

## **Terms of trade**

### **1. Definitions**

- “Company” means Surfacefix Ltd
- “Customer” means the person, or company buying the goods from the Company.
- “Products” means benchtops or countertops or including any products that are supplied but not limited to fabricated benchtops or countertops using engineered stone or solid surfaces.
- “Services” means any work carried out or to be carried out by the Company in relation to the Product.
- “Contract” means the contract between the Company and the Buyer for the purchase of the goods and/or services.
- “Date of the contract” means where the contract arises from a quotation given by the Company,
  - i ) The date of acceptance of the order by the Company; or
  - ii) Where the contract arises from quotation given by the Company, the date upon notification of acceptance of the quotation is received by the Company. This can be in written form, via email or verbal acceptance
- “Contract price” means the price of goods as agreed between the Buyer and the Company.
- “Person” includes a corporation, association, firm, company, partnership or an individual.
- “Quotation” shall mean price on offer for a fixed term.
- “Manager” is the companies appointed decision maker.
- “PPSA” means the Personal Property Securities Act 1999.

### **2. Quotations**

- Quotations from the Company sets out the price and quantity of the Products to be supplied or the description of the services to be provided and is valid within the time frame given. The Customer agrees and acknowledges that it is their sole responsibility for providing the correct information on specifications, measurements, drawings, access on site to the Company for the purposes of the Company providing the Customer with an estimate for the supply of the Product.
- The Customer agrees and acknowledges that any quote or estimate provided by the Company to the Customer have been prepared by the Company in reliance on the information, specifications or measurements and drawings provided by the Customer. If the Customer requests or requires, for any reason, amendments to any of the information provided including dimensions, specifications or measurements, colours, shapes, access on site or any other aspect of the Goods, then the Customer shall be liable for any cost towards any additional work or any changes required as a result of any inaccuracy in those information, quantities, measurements, specifications or information will be charged accordingly and will be at the sole discretion of the Company.
- 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 quote or estimate provided.
- All prices quoted is GST exclusive unless otherwise stated in the quote.
- Quotations given are subjected to these Terms and Conditions. Any Products or Services supplied by the Company to the Customer will be supplied on these conditions. These conditions constitute the whole agreement between the Customer and the Company and will prevail over any terms which may be offered by the Customer. The only circumstance where any variation to these conditions will apply is where the Company has expressly agreed in writing to that variation.
- Upon payment of the deposit, it is deemed that the Customer have accepted these terms and conditions. The terms and conditions are definitive and binding.

### **3. Acceptance**

- Any instruction, whether written (in any form) or verbal, received by the Company from the Customer or any representative for the Customer, for the supply of Goods and/or Services, the Customer's acceptance of Goods and/or Services supplied by the Company, shall constitute acceptance of these Conditions.
- Upon acceptance of these Conditions by the Customer, the terms and conditions hereof are irrevocable, definitive and binding. It can only be rescinded or amended in accordance with these Conditions or with the written consent of the Company.
- Where more than one Customer has entered into this agreement, the Customer shall be jointly and severally liable for all payments of the Price and performance of the Customer's obligations.
- 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.

### **4. Orders and Order Cancellations**

- All Orders are subject to acceptance by the Company
- Cancellation of or variations to an order may be accepted at the sole discretion of the Company, on such terms as the Company may specify. In the event that the Company accepts the cancellation, 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.
- The Company may cancel these Conditions or cancel delivery of the Products at any time before the Products 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.

### **5. Prices and Payments**

- The Price shall be as indicated on invoices provided by the Company to the Customer in respect of Products and/ or Services supplied; and or
- The Price of the Products and/or Services will be based on the price of the accepted quote or the Company's current Price at the date of delivery/installation of any Products and/or Services and will be reflective of any changes, alterations to specifications or measurements and/or additional works done on the product after the quote has been accepted by the Customer with prior agreement between the Company and the Customer during production.

- The Price excludes GST and other taxes and duties which may be applicable, unless otherwise included in any estimate given by the Company.
- The method of payment will be made by cash, cheque, direct credit, or by any other method as agreed to between the Customer and the Company.
- A DEPOSIT of 50% of the contract price must be paid on acceptance of the quote to initiate production and shall be deemed to be an acceptance of our terms and conditions. A portion of the BALANCE is due prior to the day of delivery and/or installation or pick up of any Products as set out on the quote given, unless otherwise arranged prior to acceptance of the Quote and the remaining portion of the BALANCE will be invoiced upon installation.
- 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.
- CREDIT ACCOUNT HOLDERS are due after 20 days following the date of installation.
- CREDIT ACCOUNT HOLDERS When the Credit Limit is reached, or exceeded (including on account of accrued but unpaid interest), the Customer must make one or more payments to reduce the Account to below the Credit Limit, notwithstanding that the Due Date has not arrived.
- Time for payment for the Products and/or services shall be of the essence and will be stated on the invoice, quotation, tender documents, work authorisation form or any other work commencement forms. If no time is stated or arranged prior to, then payment shall be due on delivery or installation of any Products .
- Late payment shall incur interest at the rate of 12% per annum calculated on a daily basis. This shall be payable on any monies outstanding under the Contract from the date payment was due until the date payment is received by the Company, but without prejudice to the Company's other rights or remedies in respect of the Customer's default in failing to make payment on the due date.
- Any non-account customer who has overpaid will be refunded either by same way of transaction e.g. electronic funds transfer (EFT). Any 20 day account holders who overpaid will have these funds go into credit being deducted off any current invoices and/or future transaction.
- The Customer shall indemnify the Company for any expenses, costs or disbursements incurred in recovering any outstanding monies including (but not limited to) debt collection agency fees/solicitor's fees/disbursements or and any court or service fees or by reason of any other default by the Customer. The Customer will also be liable to pay all of the Company's expenses (including legal costs) incurred in attempting to obtain or obtaining a remedy for the Customer's failure to comply with these terms. Without prejudice to any other remedies, which the Company might have, failure by the Customer to pay any debt due will entitle the Company to cancel any contracts which the Company has with the Customer.
- Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Products to the Customer and any of its other obligations under the terms and 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 clause. Or In the event that:
  - (a) 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
  - (b) 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
  - (c) a receiver, 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
  - (d) the Company shall be entitled to cancel all or any part of any order of the Customer that remains unperformed in addition to, and without prejudice to any other remedies; and all amounts owing to the Company shall, whether or not due for payment, immediately become payable.

## **6. Products / Services, Installation**

- All Products supplied (Engineered Stone, Solid Surface, Granite) 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's suppliers. These colours may again vary slightly from the samples displayed in our showroom.
- All materials to be used for fabrication is subject to stock availability.
- 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.
- Solid Surface (Acrylic) Benchtops will be polished to a semi-gloss finish unless stated otherwise on the quotation.
- Where the kitchen components are not complete at the agreed time of template, a re-template fee from a minimum of \$180 plus GST will need to be paid prior to scheduling a re-template and cost may vary depending on the location for template.
- Call outs for additional cut outs will incur a minimum charge of \$150 plus GST but may vary depending on the site location.
- Installations to upper levels or difficult access that may require a hoist or more installers, therefore will incur additional cost if not disclosed earlier and not included in the quote.
- If the template varies from estimate, cost will be adjusted accordingly.
- The customer must ensure on the agreed installation date:
  - (a) that the site for template or installation is cleared and ready before the Company is asked to start any of the required

- job onsite (e.g. existing tops are removed if this was not indicated as included in the quote), and
- (b) The site is accessible and suitable to safely carry out the installation of the Products;
- (c) The Company has the facilities and equipment that it reasonably requires to carry out the installation including, but not limited to, 230 volt AC electric power, plug outlets, etc.
- (d) That pets are also contained before, during, and after the template or installation process to ensure the safety of your pets and our authorized personnel.
- The Company will endeavour to have the Products installed on the agreed date but will not be liable for late installations. Late installations does not entitle the Customer to cancel all or any part of any contract. The Company shall not be liable for any loss or damage whatsoever suffered or incurred by the Customer due to failure to install the Products (or any part thereof), promptly or at a time previously indicated by the Company at all.
- Any date or time stated for installation is an estimate only and not to be treated as a condition of sale
- The Customer is liable to the Company for any loss, costs or damages, which the Company may suffer or incur by reason of the Customer's failure to carry out the Customer's obligations set out in this clause.
- The Customer will be responsible for all the fees needed for any permits or consents required for installation of the product to comply with the local authority legislation.
- All Kitchen components and 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 manufacturer's recommendation for a particular model.
- Overhangs exceeding 300mm on any top will require support by the Customer unless stated otherwise.
- 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 and 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.
- The Company does not always 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.
- Removal and/or disposal of existing tops, plumbing and/or electrical connections/ disconnections are not included unless specified on the quote.
- Sink Bowl, Tap, Existing top removal, Plumbing, Electrical and Gas Fitting are not included unless specified in the inclusions given on the quote. Therefore, it is the sole responsibility of the Customer to arrange for this services

## 7. Delivery

- The Company shall deliver the Products to the address stated on the quote or as agreed by the Company and the Customer in writing. Unless specified on the quote that the Customer will arrange their own delivery, then the costs incurred will be of the Customers' responsibility.
- Delivery of Products by the Company may be by instalments.
- The Company shall deliver the goods (within or outside Auckland) by such carrier and such form of transport and route
- The Company considers to be appropriate between the hours of 9am-5pm Mon-Fri excluding public holidays. The Company may consider a Customers' request for delivery at other means or at other times but with entitlement to charge the Customer additional costs the Company may incur.
- The Customer agrees to inform the Company within 7 days of the date of invoice if proof of delivery is required. After this period, no liability will lie with the Company for proof of delivery.
- Delivery is deemed made when Products arrive or Installed at the location agreed by The Company and the Customer or if the Customer have arranged their own delivery, delivery is deemed made when the Products are available for collection by Customer. The Customer or its authorized representative must sign the Company's copy of the delivery docket or packing slip before the Products are unloaded or collected. It is the responsibility of the Customer to check the Products before despatch of any errors or damages. Signing the delivery docket deemed the Products to be of good condition complying with all what is agreed to under the contract.
- All claims of errors in delivery for Products damaged in transit where the Company arranged for the delivery of the Goods, must be made to the Company within seven days of delivery and in accordance with the procedures advised by the Company.
- Where the Company arranges for the delivery of the Goods, the Customer will ensure, at its own cost or means, that all agreed delivery points have the mechanical means and labour to unload the Goods promptly and have suitable access and area for unloading
- If the Customer fails or refuses to take delivery of any Products at an agreed delivery time, the Company may (without limiting any other rights or remedies the Company may have) charge the Customer for any expenses or additional costs incurred by the Company as a result of the delay.
- The Company will not be responsible for any part delivery or delay in delivery of the Products as a result of events occurring beyond the Company's control. The Company shall not be in any way responsible for any consequences (direct or indirect) arising from such delay or non-delivery.
- The Company will endeavour to have the Products and/or Services delivered on the agreed date but will not be liable for late delivery. Late delivery does not entitle the Customer to cancel all or any part of any contract. The Company shall not be liable for any loss or damage whatsoever due to failure to deliver the Goods (or any of them) promptly or at all.
- The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.

- Any date or time stated for dispatch or delivery is an estimate only and not to be treated as a condition of sale

## **8. Defects**

8.1 The Customer shall inspect the Products on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Products within a reasonable time following delivery / Installation if the Customer believes the Products are defective in any way. If the Customer shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Product(s) or repairing the Product(s).

8.2 Products will not be accepted for replacement or repair other than in accordance with 8.1 above.

## **9. Returns**

9.1 Returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 8.1; and
- (b) the Company has agreed in writing to accept the return of the Products; and
- (c) the Products are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) the Company will not be liable for Products which have been abused or have not been used in a proper manner; and

9.2 The Company may (in its discretion) accept the replacement or repair of Products but this may incur a handling fee of fifteen percent (15%) of the value of the returned Products plus any freight.

## **10. Warranties**

- The Company warrants that the Products being sold by the Company will be free from defects in materials or workmanship and will substantially conform to the Company's specifications if any.
- For Products not manufactured by the Company the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- Warranty does not apply to any Products expressly sold by the Company as seconds, downgrades, or otherwise outside the standard specifications for those Goods.
- Unless the Company is given the opportunity to inspect the Products immediately after the defect is discovered, warranty does not apply
- Those warranty that are expressly given out as the Company's limited workmanship warranty.

## **11. Ownership and Risk**

- The Company retains ownership and property in and to the Products until the Customer has paid in full all amounts owing for the particular Products.
- 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 Products.
- The Customer must not give away or sell the Products to any other person or entity until the Customer has paid in full all amounts owing to the Company for the particular Products in agreement and acknowledgment that the Company retains ownership and property in and to the Products.
- If the Customer wishes to resell the Products before ownership passes, it would only be through the discretion of the Company and the Customer should notify the Company before doing so. The Customer may do so, if the Company allows, only by way of bonafide sale in the ordinary course of business and as the agent of the Company, but the Customer shall not represent to any other person that the Customer is acting for, or has any authority to bind, the Company. The Customer shall account to the Company for the proceeds of any sale of the Products.
- Whilst the Company retains property in the Products until payment is made for the Products in full, nonetheless all risk for the Goods passes to the Customer on delivery.

## **12. PPSA**

- The Contract constitutes a security interest in the goods supplied by the Company to the Customer for the purposes of the PPSA as security for payment by the Customer of all amounts due under the Contract, including any future amounts.
- The Customer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to perfect the Company's security interest over the Customer, or obtain the priority required by the Company or register (and renew registration) a financing statement for a security interest in favour of the Company.
- To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1) (a), 120, 122, 133 and 134 of the PPSA which are for the Customer's benefit, or place any obligations on the Company in the Customer's favour, will not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a

copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company.

- The Customer agrees to treat the security interest in the Products as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether the Products have become fixtures at any time before payment has been made for them.

## **12. Dispute resolution**

The Company will endeavour to resolve any dispute between the Customer and itself without the need for Court proceedings. Any such attempt is without legal prejudice.

## **13. Liability**

The Company shall not be liable for any loss of any kind whatsoever suffered by the Customer as a result of any breach of any of the Company's obligations under the contract, including any cancellation of the contract or any negligence on the part of the Company, its servants, agents or contractors, nor shall the Company be liable for any loss, damage or injury caused to the Buyer's servants, agents, contractors, buyers, visitors, tenants, trespassers or other persons. The Customer shall indemnify the Company against any claim by any such person.

## **14. Consumer Guarantees Act 1993**

If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Customer.

## **15. Miscellaneous**

- The Company shall not be liable for any default due to any act of God, war, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party where the Company is unable, wholly or in part, to carry out any obligation under these conditions because of an event or circumstance beyond its reasonable control ('Force Majeure Event'), that obligation is suspended so far as it is affected by the Force Majeure, during its continuance.
- All Products and Services 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 Products or Services supplied. The application of the United Nations Convention on Contracts for the International Sale of Products is expressly excluded.
- The failure of the Company to deliver any of these terms and conditions shall not entitle either party to treat this Contract as repudiated.
- The Company may license or subcontract all or any part of its rights and obligations without the Customer's consent.
- In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Products.
- 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.
- Where any provision of these conditions is rendered void, unenforceable or otherwise ineffective by operation of law, that will not affect the enforceability or effectiveness of any other provision of these conditions.
- The Customer may not assign or subcontract any of its rights or obligations under these conditions, except with the prior written consent of the Company. Any consent under this clause may be given subject to such conditions as the Company may require.
- The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- The Company may vary these conditions from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Customer of such change.