

## **TERMS AND CONDITIONS IN RESPECT OF SERVICES AND PRODUCTS SUPPLIED BY M+S DESIGNS**

### **Introduction**

These Terms and Conditions also known as "The Contract", govern the Customer's Order with the Provider, and is available :

On M+S Designs ("Provider") website, located at the domain name: [mands-designs.com](http://mands-designs.com) "the Website"); or The Customer's Order by other means including inter alia, but not limited to, telephonic, email or in person. The Provider manufactures and distributes stationery, décor, cabinetry, furniture and other woodwork related products (the "Product").

By placing an Order with the Provider, the Customer agrees to be legally bound by these Terms and Conditions.

### **Customer Status**

- When accepting a Quotation, the Customer agrees to the Terms and Conditions of the Provider.
- The Customer is responsible for reviewing the latest Terms and Conditions each time the Customer accepts a Quotation.

### **Specifications**

- The Products delivered will be in accordance with the specification contained in the Quotation.
- Paint colours mixed to match a sample will be matched as close as possible, but not guaranteed as wood grain and age will vary the finish.

*It is the Customer's responsibility:*

- To ensure that they are satisfied with the specifications as set out in the Quotation;
- To confirm all measurements, colours and configurations as set out in the Quotation.
- Any modifications or changes to the Quotation by the Customer will be undertaken following the written approval of the Provider. Where any such changes cause an increase in the cost or time required for performance, the Provider shall be entitled to reissue the Quotation, which accurately records the requested amendments.

### **Payment**

- The Customer shall pay a deposit, as noted on the Quotation, based on the total amount specified in the Quotation, for the Product within 30 (thirty) days of receiving the quotation, otherwise the Quotation can be subject to change.
- A non-refundable deposit of 50% of the quotation to be paid before any technical drawings are produced.
- Unless otherwise agreed to in writing, The Customer shall pay the balance of payment on completion and collection/delivery of the Order.
- Additional charges incurred during the Work must be paid within 7 days of being invoiced.
- Notwithstanding anything to the contrary and unless otherwise agreed upon, in writing, the maximum rate of interest permitted in terms of the National Credit Act, 2006 and the regulations thereto will be levied on all overdue amounts.

### **Delivery**

- Any Products delivered and not paid for in full remain the property of the Provider until full and final settlement has been received by the Provider.
- The Provider retains the right to cancel or suspend deliveries under the contract if the buyer fails to make any payment due as set out in the quotation. This also covers bankruptcy and liquidation.
- The Provider undertakes to make every effort to meet the delivery period as quoted, but does not guarantee to do so.
- The Provider will not under any circumstances accept responsibility for delivery delays due to causes beyond its control, including, but not limited to, Force Majeure. A reasonable extension of time shall be granted to the Provider in event of any delays that are beyond its control.
- The place of delivery will be as specified on the Quotation.
- Products are the responsibility of the Provider whilst in transit by the Provider to the Customer. Liability of the Products is passed on to the Customer after delivery or collection.
- Where the Products are not delivered by the Provider or collected by the Customer, but are delivered by an independent carrier, delivery to the carrier shall be deemed to be delivery to the Customer.
- Any damages or manufacturer's faults should be noted and confirmed in writing by the Customer to the Provider within 2 working days of the Customer's receipt of the Products.

### **Risk and Ownership**

- Where the Products have been delivered by the appointed carriers, the Customer shall be fully responsible for materials lost or damaged in transit.
- The Provider accepts no responsibility for the Customer's paid products left on the premises.
- The ownership in the Products shall not pass to the Customer until all amounts due from the

Customer to the Provider in respect of Products sold, delivered or made available in any other way to the Customer has been paid for in full.

- The Provider shall have the right at any time to give notice of its continued ownership in the Products to every possessor and every landlord of premises in which the Products are stored or may be placed, whether for sale, repair, assembly or otherwise.
- Without prejudice to any of its rights in terms of law, the Provider reserves the right to enter the Customer's premises and to repossess the Products in the event of the Customer failing to make any payments on due date or at all.

### **Packing, Shipment and Delivery**

- Packing will be in accordance with the Provider's standards, unless otherwise specified in writing. Any special packing required by the Customer will be charged for as an extra.
- Shipment is for the cost of the Customer.
- Once the Technical Drawings or any other necessary details for manufacture have been approved the Provider will make reasonable endeavours to keep to its best estimate for the week commencing date and for the completion of the Product, subject to "Force Majeure".
- The Provider's failure to meet the agreed estimation is not a breach of the Contract.

### **Cancellation**

- Once an order is placed and accepted by the Customer, if the Customer thereafter wishes to cancel or vary the order, the Customer shall be responsible for any costs of manufacture incurred by the Provider in relation to same.
- In the event of cancellation by the Customer of the contract or part thereof, or in the event of the Provider cancelling the contract as a result of a breach by the Customer of any of these conditions, the Provider shall be entitled to payment of a standard cancellation fee not less than 40% of the value of the quotation cancelled plus:
  - The sales value of all Products delivered.
  - The sales value of all Products finished and not delivered at the time of such cancellation.
  - The sales value of all materials ordered by the Provider specially for such an order whether such materials have been received or not.
  - The cost of all labour accumulated on any unfinished Products in process of assembly.
  - The sales value of any special engineering and other costs incurred up to the time of cancellation.
- The Provider shall be entitled to suspend or cancel further deliveries and to suspend or cancel work under this or any other contract between the Provider and the Purchaser if any payment is overdue.
- The Provider may, by notice in writing, cancel the Quotation if the Customer becomes insolvent or makes an arrangement with its creditors or goes into voluntary liquidation or is placed under a provisional or final order of sequestration or judicial management.

### **Installation**

- The Installation will be carried out by the Provider or by a contractor team employed by the Provider.
- The Customer must have the installation area clear and ready for the installation team. This is to provide the installation team with a safe working environment and to allow a speedy installation to benefit the Customer.
- The installation team will not touch any electronics or equipment and as such these should be removed and handled by the Customer.
- The Provider is not liable for any additional works other than to install the product, additional charges at an hourly rate will be invoiced for any unquoted work.
- The Provider is not liable for any damages incurred to the Customer's property during installation and the Customer may need to undertake minor redecoration and re-plastering at their own expense.
- The Provider will make reasonable attempts to keep the site tidy, but the Customer should expect that there will necessarily be dust, tools and materials on site during installation, which will be reasonably cleaned and tidied, thereafter.
- Storage charges may become payable if the Customer causes delay to the installation.

### **Warranty**

- The guarantee does not cover damage resulting from misuse or neglect.
- Product failure due to wear and tear is excluded and the guarantee is applicable to South Africa only.
- Should any parts, materials or components forming part of the Products sold by the Provider to the Customer, be assembled by anyone else than the Provider, then the manufacturer's normal warranty in respect of those parts, materials or components shall apply and no further warranties in this regard will be given by the Provider.
- The Provider's liability will not extend beyond that of the manufacturer's liability.
- No warranty is offered if there is damage caused by water, excessive heat, cold or sunlight.

### **Return of Products**

- The Customer shall not be entitled to return any Products to the Provider without the Provider's express consent.
- No claim regarding material defects will be entertained by the Provider unless made in writing and delivered to the Provider within a reasonable period from the date of delivery of the Products.
- *In the event of material defects or shortages in the Products being acknowledged by the Provider, the Provider shall at its option:*
- Either exchange the Products for similar Products; or
- Repair the Products.
- If no material faults are found with the Products, then the Provider will charge a handling fee of 50% of the sales price of the Products.

### **Indemnity**

- The Customer shall indemnify the Provider against all damages, penalties, costs, charges and expenses to which the Provider may become liable as a result of purchases, assemblies and installations undertaken on the instructions and according to the specifications of the Customer.
- The Provider shall not be liable for loss of profits, loss of revenues, loss of amenity or any other type of special or indirect or consequential loss suffered by the Customer as a result of any act or omission by the Provider.

### **Liability**

- These terms set out the Provider's entire liability in respect of the Products and the Provider's liability under these terms shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities expressed or implied statutory or otherwise in respect of the quality or the fitness for any particular purpose of the Products.
- *The Provider shall not, under any circumstances, be liable for:*
- Any loss or injury whatsoever (including indirect or consequential loss including loss of profit) arising from the supply of the Products, including any loss or injury (whether direct, indirect or consequential) attributed to any negligent act of the Provider or the Provider's servants or agents'; or
- Any representations or warranties as to the Products given by any of the Provider's servants or agents.

### **Intellectual Property Rights**

- Any design information, technical drawings, calculation, patent, copyright or other intellectual property rights owned by the Provider shall remain those of the Provider whether or not the purchase price under that transaction has been paid by the Customer. Any information obtained by the Customer from the Provider, which is identified as confidential and/or proprietary or is confidential and/or proprietary in nature, may not be disclosed to any third party without the prior written approval of the Provider.

### **General**

- This document constitutes the sole and entire contract agreement between the parties.
- The Provider shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- No addition to, variation of, or agreed cancellation of this contract shall be of any force or effect unless reduced to writing and signed by both parties.
- No indulgence which the Provider may grant to the Customer's party shall constitute a waiver of any of the rights of the Provider, who shall not thereby be precluded from exercising any rights against the Customer, which may have arisen in the past or which might arise in the future.

### **Updating of these Terms and Conditions**

- The Provider reserves the rights to change, modify, add or remove from portions or the whole of these Terms and Conditions from time to time.
- Changes to these Terms and Conditions will become effective upon such changes being posted to the Provider's website.
- It is the Customer's obligation to periodically check these Terms and Conditions at the Provider's website for changes or updates.

### **Force Majeure**

- The Provider shall not be liable to the Customer for any breach, hindrance or delay in the performance attributable to any cause beyond the Provider's reasonable control, including without limitation any natural disaster and unavoidable incident, actions of third parties (including without limitation hackers, suppliers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil commotion, war, hostilities, warlike operations, national emergencies, terrorism, piracy, arrests, restraints or detentions of any competent authority, strikes or combinations or lock-

out of workmen, epidemic, fire, explosion, storm, flood, drought, weather conditions, earthquake, natural disaster, accident, mechanical breakdown, third party software, failure or problems with public utility supplies (including electrical, telecoms or Internet failure), shortage of or inability to obtain supplies, materials, equipment or transportation ("Event of Force Majeure"), regardless of whether the circumstances in question could have been foreseen.

- Either party may terminate by written notice to the other in the event that the Event of Force Majeure lasts for a period of two Business Days or more, in which event neither party shall be liable to the other by reason of such termination (other than for the refund of a Product already paid for by the Customer and not delivered).

### **Disputes**

- In the event of any dispute of any nature whatsoever arising between the Customer and the Provider on any matter provided for in, or arising out of these Terms and Conditions, and not resolved through Management, then
- No party may commence any court proceedings /arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

### **Notices**

- All notices or demands to either party shall be in writing and may be served by hand delivery, registered mail or email at the address of the receiving party as set forth in the Quotation.

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[Terms and Conditions](#)