

Trade Terms and Conditions of Business for Sheffield Kitchen Outlet Ltd – Business to Business

The Customer's attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.8.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Delivery Charges: the charges set out in the Order.

Delivery Location: has the meaning given in clause 4.3 or 4.4.

Force Majeure Event: has the meaning given to it in clause 13.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods, as set out Supplier's order form or in the Customer's written acceptance of the Supplier's quotation, as the case may be .

Returns Policy: the Supplier's policy for any Goods to be returned as set out in Schedule 1.

Supplier: Sheffield Kitchen Outlet Ltd registered in England and Wales with company number 06972595.

Supplier Materials: has the meaning given in clause 8.1(e).

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods in accordance with these Conditions. The Customer may change the details of the Order within 24 hours of submitting it to the Supplier and the Customer will not be charged for anything other than samples of materials it may have ordered in such a case.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order to the Customer at which point, and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Goods contained in the Supplier's catalogues, brochures or on the Supplier's website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. Please note that for all products made from natural materials, such as wood, it is not possible to guarantee the goods supplied will have the same colour, shade, pattern and/or finish as shown on the website or samples, due to the inherent nature of such materials and that they are natural materials which do vary from piece to piece. The Supplier cannot guarantee to match products exactly which have been ordered at different times. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods except where application to one or the other is specified.
- 2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3. Goods

- 3.1 The Goods are described in the Supplier's order form, website, catalogues or brochures as modified or created by any applicable Goods Specification.

- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 3.4 It is the Customer's responsibility to ensure that any measurements or specifications given to the Supplier are correct. The Supplier is not an installer and the Customer will be responsible for any install and/or measurements of the Goods, furthermore the Supplier accepts no liability for plumbing and electrical matters and suitably qualified, third parties advice must be sought by the Customer before placing their Order and to ensure any Goods Specification has had such third parties input
- 3.5 If you have chosen a delivery option this will be detailed in the Order, if there is no delivery charge stated then the Goods will be for collection from our premises only and the provisions of clause 4.4 shall be deemed to apply.

4. Delivery of Goods

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note and/or a delivery note shall be emailed after delivery which shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered
- 4.2 The Customer shall specify in the Order whether delivery is to take place by way of the Supplier delivering the Goods to the Delivery Location as per clause 4.4, or by way of the Customer collecting the Goods from the Delivery Location as per clause 4.5. If delivery is not referred to in the Order, then the Goods shall be deemed to be for collection from the Suppliers premises by the Customer.
- 4.3 Subject to clause 4.5, the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready, provided that the Customer has paid the balance of the Order and the Delivery Charged.
- 4.4 If the Customer specifies that the Customer shall collect the Goods, the Customer shall collect the Goods from the Supplier's premises at Rawson Spring Way, Hillsborough, Sheffield, S6 1PG or such other location as may be agreed with the Customer before delivery (**Delivery Location**) within 30 days of the Supplier notifying the Customer that the Goods are ready, provided that the Customer has paid the balance of the Order.
- 4.5 If the Customer specifies that the Supplier shall deliver the Goods as provided for by clause 4.4, the Customer agrees to pay the Supplier's Delivery Charges and shall:-
- (a) provide the Supplier with adequate delivery instructions;
 - (b) be present at the delivery address to allow access;

- (c) make the Delivery Location available for delivery (including but not limited to ensuring reasonable access is provided taking into account the size of the goods and relevant access points);
 - (d) prepare the Delivery location in accordance with the Supplier's instructions;
 - (e) provide the Supplier with adequate instructions for delivery (providing these do not contravene the Supplier's instructions); or
 - (f) or otherwise relating to the Goods or any other instructions that are relevant to the supply of the Goods.
- (sub clauses (a)-(f) or any of them, are known as the "**Customer's Delivery Requirements**"). The Supplier accepts no liability to damage of any property when delivering the Goods.

4.6 Delivery of the Goods shall be completed on the completion of:

- (a) unloading of the Goods at the Delivery Location kerbside, if delivered by or for the Supplier in accordance with clause 4.3 and if it is a two-man delivery;
- (b) unloading of the Goods at the Delivery Location on the kerb of the delivery address only, if delivered by or for the Supplier in accordance with clause 4.3 and if it is a one-man delivery; or
- (c) the loading of the Goods at the Seller's Location in accordance with clause 4.4.

If the Customer requests that a two man delivery is delivered by the Supplier to a downstairs room, the Suppliers may be able to accommodate this on site at the Delivery Location but the Supplier accepts no liability for any damage to any property or fixtures and fittings and is the responsibility of the Customer to ensure that the Goods can be safely delivered to such a location.

4.7 Any dates and/or times quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to comply with any of the Customer's Delivery Requirements or in the event where the Customer is collecting the Goods as set out in the Order, any delay resulting from the Customer failing to collect the Goods or Force Majeure Event.

4.8 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to comply with any of the Customer's Delivery Requirements.

4.9 If the Customer fails to take or accept delivery of the Goods within 15 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.10 If **twenty eight** Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, the Supplier may resell or

otherwise dispose of part or all the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4.11 The Supplier may deliver the Goods by instalments. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment. For the avoidance of doubt, third party goods may form part of the Order and the Supplier may not have control over such delivery times.

4.12 Delivery may be added to the Order or removed from the Order on giving the Supplier at least 24 hours advance notice before the Goods are due to leave the Supplier's premises. If the Customer wishes to collect the Goods, any paid Delivery charge will be credited against the Order. Any addition of Delivery must be paid

5. Quality of Goods

5.1 Subject always to the Returns Policy, the Supplier offers different warranties depending on the Goods referred to in the Order:-

(a) the Supplier warrants that, the carcasses and components (hinges and drawers boxes only), drawer fronts and door fronts which are manufactured by the Supplier, on delivery and for a period of 5 years from the date of delivery (**warranty period**), the Goods shall:

- (i) conform with their description and any applicable Goods Specification;
- (ii) be free from material defects in design, material and workmanship; and
- (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);

and the Supplier further warrants all pull outs mechanism and magic corners manufactured by the Supplier will comply with points (i)-(iii) inclusive above for a period of two years form delivery.

All time periods above are reduced for Goods which are not for domestic purposes, any Goods used or intended for use for commercial, educations and/or industrial usage have a reduced warranty of 2 years from delivery.

5.2 The Order is made up of Goods which may be supplied by third parties and for the avoidance of doubt, the manufacturer's warranty shall only apply to such goods it manufacturers and the Supplier offers no such warranty to elements such as appliances forming part of any kitchen. The Supplier's warranty in clause 5.1 above is limited to its own bespoke products created. The Customer is reminded they need to adhere to any manufacturer's warranty terms and conditions in respect of appliances and it is the Customer's responsibility to inspect any product for damage and/or defects prior to installation.

5.3 The Customer's attention is drawn to the Returns Policy which applies to the Goods supplied under these terms and conditions.

5.4 Subject to clause 5.5, if:

- (a) the Customer gives notice in writing to the Supplier during the relevant warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and

- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost (subject to the discretion of the Supplier) and in its packaging in which it was delivered,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 1.1(a);
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer or any other third party;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear (including but not limited to warping of any wood or chipping of any paint), wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards; and/or
- (g) default or damage or other apparent breach of warranty is as result of its installation

5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with these terms and conditions.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:-

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in [Clause 6.4](#).

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

6.4 Subject to [Clause 6.5](#), the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 At any time before title to the Goods passes to the Customer, the Supplier may;

- (a) by notice in writing, terminate the Customer's right under [Clause 6.4](#) to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Express exclusion relating to install

7.1 For the avoidance of doubt the Supplier does not install the Goods. If the Customer has ordered install this will be a contract with a third party provider and will be governed by a separate contract for services with that third party and the Supplier takes no liability for installation of the Goods.

8. Customer's obligations

8.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) ensure they are available for the delivery date, at the address provided in the Order Form. The Supplier will try to contact the Customer by telephone prior to delivery, but if contact cannot be made, the delivery shall go ahead and any failure by the Supplier to deliver the Goods shall be the liability of the Customer;
- (c) co-operate with the Supplier in all matters relating to the instructions for preparing the premises and access to the premises, for delivery of the Goods (where applicable);
- (d) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises as reasonably required by the Supplier to comply with the Order and/pr any measuring reasonably required to fulfil the Order;

- (e) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations; and
- (b) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery; and
- (b) shall be exclusive of all costs and charges of transport of the Goods, which shall be payable by the Customer as per the Delivery Charges (if applicable).

9.2 The Supplier reserves the right to:

- (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; and/or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.3 In respect of Goods, the Customer will pay a sum equivalent to 50% of the total price of the Order, including any applicable VAT on the Commencement Date and pay the remaining balance of the Order, no later than 24 hours prior to delivery in accordance with either clause 4.4 or 4.5, unless otherwise expressly agreed in writing by the Supplier to the Customer.

9.4 In respect of any Delivery Charges incurred in relation to clause 4.4, these shall be paid in full by the Customer at least 24 hours prior to delivery.

9.5 The Customer shall pay any invoice submitted by the Supplier:

- (a) within 14 days of the date of the invoice or as otherwise provided in these terms and conditions and/or the Order and/or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and

(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

9.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Data protection

10.1 The following definitions apply in this clause 10:

(a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

(b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

(c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

10.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

10.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.

10.4 Without prejudice to the generality of clause 10.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of the Contract.

10.5 Without prejudice to the generality of clause 10.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

- (a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 [and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation].

10.6 The Customer consents to the Supplier appointing a third-party processor of Personal Data under the Contract. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 10.6.

10.7 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or

forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

11. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 11.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000.00 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 11.2 The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 11.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - (d) defective products under the Consumer Protection Act 1987.
- 11.5 Subject to clause 11.4, the Supplier's total liability to the Customer shall not exceed the price paid by the Customer under these terms and conditions.
- 11.6 This clause 11.6 sets out specific heads of excluded loss and exceptions from them:
- (a) Subject to clause 11.3 and clause 11.4, clause 13.9(b) excludes specified types of loss.
 - (b) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) accidental damage to possession, property or vehicles at the Delivery Location;
 - (vii) loss of or damage to goodwill;
 - (viii) indirect or consequential loss.
- 11.7 The Supplier has given commitments as to compliance of the Goods with relevant specifications in clause 5. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3,

4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

11.8 This clause 11 shall survive termination of the Contract.

12. Termination

12.1 Without affecting any other right or remedy available to it, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within seven days after receipt of notice in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

12.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

12.3 Without affecting any other right or remedy available to it, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

12.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

12.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

12.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

13. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control including but not limited to:-

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination, or sonic boom;
- (e) any law, restrictions, regulations or guidance or any action taken by a government or public authority, including but not limited to imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) adverse weather;
- (g) collapse of buildings, fire, explosion or accident; and
- (h) any labour or trade dispute, strikes, industrial action or lockouts [(other than in each case by the party seeking to rely on this clause, or companies in the same group as that party)];
- (i) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and/or
- (j) interruption or failure of utility service.

(a **Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

14. General

14.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

14.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(ii) sent by email to the Supplier at care@sko.me.uk and to the Customer as such email address on which they the Supplier has corresponded with the Customer on or which is otherwise stated in the Order.

(b) Any notice or communication shall be deemed to have been received:

(i) if delivered by hand, at the time the notice is left at the proper address;

(ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 14.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 14.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

14.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

14.6 Entire agreement.

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

14.7 Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

14.8 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

14.9 Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

14.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Schedule 1

SKO LTD RETURNS POLICY

(A) **STOCK ITEMS** (items marked as best value stock items in our product guide) – These items cannot be returned unless:-

1. The product is returned to our head office within 7 days of delivery subject to authorisation from our aftersales team.
2. The product is clean, unused, with ALL its original packaging.
3. The product has a defect or is not as described.
4. The product is found to be damaged, all sections (D) Damaged goods apply.

(B) **NONE STOCK ITEMS** – These items cannot be returned unless:-

1. The product is returned to our head office within 7 days of delivery subject to authorisation from our aftersales team.
2. The product is clean, unused, with ALL its original packaging.
3. The product has a defect or is not as described.
4. The product is found to be damaged, all sections (D) Damaged goods apply.
5. In the event we give authorisation to return a none stock item, we may pass on re stocking charges of up to 30% of the goods sale price.

(A) **CABINETS & OTHER MADE TO MEASURE ITEMS** - These items cannot be returned unless:-

1. The product has a defect or is not as described.
2. The product has damage, is within 7 days of delivery & no installation attempt has been made.
3. Where a mistake has been made by a member of our design team we will offer a larger or smaller cabinet, of the same type, free of charge.
4. The product is found to be damaged, all sections of (D) Damaged goods apply.

(B) **DAMAGED GOODS** – Damaged goods cannot be returned unless:-

1. Damage has been notified within 7 days of delivery.
2. Damaged items will only be credited or exchanged once returned to us, along with ALL its original packaging for inspection.
3. The goods are in any original packaging in a clean, and undamaged (unless damaged packaging is reported on delivery).
4. No fixings have been fitted to, or any attempt has been made to install the item.
5. By attempting to install any product or goods you are accepting they are free from damage.
6. Any damage that was visible, including packaging was not reported within 24 hours of delivery.
7. Any protective film must be removed from any product before attempting to install them.

(C) **APPLIANCES**

1. If any fault is discovered please contact our customer service team in the 1st instance, we need to rule out user or installation error, we may arrange an engineer to check the installation.
2. If an appliance is found to be faulty within 28 days of delivery we may offer a replacement.
3. If an appliance is found to be faulty after 28 days of delivery we will offer a repair.
4. Any appliance is found to be damaged all sections of (D) Damaged goods apply.

(D) **WORK SURFACES**

1. Our delivery team will ask you to visually inspect worktops for any clear signs of damage on delivery, damage clearly visible must be reported on deliver and is not covered under section (D.1) of our returns policy.
2. Before cutting or installing any work surfaces it is your responsibility to check for any less visible damage or any visible defects. Once a worktop has been cut or installed we cannot accept any claim for damage or installation costs.

Please report any damage, defects or returns to our aftersales team:- **E-mail:-**
care@skokitchens.com / **Phone:- (0114) 3995537**