

# JAMES MORAN INTERIORSTYLE PTY LTD ACN 079 537 545

## (TRADING AS JAMES MORAN FURNITURE)

### GENERAL TERMS AND CONDITIONS OF SUPPLY

In these terms and conditions the Supplier means James Moran InteriorStyle Pty Ltd ACN 079 537 545 (v/as James Moran Furniture (ABN 83 214 203 434), a company duly incorporated in the State of Victoria and having its offices situated at c/- Aintree Group, 294 High Street, Kew, in the State of Victoria, and the Customer means the purchaser whose details are set out in Parts 1 and 2 or Parts 1 and 3 of the attached Credit Application Form or a person or entity whose order for the purchase of the Supplier's goods is accepted by the Supplier.

#### 1. Acceptance of Customer's Order

These terms and conditions apply to every sale contract between the Supplier and the Customer and by the Supplier to the Customer and any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions are expressly excluded, obviated and rejected by the Supplier. This exclusion and rejection includes any statement by the Customer that the Customer's terms and conditions shall prevail notwithstanding any stipulation by the Customer regarding the manner of declaring such rejection. A contract is only concluded between the Supplier and Customer for the supply of goods when the order has been accepted by the Supplier. The terms of this Clause apply to every quotation or offer by the Supplier for the supply of goods.

#### 2. Prices

All prices are "ex-warehouse" and do not include insurance or delivery charges and the Supplier may invoice the goods sold at the Supplier's price relevant to the goods ordered at the date of delivery of each order. Where the Supplier publishes or discloses a price list, this list is an invitation to treat only and the Supplier reserves the right to accept or reject in its absolute unfettered discretion any orders which may be received by it. Any price list of the Supplier's is subject to alteration at any time without notice.

#### 3. Property & Risk

The risk in the goods sold pass to the Customer when all or part of the goods are loaded for consignment at the Supplier's warehouse whether by carrier employed or engaged by the Supplier or the Customer. Notwithstanding anything contained herein, property in and legal title to the goods does not pass to the Customer until payment for all debts owing to the Supplier by the Customer has been received by the Supplier. Until such payment has been received by the Supplier, the Customer will store the goods separately and apart from its own goods and those of any other person or company. The Supplier is entitled to re-take possession of all goods delivered until all debts owing to the Supplier by the Customer have been paid in full. The Customer may re-sell any of the goods on normal commercial terms before the Supplier is paid in full provided that:

- the Customer re-sells as principal and has no right to commit the Supplier to any contractual relationship or liability to any third party; and
- subject to (a), as between the Supplier and the Customer, the Customer re-sells as fiduciary agent and bailee of the Supplier; and
- the Customer holds all rights in respect of the re-sale proceeds on behalf of the Supplier and, on request of the Supplier, will assign any claim against any such third party for any unpaid debt and for this purpose the Customer irrevocably appoints the directors of the Supplier for the time being as joint and several attorneys of the Customer to sign any documents to give effect to such assignment; and
- the Customer holds the proceeds of any re-sale or insurance claim on trust for the Supplier until the Supplier has been paid in full for those goods which are subject to re-sale or insured loss.

Until payment of all debts owing to the Supplier by the Customer, the Supplier may, at its discretion, without further notice and without prejudice to any other of its rights re-take possession of the goods and re-sell them, or any of them, and may enter upon the Customer's premises, by its servants or agents, for that purpose, without any liability on the part of the Supplier for any loss or damage suffered as a consequence of such entry or re-taking of possession and the Customer hereby agrees to provide the Supplier with an irrevocable licence to so enter any premises occupied by it if:

- there is a breach of any term of any contract between the Supplier and the Customer; or
- the Customer has provided any false or misleading information to the Supplier including information set out in any application for credit or to open an account with the Supplier; or
- the Customer commences to be wound up or bankrupted or an order in bankruptcy/sequestration order is made or the Customer is placed in liquidation, under official management, or a receiver, or a receiver and manager or voluntary administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or by an agent, takes or purports to take possession of the Customer's undertaking or property or any part thereof; or
- the Customer parts with possession of the goods or any of them otherwise than by way of sale in the ordinary course of its business.

These provisions apply despite any arrangement under which the Supplier provides credit to the Customer and these provisions will prevail to the extent of any inconsistency between these provisions and any other agreement or arrangement entered into by the Customer and the Supplier. In addition, the Supplier may recover the purchase price of the goods sold to the Customer by legal proceedings and may file an application for the appointment of a liquidator to the Customer notwithstanding that property in the goods has not passed to the Customer.

The Customer acknowledges and agrees that the retention of title arrangements referred to above constitute a purchase money security interest ("PMSI") for the purposes of the *Personal Property Securities Act 2009 (Cth)* ("PPSA") which PMSI is registrable by the Supplier on the Personal Property Securities Register established by the PPSA.

To the full extent permitted by the PPSA, the Customer and the Supplier agree that in relation to the goods and/or services that are the subject of a PMSI and to the extent that any of the provisions apply to those goods and/or services, none of the provisions specified in section 115(1) of the PPSA shall apply and the Supplier is not required to comply with any of those provisions.

#### 4. Insurance

All sales are made Free On Board at the Supplier's premises and the Customer will, at its own cost, insure the goods, in the Supplier's name, against such risks as a prudent owner of the goods would insure for at their full insurable value.

#### 5. Payment

The Customer agrees to and will pay in accordance with the invoice rendered by the Supplier namely either by:

- payment in full prior to delivery of the goods;
- cash on delivery; or
- terms as stated.

If the Supplier extends trading terms to the Customer, payment for all goods sold will be within thirty (30) days from the date of invoice. Interest is payable by the Customer, immediately on demand by the Supplier, on all amounts overdue to the Supplier from the date of sale of the goods until payment at the rate of eighteen (18) per centum per annum, however all interest charges will be waived by the Supplier in the event that payment is made to the Supplier within the time stipulated above. Where payment is not made by the due date, the Customer shall, in addition to any other obligations imposed hereunder, pay to the Supplier on demand all costs of the Supplier (including but not limited to storage delivery collection obsolescence and legal costs on a full indemnity basis).

- All payments received by the Supplier shall be applied as follows:
- firstly, towards any costs of the Supplier referred to above (or any part thereof);
  - secondly, towards any interest payable as set out above (or any part thereof); and
  - thirdly, towards any other amounts payable by the Customer to the Supplier.

Time of payment in accordance with this clause 5 for any goods sold to the Customer is an essential term of any contract between the Supplier and the Customer.

#### 6. Cancellation

Cancellation of any contract of sale between the Customer and the Supplier requires approval in writing from the Supplier otherwise the goods will be delivered to the Customer and the Supplier will be entitled to payment from the Customer.

The Supplier is not obliged to supply goods in relation to any contract and may cancel the contract at any time if:

- there is a breach of any term of any contract between the Supplier and the Customer; or
- the Customer has provided any false or misleading information to the Supplier including information set out in any application for credit or to open an account with the Supplier; or
- the Customer commences to be wound up or is placed under official management, or a receiver, or a receiver and manager or voluntary administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or by an agent, takes or purports to take possession of the Customer's undertaking or property or any part thereof; or
- the Supplier is unable to supply goods as a result of the failure of any supplier of the Supplier to deliver goods or provide services which are required in order for the Supplier to supply the goods to the Customer.

#### 7. Acceptance and Claims

Acceptance of the goods delivered shall be deemed for all purposes to have taken place at the expiration of fourteen (14) days from the date of each delivery. No goods will be accepted for return unless agreed in writing by the Supplier prior to such return and then only upon conditions acceptable to the Supplier and at the Customer's entire risk as to loss or damage and provided the goods are and remain sealed in the manner in which they were delivered. Where the Supplier agrees to accept goods for return a service fee of \$20.00 and a restocking charge of 15% of the price of the goods returned shall be paid by the Customer and the Customer shall remain responsible for all freight charges upon return. The Supplier's liability for a breach of any conditions or warranty implied by Division 2 of Part V of the *Trade Practices Act 1974* (other than a condition or warranty implied by Section 69 of the Act) is limited to such one or more of the following as the Supplier decides:

- the replacement of the goods or the supply of equivalent goods; or
- the repair of the goods; or
- the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- the payment of the cost of having the goods repaired.

Without limiting the generality of any other provision of these terms and conditions but subject to the above, the Supplier is not under any liability to the Customer or to any other person in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise either directly or indirectly in respect of the supply of the goods or any ancillary services or advice or the failure or omission on the part of the Supplier to comply with its obligations hereunder.

Except as expressly provided to the contrary in these terms and conditions, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise are excluded to the extent permitted by law, including but not limited to the United Nations Convention on Contracts for the International Sale of Goods.

#### 8. Force Majeure

If delivery is prevented or delayed, in part or all, by reason of an Act of God, or the consequence thereof including,

but not limited to fire, flood, typhoon, earthquakes, or by reason of riots, wars, hostilities, government restrictions, trade embargoes, strikes, lockouts, labour disputes, boycotting of goods, ship shortage, manufacturer's bankruptcy/liquidation, delays or damage in transportation or other causes beyond the Supplier's control, the Supplier may, at its sole and unfettered option, perform the contract or the unfulfilled portion thereof within a reasonable time from the removal of the cause preventing or delaying performance, or rescind unconditionally and without liability, this contract or the unfulfilled portion thereof.

#### 9. Special Orders

Where the Customer places an order in writing with the Supplier for non-stock items, the Supplier will not accept return of non-stock items unless the manufacturer agrees to accept return from the Supplier. The Supplier may deduct transport, insurance handling, restocking charges and return freight charges from the credit due to the Customer where any such items are returned to the Supplier and their return is accepted by the Supplier.

#### 10. Substitution

The Supplier reserves the right to substitute some other make or brand with similar specifications if any item ordered by the Customer is not available. The Customer is deemed to have accepted substitution where it does not object to same within seven (7) days of the date of delivery of the goods (unless a longer period is imposed by law). If the Customer is not satisfied with the substituted goods, the goods may be returned to the Supplier for credit, subject to any deductions made by the Supplier on account of return freight charges and any other charges imposed by these terms.

#### 11. Delivery

The Supplier may deliver the goods by instalments or partial shipment and the Customer will accept each such delivery. Requirements of the Customer are not a condition or of the essence of the contract. The Supplier is under no liability for either direct or consequential loss or damage to the Customer arising from delay or postponement in delivery.

#### 12. Warranty

Goods sold shall have the benefit of any warranty given by the manufacturer and will only be considered for acceptance by the Supplier if return of the goods or any part of them is in accordance with the Supplier's warranty policy but the Supplier shall not be liable for any loss or damage either direct or consequential arising out of any defects arising from the use of the goods.

#### 13. Clerical Errors

Clerical errors, typing errors or other errors in computations, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specification of the Supplier shall be subject to correction by the Supplier.

#### 14. Modification

All modifications and amendments to these provisions or any approvals hereunder shall be in writing by a duly authorised signatory, and if otherwise, shall not be binding upon the Supplier.

#### 15. GST

- For the purpose of this clause:  
GST means GST within the meaning of the GST Act.  
GST Act means *A New Tax System (Goods and Services Tax) Act (Cth) 1999* (as amended).  
Except where the contrary intention appears, expressions used in this condition and in the GST Act have the meanings given to them in the GST Act. In respect of any orders made and supplied prior to 1 July 2000, the applicable sales tax will be payable by the Customer in addition to the quoted prices. In respect of any order made prior to 1 July 2000 and supplied after 1 July 2000, quotes will include sales tax which will be replaced with GST at applicable rates if goods are supplied after 1 July 2000. In respect of all orders made and supplied after 1 July 2000, GST will be payable by the Customer at applicable rates. If the introduction of GST is associated with the abolition or reduction of any tax, duty, excise or statutory charge which directly or indirectly affects the net dollar margin of a supplier in respect of any supply made under this document, the consideration (excluding GST) payable for the supply must be varied so that the Supplier's net dollar margin in respect of the supply remains the same.  
Except as provided in Clause 15(b) and where express provision is made to the contrary, the consideration payable by a party under this document represents the value of the supply for which payment is to be made.  
If this document requires a party to pay for, reimburse or indemnify against any expense or liability ("reimbursable expense") incurred by the other party ("payee") to a third party, the amount to be paid, reimbursed or indemnified is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense ("net expense").  
Subject to Clause 15(f), if a party makes a taxable supply under this document for a consideration which represents its value by virtue of Clause 15(c) or the net expense by virtue of Clause 15(d), then the party liable to pay for the taxable supply must also pay the amount of any GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.  
A party is not obliged under Clause 15(e) to pay the GST on a taxable supply to it, until that party is given a valid tax invoice for the supply.  
If the amount of GST paid or payable by the Supplier on any supply made under this document differs from the amount paid by the Supplier as GST, due to an adjustment of the value of the taxable supply for the purpose of calculating GST, then the amount paid as GST by the Customer must be adjusted by a payment by the Customer to the Supplier or by the Supplier to the recipient, as the case requires, so that the amount paid by the recipient as GST accurately represents the GST payable in respect of the supply.

#### 16. Jurisdiction

All contracts between the Supplier and the Customer shall be governed by the laws of the State of Victoria and the parties shall submit to the non-exclusive jurisdiction of the courts of the State of Victoria (and any courts which can hear appeals from such courts).

#### 17. Execution

Any contract between the Supplier and the Customer may be executed on behalf of the Customer by any agent or employee of the Customer and the Customer shall be bound by these terms and conditions irrespective of whether any such execution was unauthorised or fraudulent.

#### 18. Indemnification

The Customer acknowledges and agrees to defend, indemnify and hold harmless the Supplier from and against any and all claims, actions, demands, proceedings, suits, penalties, fines, judgements, costs, losses, damages, omissions, injuries and expenses, including legal fees (on a full indemnity basis) and expenses, which are related to, in connection with or arise out of or incidental to the provision by the Customer to the Supplier of any designs, drawings, sketches, plans, photographs, prototypes or any other means however described including but not limited to electronic communication, for the purposes of the Supplier utilising same as an aid, assistance or otherwise in manufacturing a similar or identical product for the Customer.

In the event that the Customer neglects and/or fails and/or refuses to defend, indemnify or hold harmless the Supplier, the Customer acknowledges and agrees:  
to being joined by the Supplier as a party to any proceeding as contained in Condition 18(a) initiated against the Supplier;  
to pay to the Customer all legal and other costs (on a full indemnity basis) associated or in connection with the joinder of the Customer;

waive and forever abandon any rights which the Customer may have against the Supplier to claim or seek payment of any costs orders which may be made against the Supplier in favour of the Customer in connection with any proceedings initiated as a consequence of Condition 18(a) herein.

#### 19. Assignment

The Customer may only assign its rights in relation to any Order subject to the prior written consent of the Supplier.

#### 20. Severability

Each supply made by the Supplier will be made under a separate contract and will be invoiced separately. Each invoice will be payable by the Customer in full, in accordance with the specified terms of payment, without reference to and despite any default in any supply covered by any other invoice or Order.

#### 21. Liability

The Supplier is not liable for, and the Customer may not claim for, any loss or damage suffered by the Customer whether in contract or tort resulting from a breach of these terms and conditions in relation to any Order, or the non-performance of any goods and/or services, the aggregate amount of which is limited to the value of the goods and/or services as detailed in the relevant tax invoice from the Supplier.

#### 22. Special Conditions

Any special terms of supply by the Supplier of the goods and/or services are by this reference incorporated herein with the same force and effect as those set forth herein in full and shall prevail to the extent of any inconsistency with the printed terms and conditions hereof.

#### 23. Interpretation

- In these terms and conditions, unless the contrary intention appears:
- a reference to a person (including a party) includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency;
  - a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
  - a reference to a document (including these terms and conditions) includes any variation of it; the singular includes the plural and vice versa;
  - the words "include", "including" or "such as" are not used as, nor are they to be interpreted as words of limitation;
  - if a payment or other act must (but for this clause) be made or done on a day which is not a business day in Melbourne, then it must be made or done on the next business day in Melbourne;
  - this document must not be construed adversely to a party solely because that party was responsible for preparing it.