customer;
- (c)** To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
- (d)** To assess the credit worthiness of Customer and/or Guarantor/s.

16.3 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1)(h) Privacy Act 1988).

16.4 The Customer agrees that personal data provided may be used and retained by the Supplier for the following purposes and for other purposes as shall be agreed between the Customer and Supplier or required by law from time to time:

- (a)** provision of Goods;
- (b)** marketing of Goods by the Supplier, its agents or distributors in relation to the Goods;
- (c)** analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provisions of Goods;
- (d)** processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
- (e)** enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

16.5 The Supplier may give information about the Customer to a credit reporting agency for the following purposes:

- (a)** to obtain a consumer credit report about the Customer; and/or
- (b)** allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

17. General

- 17.1** If any provision of these Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not thereby be affected, prejudiced or impaired.
- 17.2** All Goods supplied by the Supplier are subject to the laws of Western Australia and the Supplier takes no responsibility for changes in the law which affect the Goods supplied.
- 17.3** To the fullest extent permitted at law, the Supplier shall be under no liability whatsoever to the Customer for any loss and/or expense (including loss of profit) suffered by the Customer arising in any way from our out of these Conditions.
- 17.4** In the event of any breach of these Conditions by the Supplier the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Supplier under these Conditions exceed the Price of the Goods.
- 17.5** The Customer shall have no right of set off against any monies due to the Supplier.
- 17.6** The Supplier may license, assign or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.7** The Supplier reserves the right to review these Conditions at any time and from time to time. If following any such review, there is to be any change in such Conditions, that change will take effect from the date on which the Supplier notified the Customer of such change.
- 17.8** Neither party shall be liable for any default or delay due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.