

**GENERAL TERMS AND CONDITIONS OF TRADE** (11/16)

To the fullest extent legally permissible all dealings between the customer (including all related and/or associated companies and/or other entities, all successors and/or assigns and in its own capacity and as trustee of each and every trust of which it is trustee) [jointly "the Customer"] and Wentworth Care Furniture Pty Ltd ACN 613 921 154 (and/or any successors and/or assigns) whether trading as "Wentworth Care Furniture" and/or otherwise ["Wentworth"] relating to any goods and/or services [the "goods" and/or the "services"] are subject to the following terms and conditions ["these Terms"] unless otherwise expressly agreed in writing:

**1. Payment:** a) Payment shall be made by cash, cheque, bank cheque or EFTPOS, without deduction and within the credit period stipulated in each invoice or statement. b) If no credit period is stipulated, payment shall be made within 7 days from delivery.

**2. Interest:** Interest shall be charged on overdue accounts at the current *Penalty Interest Rates Act 1983* (Vic.) interest rate plus 2%.

**3. Property:** a) The Customer agrees that these Terms constitute a "security agreement" for the purposes of the *Personal Property Securities Act 2009* (Cth) ["PPSA"], that *Wentworth* has and/or will have a "security interest" in all goods whether present or after acquired for the purposes of the PPSA and that PPSA Sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 137 & 157 shall not apply to any such security interest. b) Property in goods shall not pass until payment in full of all monies owed by the Customer. c) *Wentworth* reserves the right to take possession and dispose of goods as it sees fit at any time until full payment. The Customer grants permission to *Wentworth* to enter any property where any goods are stored. d) Immediately on delivery the Customer accepts liability for the safe custody of goods. e) On sale or disposition of any goods prior to full payment the Customer agrees to deposit all proceeds in a separate bank account and to not mix proceeds with any other monies and shall forthwith account to *Wentworth* notwithstanding that *Wentworth* may have granted any credit facility and/or time to pay. f) Until payment in full the Customer agrees: (i) to store all goods unpaid for in a manner which shows *Wentworth* as owner; (ii) to only sell goods in the usual course of its business on the basis that all proceeds are held in trust for *Wentworth*; and (iii) that sale on terms, for less than cost and/or to a related entity of the Customer shall not be "in the usual course". g) Without derogating from any rights of *Wentworth* as a creditor or under these Terms if goods are used in any construction, fabrication, manufacturing and/or other process ["the Process"] which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any goods used in the Process as invoiced to the Customer by *Wentworth* UPON TRUST for *Wentworth* until payment in full for those goods and all monies owed to *Wentworth*. h) Nothing in this clause is intended to create a charge and this clause shall be read down to the extent necessary to avoid creating any charge.

**4. Consumer Guarantees & ACL:** The Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ["ACL"] provides consumers with certain consumer guarantees and rights in relation to certain transactions concerning goods and/or services (see [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)). Any rights the Customer may have under the ACL shall apply notwithstanding any inconsistent provisions in these Terms which shall be read down to the extent necessary to comply with the ACL and which shall otherwise apply to the fullest extent legally permissible.

**5. Limitation of Liability:** To the extent permitted by the ACL: a) The Customer agrees to limit any claim to the replacement/repair of the goods (or cost thereof) and/or re-supply of services (or cost thereof); and b) *Wentworth* shall not be liable for any consequential loss and/or any special and/or punitive damages through any fault and/or negligence of *Wentworth*.

**6. Cancellations and Returns:** The Customer agrees: a) not to cancel any order without *Wentworth's* prior approval; b) not to return goods without *Wentworth's* prior approval, if goods are not in brand new and unused condition with undamaged packaging and/or if 3 weeks or more have passed since delivery; c) that *Wentworth* may take back goods in saleable condition on such terms as *Wentworth* considers to be reasonable; d) not to return any goods which have been custom made, custom processed or custom acquired; and e) to indemnify *Wentworth* against any and all loss suffered as a result of any cancellation and/or return.

**7. Quotations and Orders:** The Customer agrees that: a) quotations must be in writing; b) *Wentworth* shall not be bound by any quotation if an order is not placed within 30 days from the date of quotation; c) *Wentworth* may prior to receipt of any order amend any quotation and notify the Customer accordingly without ratification; and d) all orders shall be accompanied by payment of a deposit of 30% of the value of the order unless otherwise agreed.

**8. Supply and Delivery:** a) *Wentworth* may supply by instalments and/or withhold or cancel supply where: (i) *Wentworth* has insufficient goods to fulfil orders; (ii) goods are not available to supply; (iii) the Customer is in breach of these Terms; and/or (iv) *Wentworth* has any safety concerns. b) The Customer agrees that: (i) *Wentworth* may elect to arrange delivery at its discretion and without any liability and at the cost and responsibility of the Customer in all things; (ii) the Customer shall be deemed to have accepted delivery and liability for goods on goods being delivered to a carrier or to the Customer's business premises or nominated site whether attended or not; (iii) a certificate purporting to be signed by an officer of *Wentworth* confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket; and (iv)

*Wentworth* shall not be liable for delay, failure or inability to deliver any goods. c) The Customer agrees: (i) to pay for so much of any forward order as *Wentworth* invoices from time to time; (ii) that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment; and (iii) to pay *Wentworth* for any demurrage or other costs and expenses in handling and/or holding any goods once ready for delivery and/or collection.

**9. Purchase Price:** a) In the absence of a binding quotation all sales are made at the price nominated by *Wentworth* at the time of delivery. b) All government imposts, levies and duties (including any GST or equivalent) shall be to the Customer's account. c) Prices exclude all government imposts, levies and duties (including any GST or equivalent).

**10. Variations:** To be binding any variation or cancellation of these Terms or any order must be approved by *Wentworth* in writing.

**11. Exclusions:** To the extent permitted by the ACL: a) no dealing between *Wentworth* and the Customer shall be or be deemed to be a sale by sample; b) the Customer shall rely on its own knowledge and expertise in selecting any goods and/or services for any purpose and any advice and/or assistance given by or for *Wentworth* shall be at the Customer's risk and shall not be or be deemed to be given as expert or adviser nor to have been relied on by the Customer or anyone claiming through the Customer; c) all goods are sold subject to all applicable trading terms, warranties and representations of the manufacturer; d) *Wentworth* shall not be responsible nor liable for paying and/or obtaining any necessary statutory, government and/or utility fees, expenses, orders, approvals, permits and/or licences; e) *Wentworth* shall not be liable for any goods and/or services: (i) made or performed to designs, drawings, specifications and/or procedures etc. and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Customer; (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately; and/or (iii) manufactured and/or supplied by any other party; and f) the Customer agrees to: (i) check all goods for compliance with all applicable laws, standards and/or guidelines before use, on-sale and/or application; (ii) comply with all applicable laws, standards and/or guidelines and with all recommendations and/or directions made and/or given by *Wentworth* and/or by any manufacturer; and (iii) act in accordance with good practice at all times.

**12. Default:** a) On default or breach of any part of these Terms by the Customer the full balance of all unpaid monies shall be deemed by this clause to be immediately due and payable (save to the extent that *Wentworth* expressly directs otherwise in writing) and *Wentworth* may *inter alia* terminate any contract, cancel any rebates, discounts or allowances, retain all monies paid, cease further deliveries and/or provision of services, recover all lost profits and/or at its discretion take immediate possession of any goods not paid for without prejudice to any other rights and without being liable in any way to any party. b) The Customer agrees to indemnify *Wentworth* for all fees and expenses payable to lawyers, mercantile agents and/or other parties acting on behalf of *Wentworth* in respect of anything instituted or being considered against the Customer whether for debt, possession of any goods or otherwise (including all legal costs on an indemnity basis). c) *Wentworth* may apply any payment in reduction of fees, interest and/or any principal debt in such order of priority as *Wentworth* in its discretion deems appropriate.

**13. Indemnity:** The Customer fully indemnifies *Wentworth* against any claim or loss arising from or related in any way to any dealing between *Wentworth* and the Customer and/or arising under these Terms.

**14. Intellectual Property:** The Customer agrees that all intellectual property in the creation of any goods and/or services shall be and remain the property of *Wentworth*.

**15. Other Terms and Conditions:** No terms and conditions sought to be imposed by the Customer upon *Wentworth* shall apply.

**16. Jurisdiction:** The Customer agrees that these Terms and any claim or dispute between *Wentworth* and the Customer shall be governed by the law applicable in the State nominated by *Wentworth* and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by *Wentworth* in the capital city of that State. If no State is nominated then Victoria shall be deemed to be the nominated State.

**17. Credit Limit:** Any credit facility or credit limit is an indication only of the intention of *Wentworth* at the time. *Wentworth* may vary or withdraw credit at any time at its discretion and without any liability to the Customer or any other party. Upon breach of any of these Terms all monies owing by the Customer shall become immediately due and payable.

**18. Waiver:** An election by *Wentworth* not to exercise any rights on any breach of these Terms shall not constitute a waiver of any rights relating to any other breach.

**19. Variations:** The Customer: a) acknowledges that *Wentworth* may vary or replace these Terms affecting all future dealings between the Customer and *Wentworth*; b)

agrees that it shall be deemed to have notice of any change to these Terms immediately upon *Wentworth* notifying the Customer at the Customer's last known address; and **c)** shall be deemed to have accepted the new Terms immediately upon placing any further order with *Wentworth*.

**20. Force Majeure:** *Wentworth* shall not be in default or in breach of any contract with the Customer as a result of *Force Majeure* including any strike or lock-out.

**21. Insolvency:** The Customer shall be in default of these Terms if it commits an act of insolvency, appoints an insolvency practitioner and/or calls a formal meeting of creditors.

**22. Containers, Pallets and Equipment:** The Customer agrees on request to return all containers, pallets, stands, reusable packaging and/or display equipment ["**Equipment**"] provided by *Wentworth* and to indemnify *Wentworth* for the full replacement cost of any Equipment not returned or damaged.

**23. Severability:** Any part of these Terms shall be capable of severance without affecting any other part of these Terms.