

Terms and Conditions (Quotation and Sale, Product Supply, Trade Services)

Definitions and Interpretation

In these terms and conditions unless the context otherwise requires:

- a) 'Buyer' means the person named as the Buyer in the Sales Invoice or Quotation.
- b) 'Goods' means the items and any services provided by the Seller to the Buyer.
- c) 'Quotation' means the form, tender or quotation submitted by the Seller to the Buyer which are subject to these terms and conditions.
- d) 'Seller' means Estelle Elliott Designs Pty Ltd.
- e) The expression 'Person' includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.

Quotations

- a) Unless previously withdrawn, Quotations are valid for (30) days or such other period as stated therein. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise until the Buyer's order has been accepted by the Seller in writing.
- b) Any special conditions specified as such on a Quotation or Sales invoice shall, to the extent that they are inconsistent with these terms and conditions take precedence over these terms and conditions.
- c) The seller shall not be bound by any condition attached to the Buyer's order or acceptance of the Quotation and unless such conditions are expressly accepted by the Seller in writing to the Buyer hereby acknowledges that such conditions are expressly excluded.
- d) Unless otherwise stated in writing by the Seller, prices quoted exclude delivery, installation, insurance in transit, packing, handling charges, and any other charges. Any charge, duty, import or other expenditure which is not applicable at the date of Quotation but which is subsequently levied upon the Seller in relation to the Quotation as a result of the introduction of any legislation or government policy, shall be to the Buyer's account.
- e) Photographs, drawings, illustrations and dimensions and any other particulars accompanying associated with or given in descriptive literature or a catalogue, approximate the goods offered but may be subject to alteration without notice.
- f) Any performance data provided by the Seller or manufacturer is an estimate only and should be construed accordingly.

Terms of Payment

Unless otherwise stated by the Seller in writing, Terms of Payment are:

- a) Written confirmation with a minimum 50% deposit is required to secure the order and/or commence production.
- b) The Buyer must pay the invoiced amount prior to delivery. Any amount not paid by the due date will attract interest at a rate of 10% per annum from the date payment was due until the amount is paid in full.
- c) Payments received will be applied firstly against any interest owing under this clause and secondly against the outstanding invoice amount.
- d) All goods remain the property of Estelle Elliott Designs Pty Ltd until final payments are received.
- e) Interstate and local deliveries require invoice balance paid in full prior to despatch.
- f) Credit card payments are accepted for Visa and MasterCard only. A surcharge of 1.5%, or a percentage otherwise prior agreed, is applied.

Shipment and Delivery

- a) Upon acceptance of an order, the Seller may confirm the period of shipment or delivery and must notify the Buyer of any variation from the quoted period.
- b) A quoted delivery period will only commence on the date the Buyer makes final invoice payment.
- c) The Seller may extend the delivery period if any variation is made.
- d) The Seller will not accept any liability or responsibility for delays in the delivery of goods.
- e) If the goods are ready by the original requested date and the buyer is not ready to receive the goods, the seller may apply storage fees based on the cubic meterage of the goods.

Part Deliveries, Substitute Goods, Supply

- a) The Seller reserves the right to make part deliveries of any order and each part delivery shall constitute a separate sale of goods upon these terms and conditions and may be invoiced separately.
- b) The Seller reserves the right to suspend or discontinue the supply of goods to the Buyer without being obliged to give any reason for its action.
- c) The Buyer can request part deliveries at additional cost to an additional delivery fee.

Buyer's Cancellation

- a) Unless otherwise agreed in writing, the Buyer shall have no right to cancel an order which has been accepted by the Seller.
- b) If agreed and a cancellation is approved, a 30% cancellation fee will apply to the full invoice.

Delivery and Title

- a) Delivery shall be deemed to be made when the Goods are delivered to the place specified in the Quotation or Purchase Order.
- b) Title of the Goods and to each part thereof shall not be transferred to the Buyer until the total purchase price and any other sums due to the Seller under these Terms and Conditions, including any late payment charge payable hereunder has been duly paid.
- c) Payment shall be deemed not to have been made until after any monies payable otherwise than by cash have been duly collected by the Seller.
- d) Unless or until such payment is made;
 - i. The Buyer will hold the Goods and any monies received by the Buyer in respect of the sale or disposal of them (or if any part of the whole thereof has been damaged or destroyed, an insurance or other compensation monies received) on trust for the Seller; and
 - ii. The Buyer shall store the Goods or hold such monies in such manner as to show clearly that they are the property of the Seller.
- e) The Buyer irrevocably authorises the Seller at any time to enter onto any premises upon which:
 - i. The Seller's goods are stored or held for the Seller to inspect on request from the Buyer.
 - ii. If the Buyer is in default under these Terms and Conditions, to reclaim the goods.
 - iii. The Buyer's records pertaining to the goods are held, to inspect and copy such records.
- f) The risk in the Goods shall pass to the Buyer upon delivery. Buyer accepts the responsibility for insurance from that time notwithstanding the Buyer does not become the owner of the Goods until payment in full.
- g) If the Buyer delays delivery and installation of the Goods for any reason whatsoever the Seller shall be entitled to charge a reasonable fee for storage of the Goods in respect of each day that the delivery and installation of the Goods is delayed past the agreed delivery date.
- h) If the Seller attempts delivery of the Goods and it is discovered that the delivery site is not ready for installation of the Goods and the Seller is required to return the goods back to its own premises and subsequently re-deliver the Goods to the Buyer, the Seller shall be entitled to charge a reasonable fee to recover the additional transport and storage costs.

Inspection and Acceptance

- a) The Buyer shall inspect all goods upon delivery. Accepting the goods is an acceptance of the condition in which they are delivered. If the goods are damaged when delivered, the Buyer must refuse goods.
- b) The Buyer shall within forty-eight hours of delivery give notice to the Seller of any matter or thing in which the Buyer alleges that the goods are not in accordance with the Buyer's order.
- c) Failing such notice and to the extent permitted by statute, the goods and their condition shall be deemed to have been delivered and accepted by the Buyer.

Warranties

- a) Warranties as applicable are provided only by the manufacturer of items supplied by the Seller.

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- b) Any warranty terms and conditions shall be confirmed by the Seller if requested by the Buyer at the time of quotation and prior to confirmation of the order.
- c) The Seller does not warrant any products supplied, but will provide support to the Buyer to resolve any issues with the product that invokes any manufacturer's warranties.
- d) The warranty period commences when;
 - i. All goods have been delivered, accepted by the Buyer and paid in full.
 - ii. Where required, the installation has been signed off by the Buyer's representative.
- e) The Seller will support the Buyer for any issues involving the manufacturer's warranty for a maximum one year period from the commencement of the warranty.
- f) Warranty periods apply to structural workmanship only and are subject to normal commercial and residential conditions.
- g) For a warranty support query, Estelle Elliott Designs or representative will arrange for a manufacturer representative to conduct an inspection of any item questioned within the warranty support period to assess the nature and grounds of fault. Any items that have been vandalised, misused, stolen, altered, placed in extreme UV environments or normal wear and tear will not be covered by the warranty support service.
- h) The warranty support extends only to the original purchaser.
- i) Natural variations occurring in wood, marble and leather are not considered defects. The Seller does not warrant the colourfastness or matching of colours, grains or textures of these natural materials or textiles.
- j) To the extent allowed by law any implied warranties including any warranty of merchantability or fitness for a particular purpose are limited. The seller shall not be liable for loss of time, inconvenience, commercial loss, incidental or consequential damages.
- k) The Buyer may be required to supply a proof of purchase. This is at the Sellers discretion.
- l) Warranty support will not be provided for items for which a manufacturer's warranty does not exist, is not valid, or which was not confirmed by the Seller prior to the confirmation of the order.

Return Policy

- a) Estelle Elliott Designs does not cover transport or freight costs incurred with the return of any items.
- b) Items specified for return must be itemised and submitted for Estelle Elliott Designs to approve the identity of the items.
- c) No returns will be accepted on customised items.
- d) If requested after 3 business days from the time of delivery, approved returns will incur a 30% fee of the total invoice.

Default of Buyer

- a) If the Buyer defaults by non-payment or non-performance of any obligations under this Agreement or if any proceedings under any bankruptcy, liquidation or insolvency laws are commenced by or against the Buyer, the Seller will have the right to exercise any one of the following remedies:
 - i. Declare all unpaid charges to be immediately due and payable;
 - ii. Require the Buyer to make available all documentation and to assemble such parts of the Goods provided hereunder which has not been paid for and to make the same available at a time and place reasonably convenient to the Seller.
 - iii. Take possession without demand or notice (the right to demand or notice the Buyer hereby expressly waives) of all parts of the Goods as yet unpaid for.
 - iv. Sell, leave or otherwise dispose of the Goods publicly or privately;
 - v. Terminate the Agreement in whole or in part and /or;
 - vi. Pursue any other remedies existing at law or in equity.
- b) In addition to any other payment obligations hereunder the Buyer agrees to pay to the Seller all costs and expenses including reasonable legal fees and costs incurred by the Seller in exercising any of its rights and remedies.

Copyright of Design

- a) The Buyer agrees that any design, drawing, investigations, bills of material, specifications, etc carried out by the Seller specifically

associated with the subject of the quotation remains the intellectual property of the Seller.

Confidentiality

- a) The Seller undertakes not to disclose at any time any commercial, personal or technical details associated with the purchase order.

Work Site Conditions

- a) Access: The Buyer undertakes to provide access to the site as necessary within good time. The Seller is to give reasonable notice of time of commencement on site. The Seller is to advise immediately of any problems with access to the site.
- b) If the site is deemed "unsafe" by the Seller, the Seller reserves the right to refuse entry.

Force Majeure

- a) If in the performance or observance of its obligations the Seller is prevented, restricted or affected by reason of a force majeure including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond reasonable control of the Seller, the Seller may in its absolute discretion give prompt notice of such cause to the Buyer whereupon the Seller is excused from such performance or observances to the extent of such prevention, restriction or affection.

Disputes

- a) If a difference or dispute (together called a "dispute") between the parties arises in connection with the subject matter of the Agreement, then either party may, by hand or by registered post, give the other party a written notice of dispute adequately identifying and providing details of the dispute. Notwithstanding the existence of a dispute, the parties must continue to perform the Agreement.
- b) Within 14 days after receiving a notice of dispute, the parties must confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party will be represented by a person having authority to agree to such resolution or methods of resolution. All aspects of every such conference except the fact of occurrence will be privileged.
- c) If the dispute has not been resolved within 28 days of service of the notice of dispute, the parties agree to endeavour to settle the dispute by the following methods:
 - (i) For small claims, by adjudication by the Queensland Civil and Administrative Tribunal (QCAT).
 - (ii) For any dispute not considered small claims (outside of the scope to be adjudicated by QCAT), by mediation administered by the South Queensland Dispute Resolution Centre ("SQDRC"), or equivalent to be otherwise agreed by both parties, before having recourse to litigation. The mediation shall be conducted in accordance with the SQDRC Guidelines for Commercial Mediation ("Guidelines") which are operating at the time the matter is referred to SQDRC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
 - (iii) Nothing in this clause will prejudice the right of a party to institute proceedings to enforce any payment due under the Agreement or to seek injunctive or urgent declaratory relief.

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Specific Terms and Conditions – Window Treatments

- a) The Seller relies on the supplier for the installation of Window Treatments, and all terms and conditions for the installation services shall be agreed directly between the Buyer and the window treatment installer.
- b) Access will be required for installation. The Buyer is to provide site access for installation between 8:00am and 5:30pm Monday to Saturday (public holidays excluded).
- c) The Buyer is responsible for advising the installer regarding the location of any water pipes, electrical wiring, or other obstructions that could cause damage or could create an unsafe environment;
- d) The Buyer is responsible for removing any existing Window Treatments. A minimum charge of \$15/window will be charged at point of installation if it is necessary for the installer to remove or move any existing window coverings, furniture or fixing to gain access for the installation.
- e) Window treatment blinds and fabrics may vary slightly between dye batches. Samples shown to the Buyer are representative only.
- f) Blinds are manufactured square and no responsibility can be accepted for windows or doors that are out of square.

Specific Terms and Conditions – Trade Services

- a) Trade Services includes any trade arranged by the Seller on behalf of the Buyer including but not limited to plumbing, plastering, painting, tiling, carpet laying, carpentry, picture hanging, cabinetry, electrical, and general labour services, etc.
- b) Any Trade Service arranged by the Seller on behalf of the Buyer shall be a commercial arrangement between the Buyer and the Trade Service Supplier.
- c) The Buyer shall indemnify the Seller for any liabilities that may arise associated with Trade Services that have been arranged by the Seller on behalf of the Buyer.

Product and General Care

Estelle Elliott Designs recommends the following product care to maintain your furniture to its optimum level:

- a) Dusting furniture before cleaning; Soapy water for wiping surfaces; No harsh chemicals (i.e. acetone); A clean soft cotton rag for wiping; Protecting from direct sunlight for long periods of time; Do not use wax products.
- b) Do not expose surfaces to excessive quantities of liquids or moisture which may absorb into the timber. This may result in movements of the timber, change in form, cracking or mould.
- c) A small amount of natural movement of the timber is expected as it adapts to the conditions of your home, due to variations in humidity and temperature.
- d) Leather products can be treated with conditioners and cleaners, ensuring strict accordance with cleaning manufacturer's instructions.
- e) The Buyer is responsible for the protection timber floor surfaces other floor surfaces. Estelle Elliott Designs recommends using felt protection under all furniture for protection of polished timber floors.