
McGRATH BENCHTOP SOLUTIONS LTD - TERMS & CONDITIONS

1. DEFINITIONS

- 1.1 **"Conditions"** means these Terms and Conditions of the Company and includes any variations applicable hereto.
- 1.2 **"Customer"** means the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.3 **"Goods"** means all Goods and/or Services supplied by the Company to the Customer.
- 1.4 **"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-debtor basis.
- 1.5 **"Company"** means McGrath Benchtop Solutions Ltd and its successors and assigns.
- 1.6 **"Price"** means the cost of the Goods as agreed between the Company and the Customer, subject to Condition 5.

2. ACCEPTANCE

- 2.1 Any instructions whether written or verbal, received by the Company from the Customer for the supply of Goods and/or, the Customer's acceptance of Goods supplied by the Company, shall constitute acceptance of these Conditions.
- 2.2 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.
- 2.3 Upon acceptance of these Conditions by the Customer the terms and condition hereof are irrevocable and can only be rescinded or amended in accordance with these Conditions or with the written consent of the Company.
- 2.4 None of the Company's agents or representatives are authorised to make any representations, statements, Conditions or agreements not expressed by the Company in writing nor is the Company bound by any such unauthorised statements.
- 2.5 The Customer undertakes to give the Company 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).

3. ESTIMATE/QUOTE

- 3.1 The Customer agrees and acknowledges that any estimate provided by the Company to the Customer have been prepared by the Company in reliance on the information, specifications and drawings provided by the Customer.
- 3.2 The Customer agrees and acknowledges that it is solely responsible for providing the correct information, specifications and drawings to the Company for the purposes of the Company providing the Customer with an estimate for the supply of the Goods.
- 3.3 Any estimate provided by the Company to the Customer is only valid for a period of thirty (30) days from the date of the estimate but no later.

4. GOODS

- 4.1 The Goods are as described on any invoice, estimate, work authorisation or any other work commencement forms as provided by the Company to the Customer.
- 4.2 The Company 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 provided to the Customer.
- 4.3 If the Customer requests or requires, for any reason, amendments to the dimensions, specifications, colours, shapes, or any other aspect of the Goods then it shall be liable to the Company for payment of the Price and any increases in costs caused by the amendments, at the sole discretion of the Company.
- 4.4 The Goods shall be deemed of merchantable quality if they are made in accordance with the estimate provided and accepted by the Customer.
- 4.5 All Goods supplied (Laminate, 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 Company. These colours may again vary slightly from the sample chips displayed in our showroom.
- 4.6 Solid Surface (Acrylic) Benchtops are finished with inconspicuous joints and have a visibility tolerance from a minimum distance of one and a half (1.5) metres. All glue colours supplied are recommended by the Company.

- 4.7 Solid Surface (Acrylic) Benchtops will be polished to a satin finish unless stated otherwise on estimate.

5. PRICE AND PAYMENT

- 5.1 At the Company's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
- (b) the Company's estimate Price which shall be binding upon the Customer provided that the Customer shall accept the Company's estimate (based on specifications and finishes as provided by Customer) within three (3) months from the date of the estimate.
- 5.2 Subject to Condition 8.2, the Customer agrees that the deposit is fully non-refundable for any reason not attributable to the Company, unless agreed otherwise by the Company in writing.
- 5.3 Unless agreed otherwise, payment of all amounts payable by the Customer will be made in full no later than 7 days from invoice.
- 5.4 For Non Account Customers, payment of 50% is payable on acceptance of quotation, and 50% on day of installation. Full payment must be received prior bench top(s) leaving the Company's premises.
- 5.5 If full payment is not made by the due date for payment, the Customer will pay, at the Company's discretion (and without prejudice to any other rights or remedies the Company may have), on demand, default interest on any amount outstanding, at a rate equal to 3% above the current base lending rate from time to time set by the Company's bankers, from the date when payment is due until the date when payment is actually made and all expenses and costs (including legal costs between solicitor and client) incurred by the Company in connection with the Company recovering or attempting to recover any overdue amount.
- 5.6 Payment will be made by cash, bank cheque, direct credit, or by any other method as agreed between the Customer and the Company.
- 5.7 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 Company.
- 5.8 Before the Company commences any repair, the Company may request the Customer to pay a deposit equivalent to fifty percent (50%) of the invoice total, with the balance payable on completion of the repair.
- 5.9 If cabinets are not complete at time of template, a re-template fee of a minimum of \$300 plus GST will need to be paid prior to scheduling a re-template.
- 5.10 Call outs for additional cut outs will incur a minimum charge of \$175 plus GST.
- 5.11 If template varies from estimate cost will be adjusted accordingly.
- 5.12 Any non account customer who has over paid will be refunded either by same way of transaction e.g. electronic funds transfer (EFT). Any 30 day account holders who over paid will have these funds go into credit being deducted off any current invoices and/or future transaction.

6. DELIVERY OF GOODS / INSTALLATION

- 6.1 If the Company is to install the Goods, the Customer must ensure, at its own cost, that:
- (a) the site is prepared to the satisfaction of the Company;
- (b) the Company (and its authorised personnel) has the access to the site that the Company reasonably requires.
- 6.3 The Company shall not be liable for any loss or damage whatsoever suffered or incurred by the Customer, due to failure by the Company to deliver the Goods (or any part thereof) promptly or at a time previously indicated by the Company provided that the Goods are delivered within a reasonable time.
- 6.4 Delivery's to upper levels may require a hoist and will incur additional cost.
- 6.5 All cut out items must be on site at the time of template for inspection by the Company to determine cut out size. The Company will not be held responsible for cut out size if determined by any other means including manufacturers recommendation for a particular model.
- 6.6 Overhangs exceeding 300mm on any top will require support by the customer unless stated otherwise.
- 6.7 Although care will be taken by installers the Company 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 Company recommends all areas (draw runners and mechanical fittings) be covered and/or protected to avoid any possible damage.
- 6.8 When sink fitting is included in estimate, the Company will not be responsible for any plumbing connections. This must be completed by a

- licensed plumber. The Company will not be held responsible for any direct or indirect damage caused by leaking plumbing fixtures.
- 6.9 The Company does not provide support for the underneath of tops. Cabinets must be level to a tolerance of +/- 1mm per metre. If cabinets are not level, the Company will not be able to provide a join or structural warranty on tops. If at time of template the cabinets are found not within tolerance the customer will be notified. If additional work is required then another appointment for template will be required. This will be at the customers expense.
- 6.10 Removal or disposal of existing tops, plumbing and/or electrical connections/ disconnections are not included unless specified on the estimate.
- 7. RISK**
Whilst the Company 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.
- 8. ERRORS AND OMISSIONS**
- 8.1 The Customer shall inspect the Goods on delivery and shall within twenty four (24) hours of delivery notify the Company of any alleged damage, defect, shortage in quantity, errors, or omissions not in compliance with the invoice or estimate ("Defects"). The Customer shall afford the Company 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, 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 For defective Goods, provided that the Customer has complied with the provisions of Condition 8.1, the Company's liability is limited to either giving credit, replacing the Goods or repairing the Goods, at the Company's sole discretion.
- 8.3 Subject to Condition 8.2 above, the Price is fully due and payable and there shall be no entitlement of the Customer for a refund or credit of the Price for any alleged Defects.
- 8.4 The Price is fully due and payable, and the Customer indemnifies and will hold harmless, the Company from and against any and all loss or damage suffered for any alleged Defects, caused by the Customer providing incorrect information as to the specifications, quantities, drawings and finishes of the Goods.
- 9. CUSTOMER DISCLAIMER**
The Customer hereby disclaims any right to rescind, or cancel these Conditions or to sue for damages or to claim restitution arising out of any misrepresentation to him by Company or any servant or agent of the Company and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgment.
- 10. GOVERNING LAW**
These conditions will be governed by New Zealand law and the Customer agrees to submit to the exclusive jurisdiction of the New Zealand courts.
- 11. CANCELLATION**
- 11.1 The Company may cancel these Conditions or cancel delivery of the Goods at any time before the Goods are delivered by giving written notice to the Customer outlining the reasons for cancellation. The Company shall not be liable for any loss or damage whatever suffered or incurred by the Customer, and arising from such cancellation.
- 11.2 At the Company's sole discretion, the Customer may cancel supply or delivery of the Goods. In the event that the Customer cancels the supply or delivery of the Goods the Customer shall be liable to the Company for payment of the Price, or any costs incurred by the Company up to the time of cancellation, at the Company's sole discretion.
- 12. DEFAULT & CONSEQUENCES OF DEFAULT**
- 12.1 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify and hold harmless the Company from and against any and all of the Company's costs and disbursements relating to such default, including on a solicitor and own client basis and in addition all of the Company's nominees costs of collection.
- 12.2 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any of its obligations (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this Condition.
- 12.3 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 Company 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 5.4.
- 12.4 In the event that:
- any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
 - 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
 - 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 Company's other remedies at law:
 - the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies it may have consequent upon the happening of that event; and
 - all amounts owing to the Company shall, whether or not due for payment, immediately become due and payable.
- 13. TITLE AND REPOSSESSION**
- 13.1 The Company retains ownership and property in and to the Goods until the Customer has paid in full all amounts owing for the particular Goods.
- 13.2 In the event of a failure by the Customer to pay in full all amounts owing to the Company, the Company may, at its sole discretion, and to the extent permitted by law, enter upon the Customer's premises or other property where the Goods are located, for the purpose of recovering possession of the Goods.
- 13.3 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 Company for the particulars Goods in agreement and acknowledgment that the Company retains ownership and property in and to the Goods.
- 14. SECURITY AND CHARGE**
- 14.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these Conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat over the title to that land, realty or other asset, which caveat shall only be released once all payments and other monetary obligations payable hereunder have been met.
 - Should the Company elect to proceed in any manner in accordance with this Condition or any part thereof, the Customer and/or Guarantor shall indemnify the Company from and against any and all of the Company's costs and disbursements incurred in so proceeding, including legal costs on a full indemnity basis.
 - 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 Company or the Company'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 Company and/or the Company'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 Company and in the Customer's and/or Guarantor's obligations and indebtedness to the Company 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 Company's absolute discretion which may be necessary or advantageous to give effect to the provisions of this condition.
- 15. GUARANTEE AND INDEMNITY**
- 15.1 The Guarantor(s) hereby agree and undertake to:
- Guarantee to the Company the due and punctual observance and performance of the Customer's obligations under these Conditions; and
 - Indemnify the Company and keep the Company indemnified against all losses, expenses, claims, and damages incurred or reasonably expected to be incurred by the Company 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 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 Company is stopped from enforcing any term of these Conditions, or that the Customer has any other defence against an action by the Company 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 Company 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 also agree to pay the Company on demand the loss, damage, costs and expenses suffered or incurred by the Company 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 Company 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 Company 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 Company as a result of a default including the Customer's terminating these Conditions.
- 15.7 If a payment to the Company in connection with these Conditions is void or voidable under laws relating to insolvency or protection of creditors the Company remains entitled to the rights against the Guarantor which the Company 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 Company may assign the rights under, and the benefit of, the obligations of the Guarantor under these Conditions.
- 16. GENERAL**
- 16.1 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.
- 16.2 If at any time the Company does not enforce any of these conditions or grants the Customer time or other indulgence, the Company will not be construed as having waived that condition or its rights to later enforce that or any other condition.
- 16.3 All Goods supplied by the Company are subject to the laws of New Zealand and the Company takes no responsibility for changes in the law which affect the Goods supplied.
- 16.4 To the fullest extent permitted at law, the Company shall be under no liability whatever to the Customer for any loss and/or expense (including loss of profit) suffered by the Customer arising in any way from or out of these Conditions.
- 16.5 In the event of any breach of these Conditions by the Company the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Company under these Conditions exceed the Price of the Goods.
- 16.6 The Customer shall not set off against the Price amounts due from the Company, if any.
- 16.7 The Company may license, assign or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.8 The Company 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 Company notifies the Customer of such change.
- 16.9 Neither party shall be liable for any default 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.