

A Arcuri & M Arcuri T/A Styline Kitchens Australia – Terms & Conditions of Trade

1. Definitions	market value. If the Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any such act on behalf of the Seller and must pay or deliver the proceeds to the Seller on demand.	unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
1.1 "Seller" means A Arcuri & M Arcuri T/A Styline Kitchens Australia, its successors and assigns (or any person acting on behalf of and with the authority of A Arcuri & M Arcuri T/A Styline Kitchens Australia).	(d) the Buyer shall not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;	(a) the Buyer becomes overdue, or in the Seller's opinion the Buyer will be unable to make a payment when it falls due;
1.2 "Buyer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Buyer is a reference to each Buyer jointly and severally.	(e) the Buyer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;	(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
1.3 "Goods" means all Goods or Services supplied by the Seller to the Buyer at the Buyer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).	(f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.	(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.
1.4 "Price" means the Price as agreed between the Seller and the Buyer in accordance with clause 4.2 below.	(g) the Buyer shall not charge or grant an encumbrance over the Goods that the Seller is not entitled to give any interest in the Goods while they remain the property of the Seller.	16. Dispute Resolution
2. Acceptance	(h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.	If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after the receipt of the notice the parties shall confer at least once to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing requested by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
2.1 The Buyer shall be taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods.	11. Personal Property Securities Act 2009 ("PPSA")	(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia;
2.2 These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Buyer and the Seller.	11.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.	(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
3. Change in Control	11.2 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Seller to the Buyer.	17. Cancellation
3.1 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's name, address, contact phone or fax numbers, or business practices) and the Seller shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.	11.3 The Buyer undertakes to:	17.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall remain liable for any loss or damage whatsoever arising from such cancellation.
4. Price and Payment	(i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;	17.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
4.1 At the Seller's discretion the Price shall be either:	(ii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);	17.3 Cancellation of orders for Goods made to the Buyer's specifications, or from stocklist terms, will definitely not be accepted once production has commenced, or an order has been placed.
(a) as indicated on any invoice provided by the Seller to the Buyer; or	(iii) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;	18. Compliance with Laws
(b) the Seller's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.	(c) not register a financing charge statement in respect of a security interest without the prior written consent of the Seller;	18.1 The Buyer and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties such as, inaccurate measurements provided by the Buyer, accessing the site, obscured building defects, safety considerations, prerequisite work by any third party not being completed, hidden pipes and/or wiring in walls or as a result of increases to the Seller in the cost of materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made full and in advance.	(d) register a security interest on the PPSA in relation to a financing charge statement in relation to the Goods in favour of a third party without the prior written consent of the Seller;	18.2 The Buyer shall obtain (at the expense of the Buyer) all licenses and approvals that may be required for the Services.
4.3 At the Seller's discretion payment may be required.	(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.	18.3 The Buyer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Buyer on the date/s determined by the Seller, which may be:	11.4 The Seller and the Buyer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.	19. Privacy Act 1988
(a) on delivery of the Goods;	11.5 The Buyer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.	19.1 The Buyer agrees for the Seller to obtain from a credit reporting agency a credit report concerning personal credit information about the Buyer in relation to credit provided by the Seller.
(b) thirty (30) days following the end of the month in which a statement is posted to the Buyer's address or address for notices;	11.6 The Seller and the Buyer agree that sections 142 and 143 of the PPSA do not apply to the security agreement created by these terms and conditions.	19.2 The Buyer agrees that the Seller may exchange information about the Buyer with those credit providers either named as trade referees by the Seller or those credit providers that issue a credit report issued by a credit reporting agency for the following purposes:
(c) the date specified on any invoice or other form as being the date for payment; or	11.7 The Buyer must unconditionally ratify any actions taken by the Seller under clauses 11.3 to 11.5.	(a) to assess an application by the Buyer; and/or
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Buyer by the Seller.	11.8 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.	(b) to notify other credit providers of a default by the Buyer; and/or
4.5 Payment may be made by cheque, electronic/online banking, or by any other method as agreed to between the Buyer and the Seller.	12. Security and Charge	(c) to provide information to the Seller in relation to the status of this credit account, where the Buyer is in default with other credit providers; and/or
4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Buyer must pay to the Seller an amount equal to any GST the Seller must pay or be liable to pay in connection with the Goods under any agreement for the sale of the Goods. The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition the Buyer must pay any other taxes or levies that may be payable in addition to the Price except where they are expressly included in the Price.	12.1 The Seller, in consideration of the Seller agreeing to supply the Goods, the Buyer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Buyer either now or in the future, to secure the performance by the Buyer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).	(d) to assess the creditworthiness of the Buyer.
5. Delivery of Goods	12.2 The Seller indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis in respect of these terms and conditions.	19.3 The Seller consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
5.1 Delivery of the Goods is to occur at the time that:	12.3 The Buyer irrevocably appoints the Seller and each director of the Seller as the Buyer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Buyer's behalf.	19.4 The Seller agrees that personal credit information provided may be used and shared by the Seller for the following purposes (and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time):
(a) the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Seller's address; or	13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)	(a) the provision of Goods; and/or
(b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the address.	13.1 The Buyer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Buyer must notify any other alleged defect in the Goods as soon as reasonably possible after such defect becomes evident. Upon such notification the Buyer must allow the Seller to inspect the Goods.	(b) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods; and/or
5.2 Subject to clause 5.3 it is the Seller's responsibility to ensure that the Services start as soon as it is reasonably possible.	13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).	(c) processing of any payment instructions, direct debit facilities and/or credit facilities provided to the Buyer; and/or
5.3 The Seller's commencement date will be back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Buyer written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to, a failure by the Buyer to:	13.3 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations in respect of the Goods, the Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.	(d) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.
(a) make a selection; or	13.4 If the Buyer is a consumer within the meaning of the CCA, the Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.	19.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
(b) have the site ready for the Services; or	13.5 If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Buyer has paid for the Goods.	(a) to obtain a consumer credit report about the Buyer;
(c) notify the Seller that the site is ready.	13.6 If the Buyer is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is:	(b) allow the credit reporting agency to create or maintain a credit file on the Buyer; and/or
5.4 The Seller's sole duty of care of delivery is either included in the Price or is in addition to the Price.	(a) limited to the value of any express warranty or warranty card provided to the Buyer by the Seller at the Seller's sole discretion;	(c) advise of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
5.5 Any time or date given by the Seller to the Buyer is an estimate only. The Buyer must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Buyer as a result of the delivery being late.	(b) the Seller failing to properly maintain or store any Goods;	(d) information that, in the opinion of the Seller, the Buyer has committed (including, but not limited to, the Buyer's failure to show an intention not to comply with the Buyer's credit obligations);
6. Risk	(c) the Buyer using the Goods for any purpose other than that for which they were designed;	(e) any credit provided to the Buyer by the Seller has been paid or otherwise discharged.
6.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer must insure the Goods on or before Delivery.	(d) the Buyer failing to follow any instructions or guidelines provided by the Seller;	20. Unpaid Seller's Rights
6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. 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 take any further steps.	(e) fair wear and tear, any accident, or act of God.	20.1 Unless the Seller has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any moneys owing to it by the Buyer, the Seller shall have, until all moneys owing to the Seller are paid:
6.3 If the Buyer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Buyer's sole risk.	13.7 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:	(a) a lien on the item; and
6.4 Timber is a hydroscopic material subject to expansion and contraction, therefore the Seller will accept no responsibility for gaps that may appear in the flooring during and after the Services.	(a) the Buyer failing to properly maintain or store any Goods;	(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of the item.
6.5 The Buyer acknowledges that Services supplied may:	(b) the Buyer using the Goods for any purpose other than that for which they were designed;	20.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Seller having been obtained against the Buyer.
(a) fade or change colour over time; and	(c) the Buyer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;	21. Building and Construction Industry Security of Payments Act 1999
(b) expand, contract or distort as a result of exposure to heat, cold, weather; and	(d) the Buyer failing to follow any instructions or guidelines provided by the Seller;	21.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
(c) mark or stain if exposed to certain substances; and	(e) fair wear and tear, any accident, or act of God.	General
(d) be damaged or disfigured by impact or scratching.	13.8 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.	21.2 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable in any way, its enforceability, validity, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which the Seller has its principal place of business, and are subject to the jurisdiction of the New South Wales Courts in that State.
6.7 The Seller is not responsible for the removal of rubbish from or clean-up of the Buyer's construction sites. This is the responsibility of the Buyer or the Buyer's agent.	14. Intellectual Property	22.1 The Seller warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark of the Seller or any third party. The Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
7. Surplus Goods	14.1 Where the Seller has designed, drawn or developed Goods for the Buyer, the Seller's copyright in any designs and drawings and documents shall remain the property of the Seller.	22.2 The Seller agrees that the Seller may (at no cost) use, for the purposes of marketing or promotional purposes, any documents, designs, drawings or Goods which the Seller has created for the Buyer.
7.1 Unless otherwise stated elsewhere in this contract:	14.2 The Buyer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark of the Seller or any third party. The Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.	22.3 Subject to clause 13 the Seller shall be under no liability whatsoever to the Buyer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Buyer as a result of a breach by the Seller of these terms and conditions (alternatively, the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
(a) demised Goods remain the Buyer's property; and	15. Default and Consequences of Default	22.4 The Buyer shall be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller or to withhold payment of any invoice because part of that invoice is in dispute. The Seller may license or sub-contract all or any part of its rights and obligations under these terms and conditions to any third party.
(b) Only suitable new materials or the Buyer's reclaimed timber will be used;	15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	22.5 The Buyer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change. The Buyer will be taken to have accepted such changes if the Buyer makes a further request for the Seller to provide Goods to the Buyer.
(c) Goods which the Seller brings to the site which are surplus remain the property of the Seller.	15.2 If the Buyer owes the Seller any money the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including, but not limited to, internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank disbursement fees).	22.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
8. Buyer's Responsibilities	15.3 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) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Buyer. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller is not liable to be used in this use.	22.7 The Buyer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent or under liquidation, and that this agreement creates binding and valid legal obligations on it.
8.1 It is the intention of the Seller Kitchens and agreed by the Buyer that it is the responsibility of the Buyer to provide and have erected scaffolding to enable the services to be undertaken (where in the Seller's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.	15.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains	
8.2 The Buyer agrees to remove all furniture, furnishings or personal goods from the vicinity of the works and agrees that the Seller shall not be liable for any damage caused to those items through the Buyer's failure to comply with this clause.		
9. Access		
9.1 The Buyer shall ensure that the Seller has clear and free access to the work site at all times to enable them to undertake the services. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Seller.		
10. Title		
10.1 The Seller and the Buyer agree that ownership of the Goods shall not pass until:		
(a) the Buyer has paid the Seller all amounts owing to the Seller; and		
(b) the Buyer has met all of its other obligations to the Seller.		
10.2 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.		
10.3 It is further agreed that:		
(a) until ownership of the Goods passes to the Buyer in accordance with clause 10.1 that the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request;		
(b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;		
(c) the Buyer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for		