

QUOTATION FOR DESIGNER SERVICES

QUOTATION NO.: _____

QUOTATION

QUOTATION VARIATION

DATE: _____

CONSULTANT: _____ ("Consultant")

offers to provide the Services as listed below to:

CUSTOMER: _____ ("Customer")

Operating as a Sole trader Partnership Company Individual Other

OF (present address): _____

PHONE NO.: (Res) _____ (Mob) _____ (Bus) _____

At the following Premises: _____

The Services shall include:

And [commence/be provided] on or about: _____

For the contract price of: \$ _____

GST: \$ _____

TOTAL PURCHASE PRICE: \$ _____

Payable as follows:

Upon signing this Contract (Deposit): \$ _____

Upon: _____ \$ _____

Upon: _____ \$ _____

Upon: _____ \$ _____

TOTAL: \$ _____

Subject to the terms and conditions on the reverse side of, or otherwise forming part of, this Quotation.

This offer is open for acceptance by the Customer within _____ days of the date hereof.

Signed for and on behalf of the Consultant: _____

ACCEPTANCE AND ACKNOWLEDGEMENT

The Customer hereby acknowledges that it has read, understood and accepts this Quotation, the attached terms and conditions and any other documentation which together shall form the Contract between the Customer and Supplier.

Signed for and on behalf of the Customer

Date: _____

STANDARD CONTRACT TERMS

1. DEFINITIONS & INTERPRETATION

1.1 In these terms, unless the context otherwise requires:

Contract means the Quotation, these standard contract terms, and any plans, drawings or specifications attached to the Quotation.

Customer means the Customer referred to in the Quotation.

Goods means the cabinets, fittings, appliances, kitchenware and bathroomware specified in the Quotation.

Guarantor means each person named as a guarantor in the Quotation.

Installer means the installer of the Goods, as referred to in the Quotation.

Premises means the premises specified in the Quotation.

Price means the total purchase price (including GST) of the Goods and Services as set out in the Quotation, subject to any adjustment described in clauses 4.2, 4.3 and 5.1.

Quotation means the quotation for the supply of the Goods or Services to which these terms are attached.

Services means installation services, as specified in the Quotation.

Supplier means the Supplier referred to in the Quotation.

1.2 In these terms, **including** implies no limitation.

2. PROVISION OF GOODS AND SERVICES

2.1 Quotations are valid for 30 days after first provision to the Customer. The Contract comes into existence on the earlier of:

- (a) the date the Supplier first provides the Goods or Services;
- (b) the date the Supplier and the Customer have both signed the Quotation.

2.2 The Supplier will provide the Customer with the Goods and Services for the Price, using all reasonable care and skill, and otherwise in accordance with the Contract.

2.3 These standard contract terms apply to any other goods or services (including any advice or recommendations) provided by the Supplier.

2.4 The Quotation is given on the basis that:

- (a) the floors and walls of the Premises are true and square (subject to the tolerances contained in the New Zealand Building Standards);
- (b) all information requested by the Supplier, or otherwise provided by the Customer, is materially complete and accurate and no relevant information has been omitted; and
- (c) nothing else in or at the Premises will prevent, or may adversely affect, the ability of the Supplier to provide the Goods and Services for the Price and otherwise in accordance with the Contract.

2.5 If the Supplier discovers any one or more of the circumstances set out in clause 2.4 (Defect) at any time, the Supplier will promptly notify the Customer, explaining the nature of the Defect and the impact it will (or may) have on the provision of the Goods and Services. The parties will discuss and attempt to agree on how to remedy the Defect and any resulting change to the Quotation or the Price. Where the parties agree, a variation to the Contract will be prepared by the Supplier and, once signed by both parties, will be binding on them. If the parties cannot agree within 30 days of the Supplier notifying the Customer of the Defect, either party may refer the disagreement to dispute resolution under clause 14. Until agreement is reached, the Supplier shall be entitled to suspend work.

2.6 Unless expressly provided for in the Quotation, the Services do not include any plumbing, electrical, ducting, flooring, tiling, painting, decorating or similar work, including the removal of wall coverings, cabinetry or anything else from the Premises.

2.7 Lead times shall commence from payment of the deposit unless another date is specified in the Contract.

3. PRICE & PAYMENT

3.1 The Customer will pay the Supplier the Price as follows:

- (a) Deposit: payable immediately after the Customer signs the Quotation. The Supplier does not have to provide any Goods or Services until the deposit has been paid;
- (b) Balance of Price: payable on the dates, or on the occurrence of the milestones, set out in the Quotation;
- (c) Monthly progress payments: where applicable, payable on or before the last day of the month.

3.2 Where the Supplier is providing Goods, the price for the Goods is the price available to the Supplier at the time the Quotation is provided. Prices for Goods will be valid for 30 days from the date the Quotation is provided, unless the Supplier advises otherwise. The Supplier will advise the Customer when payment for the Goods is required and, the Supplier is entitled to be paid for the Goods prior to the Supplier acquiring them for resale to the Customer (unless otherwise specified in the Quotation). If the Customer fails to pay the Supplier for the Goods when requested, and the price to the Supplier for the Goods increases, the Supplier may pass on that increase to the Customer (and the Price will increase accordingly).

3.3 The Price and any other amount payable under the Contract are exclusive of GST.

3.4 All payments must be made in full, without set-off or deduction.

3.5 The Customer must pay interest at 12% per annum on any overdue amount from the due date until the date of payment in full.

3.6 If any overdue amount remains unpaid for more than 30 days, the Customer shall reimburse the Supplier on demand for all the Supplier's costs of debt collection (including legal costs on a solicitor – own client basis).

4. DELIVERY

4.1 The Supplier will use all reasonable endeavours to deliver the Goods to the Customer at the Premises on the date(s) for delivery agreed with the Customer.

4.2 The Supplier shall be deemed to have delivered the Goods in full and in good condition, unless the Customer notifies the Supplier otherwise within 5 days of receipt of the Goods.

4.3 The Supplier will not be liable for shortages in quantity unless:

- (a) the claim is notified to the Supplier within 5 days of receipt of the Goods, and
- (b) the Supplier is given a reasonable opportunity to investigate the claim.

4.4 Risk of loss or damage to the Goods passes to the Customer on delivery of the Goods to the Premises.

4.5 Title in Goods shall not pass to the Customer until the Customer has paid the Supplier in full for all Goods purchased from the Supplier. Until the Customer owns the Goods, the Customer will store them separately and safely, in a manner which makes them readily identifiable as the Supplier's.

4.6 Where payment for Goods or Services is overdue, the Supplier shall be entitled to remove Goods that have not been paid for from the Premises at any time, until payment of all overdue amounts has been made in full.

5. DEFAULT

5.1 If the Customer fails to pay any amount when due, or fails to perform any other material obligation under the Contract (Default), and has not remedied the Default within 7 days of receiving notice from the Supplier (Supplier's Notice), the Supplier may suspend the supply of Goods or Services to the Customer and the Supplier will have no liability to the Customer as a result.

5.2 If a Default remains unremedied for 30 days after the date of the Supplier's Notice, the Supplier may terminate the Contract and the Supplier will have no liability to the Customer as a result.

5.3 If the Supplier terminates the Contract, the following amounts will become immediately due to the Supplier:

- (a) all amounts due under the Contract at the date of termination, including interest (clause 3.5);
- (b) to the extent they are not recoverable under clause 5.3(a), all costs incurred by the Supplier in providing Goods and Services up to the date of termination (Work in Progress) plus the Supplier's usual margin on the Work in Progress;
- (c) any other costs and expenses reasonably incurred by the Supplier in connection with termination.

6. CONSUMER GUARANTEES ACT 1993

6.1 The parties agree that, where Goods or Services are being acquired for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 (CGA) do not apply to the Contract and:

- (a) the Supplier and the Customer are, and the Goods and Services are supplied and acquired, in trade;
- (b) the Supplier and the Customer agree to contract out of the provisions of the Act.

6.2 Subject to clause 6.1, nothing in the Contract shall derogate from the Customer's rights under the CGA.

7. WARRANTY

7.1 The Supplier warrants the Goods and Services against faulty workmanship or materials (Warranty) for the period specified in the Quotation (Warranty Period). The Warranty Period commences:

- (a) for Goods: on the date of installation of the relevant Goods at the Premises;
- (b) for Services: from the date of completion of the relevant Services, or any later date specified by the Supplier in writing.

7.2 The Warranty will not apply if:

- (a) the Goods are installed or repaired by any person not authorised by the Supplier;
- (b) the Goods are used other than for the purpose for which they were intended; or
- (c) the defect arises from fair wear and tear, or damage caused by accident, neglect, abuse, wilful act, misuse, theft or any circumstance beyond the Supplier's reasonable control.

All costs incurred by the Supplier for investigating or rectifying any defects caused due to any of the above will be reimbursed by the Customer upon demand.

7.3 Where the Goods or Services fail to comply with the Warranty within the Warranty Period, the Customer may require the Supplier to remedy the failure within a reasonable time.

7.4 The Supplier shall not be liable for any failure of the Goods or Services to comply with the Warranty unless:

- (a) the failure is notified to the Supplier within a reasonable period of the defect becoming apparent; and
- (b) the Supplier is given a reasonable opportunity and period of time to investigate and remedy the failure.

7.5 Except as expressly set out above, the Supplier excludes, to the maximum extent permitted by law, all other warranties and guarantees whether written, statutory, oral, express or implied (including any warranty of merchantability or fitness for purpose).

8. LIABILITY

- 8.1 The Supplier's liability to the Customer in connection with the Goods and Services and the Contract, whether in contract, tort (including negligence) or otherwise, in respect of all claims for loss, damages or liability will not, in aggregate, exceed an amount equal to the Price.
- 8.2 The Supplier shall have no liability whatsoever to the Customer for any indirect or consequential loss, nor for any loss of profits, business or reputation.
- 8.3 Where any person other than the Supplier or the Supplier's contractors is engaged by the Customer to provide goods or services (including the Goods and Services), the Supplier shall have no liability whatsoever to the Customer in relation to those goods or services.
- 8.4 The Customer shall indemnify the Supplier against any, loss, damage, liability, cost or expense incurred or suffered by the Supplier arising from any claim by a third party in connection with the provision of the Goods or Services, except to the extent that claim arises from the Supplier's negligence.

9. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 9.1 The Customer's right to possession of the Goods shall cease if the Customer either fails to pay the Supplier for the Goods on the due date, becomes unable to pay its debts as they fall due, or breaches the terms of any mortgage over the Premises.
- 9.2 The Supplier or its representatives, agents or servants may at any time enter upon the Premises, or any other land or premises where the Supplier believes such Goods may be, using such reasonable force as is necessary, to view and inspect the same and repossess them if the Customer's right to possession of the Goods has ceased.
- 9.3 The Customer must indemnify the Supplier and its representatives, agents or servants against any liability arising from the entry by the Supplier to the Premises or any other place under this clause 9, including any act of trespass committed by such entry.
- 9.4 The Customer acknowledges that:
- (a) these terms constitute a security agreement for the purposes of the PPSA; and
 - (b) the Customer grants a security interest to the Supplier in all Goods, all proceeds (as that term is defined in the PPSA) and any other goods in which an accession (as that term is defined in the PPSA) is installed or to which the accession is affixed; and
 - (c) the Customer shall, until all amounts payable under the Contract are paid in full, hold all proceeds (as that term is defined in the PPSA) from the on-sale of the Goods in trust for the benefit of the Supplier.
- 9.5 The Customer must:
- (a) sign any further documents or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register in respect of its security interest;
 - (b) indemnify, and upon demand reimburse, the Supplier 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 or a change demand without the prior written consent of the Supplier;
 - (d) give the Supplier not less than 7 days prior written notice of any proposed change in the Customer's name 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); and
 - (e) immediately advise the Supplier 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.
- 9.6 The Customer has no rights under section 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a copy of a verification statement in accordance with section 148 of the PPSA.

10. GUARANTEE

- 10.1 Each guarantor hereby guarantees to the Supplier the due and punctual performance by the Customer of its payment obligations under this Agreement (guaranteed moneys).
- 10.2 As a separate and independent obligation each Guarantor indemnifies the Supplier against all losses or damage which the Supplier may suffer or sustain as a result of the non-payment of all or part of the guaranteed moneys.
- 10.3 The obligations of each Guarantor under this guarantee and indemnity are principal obligations imposed upon the Guarantor as principal debtor. Accordingly each Guarantor acknowledges that the Supplier has the right to make a claim or demand against that Guarantor without having first made a claim or demand against the Customer or any other Guarantor.
- 10.4 This guarantee and indemnity is not impaired or discharged by the fact that all or any part of the guaranteed moneys may not or may cease to be recoverable from the Customer or any other Guarantor for any reason (other than the guaranteed moneys have been fully paid or satisfied), the granting of time, credit, forbearance, indulgence or concession to the Customer or to any other Guarantor, or any other matter or thing which but for this provision could or might operate to abrogate the effect of this guarantee and indemnity.
- 10.5 The obligations under this guarantee and indemnity shall bind two or more Guarantors jointly and severally.
- 10.6 The Supplier may assign, absolutely or by way of security, its rights under this guarantee and indemnity.

11. OTHER SECURITY

- 11.1 Where the Supplier provides any Goods or Services to the Customer, the Customer hereby acknowledges that the Supplier shall be entitled to step-in rights with respect to any third party by whom the Customer is engaged (End-Customer). The Customer shall, upon reasonable request of the Supplier, provide all reasonable details and particulars of the End-Customer and its terms of engagement with the Customer. Where the Customer is in default, the Supplier shall be entitled to demand payment directly from the End-Customer and the production to the End-Customer of these terms of trade shall be sufficient evidence, without the need for the End-Customer to make further enquiries, that the Customer has authorised the End-Customer to pay the Supplier direct.
- 11.2 The Customer and each Guarantor agrees to mortgage and charge, to the Supplier, all of their joint and several interest in any land and any other asset capable of being charged to secure payment of all amounts due under these terms. The Supplier shall be entitled to lodge a caveat against land to protect its rights under this clause.
- 11.3 The Customer and each Guarantor shall indemnify the Supplier from and against all the Supplier's costs and disbursements, including legal costs on a solicitor and own client basis, incurred by the Supplier in enforcing its rights under the Contract.
- 11.4 The Customer and each Guarantor irrevocably appoints the Supplier as the Customer's and the Guarantor's attorney to execute all documents, mortgages and charges (whether registrable or not) as the Supplier shall think fit in its absolute discretion and further to do and perform all other acts which may be necessary or advantageous to give effect to the provisions of this clause 11.

12. INSURANCE

- 12.1 The Customer shall be responsible for, and shall maintain, all necessary and appropriate insurance for the Goods from the time of delivery, and will produce a copy of the insurance cover note to the Supplier if requested.

13. PRIVACY

- 13.1 The Customer and any Guarantor authorises the Supplier to collect, retain, use and disclose any information about the Customer solely for the purpose of assessing the Customer's creditworthiness or marketing any Goods and Services provided by the Supplier or its partners.
- 13.2 Where the Customer is a natural person and information collected by the Supplier is personal information, the Customer has the right to access and correct that information.

14. DISPUTES

- 14.1 If either party notifies the other in writing of any dispute arising in connection with the Contract, the parties will, meet promptly to negotiate in good faith to resolve the dispute. The parties may, but are not obliged to, use a mediator.
- 14.2 If any dispute cannot be resolved between the parties within 30 days of notification under clause 14.1, either party may refer the dispute (by written notice to the other party) for determination by a single person who is suitably qualified and experienced (Expert) to determine the matter in dispute.
- 14.3 The dispute resolution mechanism in this clause 14 is in addition to, and not in substitution for, adjudication available under the Construction Contracts Act 2002.

15. GENERAL

- 15.1 If any part of the Contract is declared by a Court to be invalid, void, illegal or unenforceable, the rest of the Contract shall remain in force.
- 15.2 The Customer may not assign its rights and obligations under the Contract without the prior written consent of the Supplier.
- 15.3 The Contract is subject to the laws of New Zealand and each party irrevocably submits to the exclusive jurisdiction of the Courts of New Zealand.
- 15.4 If any legislative change affects the ability of the Goods or Services to comply with the law, the Customer may request the Supplier to make the Goods or Services compliant, at the Customer's cost.
- 15.5 Neither party will be liable to the other for any delay or non-performance of its obligations under the Contract (other than a payment obligation) arising from any cause beyond that party's reasonable control.
- 15.6 If the Customer (or its personnel) goes onto the Supplier's premises for any reason, the Customer must ensure that each of them takes reasonable care for his or her own health and safety, takes reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons and comply, as far as he or she is reasonably able, with any reasonable instruction that is given by the Supplier to allow the Supplier to comply with the Health and Safety at Work Act 2015.
- 15.7 Any variation to the Quotation or any other part of the Contract must be in writing, signed by both parties.
- 15.8 The Contract is the only agreement between the parties for the Goods and Services. Any prior agreements, statements, representations or understandings (whether oral or written) relating to the Goods and Services shall be of no effect.