

**ESSEX CABINET MAKERS LTD & COM-SHAPE TECHNOLOGY LTD**  
**TERMS & CONDITIONS OF TRADE**

**1. DEFINITIONS**

- 1.1 "Seller" shall mean Essex Cabinet Makers Ltd & Com-Shape Technology Ltd and its successors and assigns.  
1.2 "Buyer" shall mean the buyer or any person or Seller acting on behalf of and with the authority of the buyer.  
1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Seller on a principal debtor basis.  
1.4 "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).  
1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).  
1.6 "Price" shall mean the cost of the goods as agreed between Essex Cabinet Makers Ltd & Com-Shape Technology Ltd and the Buyer subject to clause 4 of this contract.

**2. ACCEPTANCE & GOODS / SERVICES**

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods or the Buyer's acceptance of the Sellers quotation shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.  
2.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.  
2.3 The Goods and / or Services are as described on the invoices, quotations, work authorisation documents or any other work commencement forms as provided by Seller to the Buyer.

**3. PRICE & PAYMENT**

- 3.1 At the Sellers sole discretion;  
(a) The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of goods/services supplied; or  
(b) The Price shall be the Seller's current price at the time of the contract  
3.2 The price maybe automatically increased due to an increase in current factory and production costs that is beyond the control of the seller. Therefore, the Seller reserves the right to alter prices between the date of the contract and delivery of the goods or providing of the services.  
3.3 Time for payment for the Goods or Services will be as expressly stated by the Seller. These payment times maybe either:  
(a) By instalment where a 50% deposit is due from the Buyer on acceptance of the job quotation. The remaining 50% balance shall be due on delivery/installation of the goods; or  
(b) Due on or before the 20<sup>th</sup> of the month following the date of the invoice  
3.4 Receipt of a cheque, bill of exchange or any other negotiable instrument shall not constitute payment until such negotiable instrument has lawfully cleared and been paid in full.  
3.5 The price shall be increased by the amount of any GST and other taxes and duties that may be applicable.

**4. RISK**

- 4.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.  
If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

**5. LIABILITY**

- 5.1 The Seller shall not be liable for:  
(a) Any delays or failure to meet agreed delivery dates to the Buyer. The Seller will endeavour to meet any stated delivery date but the Buyer is not entitled to cancel its order if the Seller is unable to meet agreed delivery dates.  
(b) Any loss or damage of any kind whether suffered by the Buyer or a third party where such loss or damage arises directly or indirectly from goods or services or advice provided by the Seller to the Buyer. Furthermore, the Seller shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss;  
(c) Except as provided in this contract, the Seller shall not be liable to the Buyer or any third party, whether in contract, tort, or otherwise for any loss or damage whatsoever, and all such liability is expressly excluded, or injury beyond the value of the goods or services provided by the Seller to the Buyer.  
5.2 The liability of The Seller in respect of any order of goods or services shall be limited to the lesser of the purchase price of the goods or services complained of, the cost of replacing the defective goods or supplying new services, and the actual loss or damage suffered by the Buyer.

**6. QUOTATIONS & ESTIMATES**

- 6.1 Where a quote or estimate is given by the Seller for goods to be supplied or services provided:  
(a) the quote or estimate shall be valid for one month from the date of issue or as stated in writing by the Seller  
6.2 Where goods and/or services are required in addition to the quote or estimate the buyer agrees to pay for the additional cost of the goods or services.

**7. DEFECTIVE GOODS**

- 7.1 Subject to any statutory rights and remedies that the Buyer may have in respect of any claim by the Buyer which establishes that the goods supplied or services provided were defective, then the Buyers rights and remedies shall be limited in accordance with clause 6.2, and shall be subject to the following conditions:  
(a) All defect claims must be received by the Seller within one (1) month of delivery of the goods or else within a time period expressly stated in writing by the Seller  
(b) All claims must specifically identify the defect and the Seller shall have a reasonable opportunity to investigate the defect claim and  
(c) The Seller may at its complete discretion, replace or undertake repairs on the goods shown to be defective. This replacement or repair work shall be deemed to fully satisfy any claim by the Buyer in respect of any such goods.

**8. RETURN OF GOODS POLICY**

- 8.1 The Seller reserves the right to accept or reject a Buyers request for the return of any goods purchased.  
8.2 Instead of accepting the goods for return, the Seller may in agreement with the buyer undertake modifications to the goods at the Buyers premises  
8.2 Requests from the Buyer for goods to be returned will only be considered if received by the Seller within three (3) days of the original delivery / installation. The goods must be in the same condition as they were when first delivered / installed.

**9. WARRANTY**

- 9.1 Subject to the conditions of warranty set out in Clause 8.2 the Seller warrants that if any defect in any workmanship manufactured by the Seller becomes apparent and is reported to the Seller within one (1) year of the date of delivery then the Seller will (at the Sellers sole discretion) repair the defect or replace the workmanship.  
9.2 The conditions applicable to the warranty given in Clause 8.1 are:  
(a) The warranty shall not cover any defect or damage caused by or partly caused by or arises through:  
(i) Failure on the part of the Buyer to properly maintain any goods; or  
(ii) Any use of any goods otherwise than for any application specified on a quote or order form; or  
(iii) Failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or  
(iv) The continued use of any goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or  
(v) Variations in the colour or structure of the wood and changes in the wood which normally occur over a period of time; or  
(vi) Fair wear and tear, any accident or act of god.  
(b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Sellers consent.  
9.3 In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/goods or in properly assessing the Buyers claim.  
9.4 For Goods not manufactured by the Seller the warranty shall be the current warranty provided by the manufacturer of the goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.

**10. BUYERS DISCLAIMER**

- 10.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

**11. CONSUMER GUARANTEES ACT 1993**

- 11.1 This agreement is subject, in all cases except where the Buyer is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.

**12. CANCELLATION**

- 12.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price for those Goods. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

**13. DEFAULT & CONSEQUENCES OF DEFAULT**

- 13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per month or part month and shall accrue at such a rate after as well as before any judgement.  
13.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of a debt collection agency's costs of collection.  
13.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.  
13.4 If any amount remains unpaid at the end of the second month after supply of the Goods or Services the following shall apply: An immediate amount equivalent to 10% of the amount overdue levied for administration fees which sum shall become immediately due and payable.  
13.5 In the event that:  
(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or  
(b) the Buyer 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, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then  
(i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and  
(ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable.

**14. TITLE**

- 14.1 It is the intention of the Seller and agreed by the Buyer that property in the goods shall not pass until:  
(a) The Buyer has paid all amounts owing for the particular Goods; and  
(b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.

**14.2 It is further agreed that:**

- (a) The Buyer shall not deal with the money of the Seller in any way that may be adverse to the Seller.  
(b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.  
(c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.  
(d) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.  
(e) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.  
(f) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.  
(g) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

**15. PERSONAL PROPERTY SECURITIES ACT 1999**

- 15.1 Upon assenting to these terms and conditions the Buyer acknowledges and agrees that:  
(a) These terms and conditions constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 ("PPSA"); and  
(b) A security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer during the continuance of the parties relationship;  
15.2 The Buyer undertakes to:  
(a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;  
(b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;  
(c) not register a financing change statement (in accordance with Regulation 9) or a change demand (in accordance with Regulation 10) without the prior written consent of the Seller;  
(d) give the Seller not less than 14 days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice); and  
(e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

- 15.3 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA

**16. PRIVACY ACT 1993**

- 16.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to collect, retain and use any information about the Buyer, for the purpose of assessing the Buyers creditworthiness or marketing any Goods and Services provided by the Seller to any other party.  
16.2 The Buyer authorises the Seller to disclose any information obtained to any person for the purposes set out in clause 17.1.  
16.3 Where the Buyer is a natural person the authorities under (clause 17.1 & 17.2) are authorities or consents for the purposes of the Privacy Act 1993.

**17. LIEN & STOPPAGE IN TRANSIT**

- 17.1 Where the Seller has not received or been tendered the whole of the Price, or where a bill of exchange or other negotiable instrument or the like has been dishonoured, the Seller shall have:  
(a) a lien on the Goods;  
(b) the right to retain them for the Price while the Seller is in possession of them;  
(c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and  
(d) a right of resale,  
(e) the foregoing right of disposal.

**18. UNPAID SELLERS RIGHTS TO DISPOSE OF GOODS**

- 18.1 In the event that:  
(a) the Seller retains possession or control of the Goods; and  
(b) payment of the Price is due to the Seller; and  
(c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and  
(d) the Seller has not received the Price of the Goods,  
then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

**19. GENERAL**

- 19.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.  
19.2 All Goods and Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law which affect the Goods or Services supplied.  
19.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.  
19.4 The Buyer shall not set off against the Price amounts due from the Seller.  
19.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.  
19.6 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods/Services.  
19.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change.

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