

Terms & Conditions

PARTIES

1. **Level O Furniture and Interior Design Pty Ltd ACN 615 887 244** of Suite 5, 101 George Street, Parramatta NSW 2150 (**Level-O**); and
2. **The customer named in the quotation (the Customer).**

OPERATIVE PROVISIONS

1. Acceptance of these Terms

- 1.1 Upon acceptance of the offer made in the Quotation or placing a purchase order with Level-O that is accepted by Level-O, the Customer agrees and acknowledges that the order(s) made are confirmed and it will be irrevocably bound by these Terms.
- 1.2 Any instructions received by Level-O from the Customer for the supply/sale of goods, provision of services, installation of furniture or any other work prescribed in the Quotation or any payment to Level-O by the Customer after Level-O has provided the Quotation to the Customer constitutes acceptance of the Quotation and these Terms.
- 1.3 This Quotation shall remain open for acceptance by the Customer for a period of thirty (30) days from the date of issue (**Offer Period**). After the expiration of the Offer Period, the Quotation will be withdrawn and no longer available for acceptance, unless otherwise determined by Level-O in its discretion.
- 1.4 Level-O reserves the right to revise and re-issue a Quotation that is not accepted by the Customer during the Offer Period.
- 1.5 From acceptance of the Quotation, the Customer must not alter or cancel the order without the consent of Level-O, which may be granted or withheld in the sole and absolute discretion of Level-O. If Level-O consents to the cancellation of the order, the Customer must pay to Level-O:
 - (a) if manufacture of the goods has not commenced at the time of cancellation, the sum of 10% of the amount specified in the Quotation plus applicable GST; or
 - (b) if manufacture of the goods has commenced at the time of cancellation, the full amount specified in the Quotation plus applicable GST, (each termed a **Cancellation Fee**) which represents a genuine pre-estimate of the loss suffered by Level-O as a result of the Customer's cancellation of the order.
- 1.6 The Cancellation Fee is payable on demand from Level-O and any valid cancellation (consented to by Level-O) is subject to payment of the Cancellation Fee in full by the Customer.

2. Payment

- 2.1 The total amount owed to Level-O for provision of the goods and services contained in the Quotation will be specified in the Quotation (**Purchase Price**). Upon acceptance of the Quotation and these Terms, the Customer will be liable to pay the Purchase Price to Level-O in full.
- 2.2 The Purchase Price must be paid as follows, time being of the essence:
 - (a) 50% within forty-eight (48) hours after acceptance of the Quotation made by Level-O (**Advance Payment**);
 - (b) 50% by the date that the goods and/or services are delivered by Level-O to the Customer (**Balance Payment**).
- 2.3 The Quotation may contain alternate payment terms and any such alternate payments contained in the Quotation will prevail to the extent of any inconsistency with these Terms.
- 2.4 Level-O may, but will not be obligated to commence with the provision of services or commence the supply of the goods described in the Quotation, until such time that the Advance Payment has been received from the Customer.
- 2.5 The Customer acknowledges that any delay in payment of the Purchase Price may affect the price of any pre-assigned scheduled shipment for the order of the goods specified in the Quotation. The Customer will be liable to pay increased charges to Level-O on demand.
- 2.6 Payment of the Advance Payment and the Balance Payment is to be made by the Customer by way of bank transfer to the account nominated in the Quotation, unless otherwise expressly agreed between the parties in writing.
- 2.7 In the event the Customer makes any payment to Level-O by way of bank transfer, any and all applicable bank and authority charges relating to the Customer's payment of the Advance Payment and the Balance Payment that are incurred by Level-O or the Customer shall be borne by the Customer.
- 2.8 If the Customer fails to pay any instalment of the Purchase Price by the due date, then without prejudice to the rights and remedies of Level-O, interest will accrue on the outstanding portion of the Purchase Price at the rate of 24% per annum. Interest accrues and is payable from day to day and is calculated daily on the basis of days elapsed and a 365-day year and compounds monthly in arrears.
- 2.9 The Customer shall indemnify Level-O, on demand, against expenses or loss resulting from the Customer's failure to make payment of the Purchase Price (or part thereof) by the relevant due date, including but not limited to legal costs on a full-indemnity basis and any costs incurred by Level-O from a third-party as a result of the Customer's failure to make such payment.
- 2.10 The payment of any amount by the Customer under these Terms (including the Purchase Price) is non-refundable under any circumstance, unless otherwise agreed by the parties in writing.
- 2.11 If any amount payable under these Terms (including the Purchase Price) is outstanding, then without prejudice to its other rights and remedies, Level-O may exercise a lien over any goods in its possession and may refuse to deliver the goods and/or provide services specified in the Quotation until such time that the Customer pays all outstanding amounts to Level-O.

3. Dispatching, Production and Delivery of Goods

- 3.1 Upon receipt of the Advance Payment, the estimated date for commencement of the delivery of the goods specified in the Quotation will be notified by Level-O to the Customer (**Dispatch Date**).
- 3.2 The Customer acknowledges that any applicable manufacturing lead time specified in the Quotation (**Lead Time**) does not include any disruptions which will occur during the following periods:
 - (a) August of each year in the case of European products;
 - (b) 20 December to 8 January; and
 - (c) any public holiday in Australia or the country of manufacture.

- 3.3 The timely dispatch of any goods specified in the Quotation is subject to availability of labour and materials, the manufacturer's quality assurance inspection process and approval by government authorities. In the event that any goods fail to meet manufacturer's quality assurance standards, there is a delay in available materials or labour, there is a delay in processing by government authorities or Level-O is not satisfied with the quality of the goods so manufactured, Level-O may in its discretion delay delivery of the goods and shall not be liable for any delay that may arise from such circumstances.
- 3.4 The estimated shipping time of purchased goods can be expected as follows:
- (a) sea freight – approximately six (6) to eight (8) weeks from the Dispatch Date; and
 - (b) air freight – approximately fifteen (15) days from the Dispatch Date (plus any period of delay caused by customs or some other border authority).
- 3.5 The Customer acknowledges that the shipping lead times are outside the control of Level-O and Level-O is not liable for any delay in shipping lead times.
- 3.6 Level-O will notify the Customer of the date for completion of the delivery the goods and/or services specified in the Quotation (**Delivery Date**) once the Delivery Date is known by Level-O.
- 3.7 Where the Customer fails to take delivery of goods and/or services specified in the Quotation on the Delivery Date, or fails to provide the information or instructions necessary to enable delivery of goods and/or provision of services by Level-O, the Customer will indemnify Level-O for all damages, costs, charges, expenses and losses suffered by Level-O (**Delivery Costs and Losses**), including but not limited to:
- (a) import costs, export costs, tariffs and duties;
 - (b) costs payable under clause 5.2;
 - (c) transportation costs;
 - (d) extra storage costs;
 - (e) re-stocking costs;
 - (f) handling costs; and
 - (g) insurance costs.
- 3.8 Pursuant to Level-O's obligations under Shipping incoterm DDP (if applicable) and subject to these Terms, Level-O will commence delivery of the goods specified in the Quotation to the Customer when such goods have been made available for collection at the country of importation.
- 3.9 Level-O shall bear all costs associated with the exportation and importation of the goods including but not limited to all applicable duty, tax, and any other charges involved in clearing the goods for exportation and importation.
- 4. Goods**
- 4.1 The parties agree and acknowledge that:
- (a) title in the goods specified in the Quotation vests in Level-O until such time that the Purchase Price and any other amounts due under these Terms are paid in full by the Customer;
 - (b) until the Purchase Price and any other amounts due under the Terms are paid in full by the Customer, the Customer will not acquire title in the goods specified in the Quotation.
- 4.2 Risk in the goods specified in the Quotation will pass from Level-O to the Customer on and from the date which the goods are delivered to the Customer. The Customer is responsible for any loss or damage caused to or occasioned by the goods on and from the date which the goods are delivered to the Customer. For the avoidance of doubt, reference to delivery of the goods to the Customer does not constitute delivery of title in those goods, but only physical delivery of those goods to the Customer.
- 4.3 Until the Purchase Price is paid in full, the Customer must do all things necessary to protect Level-O's ownership and title in the goods specified in the Quotation and must not attempt to sell, hire, transfer, dispose or deal with the goods specified in the Quotation through any means without first obtaining the prior written consent of Level-O which may be granted or withheld in its sole and absolute discretion.
- 4.4 If requested by Level-O, the Customer must produce evidence that the goods specified in the Quotation have not been sold, hired, transferred, disposed of or dealt with.
- 4.5 In using the goods specified in the Quotation until the Purchase Price is paid in full, the Customer must:
- (a) ensure the Goods are kept in good repair, condition and working order (normal fair wear and tear excepted);
 - (b) use and maintain the goods specified in the Quotation in accordance with the Level-O's and its supplier's instructions and recommendations;
 - (c) not modify, vary, improve or otherwise alter the goods specified in the Quotation.
- 4.6 In the event that the Customer, in the reasonable opinion of Level-O, causes any damage to the goods before the Purchase Price has been paid in full, whether resulting from misuse or otherwise, the parties agree and acknowledge that the Customer will bear all costs associated with making good such damage to the value determined by Level-O in its reasonable opinion, such payment is payable on demand.
- 5. Installation**
- 5.1 If specified in the Quotation, the Purchase Price includes installation of the goods specified in the Quotation and garbage removal.
- 5.2 The Customer must provide Level-O reasonable access to the premises to install the goods specified in the Quotation and to do all other things reasonably acquired to ensure full installation of the goods and provision of the services specified in the Quotation can be completed as soon as possible. In the event that access to the premises for installation is not provided by the Customer, any such costs incurred by Level-O as a result of any failure to obtain access will be deemed Delivery Costs and Losses and the Customer will be liable to pay such Delivery Costs and Losses.
- 5.3 Level-O will not install any light fittings or electrical wiring included with the goods. The Customer must engage a qualified electrician to install any and all light fittings and electrical wiring at its own cost.
- 5.4 The Customer acknowledges that any replacement bulbs purchased by the Customer for the goods must be in accordance with the recommendations found within the product instructions.
- 6. Warranties**
- 6.1 Except for applicable non-excludable consumer guarantees, rights or warranties under the *Australian Consumer Law*, Level-O gives no guarantees and makes no warranties as to the condition of the goods and services supplied to and installed for the Customer.
- 6.2 Prior to signing the delivery docket, the Customer must inspect the goods specified in the Quotation and satisfy itself in relation to the condition and state of the Goods. Any claim for defective goods must be supported by photographic evidence.

- 6.3 Liability in relation to the condition of the goods specified in the Quotation vests with the manufacturer. The Customer must contact Level-O in respect of any claim and Level-O will use reasonable endeavours to contact the manufacturer of the Goods directly on behalf of the Customer to obtain the benefit of any warranties offered by that manufacturer on behalf of the Customer.
- 6.4 In the event of any defects in goods, the Customer must notify Level-O who will then contact the manufacturer of the goods in an attempt to procure rectification.
- 6.5 Unless otherwise specified, each of the goods supplied to the Customer will have a manufacturer's warranty period of five (5) years from the date of the Quotation.
- 6.6 In the event that the Customer has engaged a third party to undertake repairs to any alleged defects, the Customer shall not be entitled to any form of reimbursement from Level-O.
- 6.7 Any manufacturer's warranty does not apply to defects that are the result of fair wear and tear, accidental or intention damage to the goods or a failure by the Customer or any third party to comply with the manufacturer's instructions or written recommendations.
- 6.8 The Customer acknowledges that any alterations or modifications to the goods will void the manufacturer's warranty provided in respect of that good.
- 6.9 For the avoidance of doubt, nothing in these Terms is to be taken to exclude, restrict or vary any consumer guarantees that Level-O are prohibited by law from excluding, restricting or varying. To the extent that a consumer guarantee applies, the liability of Level-O for breaches of consumer guarantees is limited, to the repair or replacement of the goods including re-installation.
- 6.10 The Customer releases Level-O from all liability for indirect or consequential damage, loss of income, loss of profit or interruption of business and Level-O disclaims any liability in relation to the aforementioned.
- 6.11 The Customer agrees and acknowledges that no contractor, supplier or agent is authorised to act as Level-O's agent to agree or negotiate or change any term of these Terms, to exercise any authority on behalf of Level-O or to make any warranties or representations in relation to the Goods.
- 6.12 The Customer warrants to Level-O that the Customer:
- (a) information provided to Level-O about the Customer is true and accurate in all respects;
 - (b) has provided all information and documentation to Level-O which may be appropriate for Level-O to satisfactorily provide the goods and/or services contained in the Quotation;
 - (c) has adequate finances to comply with its obligations under these Terms;
 - (d) has full power to enter into these Terms;
 - (e) has entered into these Terms fully and voluntarily based on its own information and investigation, and without reliance on any representations made by Level-O unless such representations are contained in these Terms;
 - (f) agrees that no undue influence or pressure was exerted by Level-O prior to the Customer entering into these Terms; and
 - (g) agrees that no unfair tactics were used by Level-O prior to the Customer entering into these Terms.
- 7. Termination**
- 7.1 If the Customer commits a breach of these Terms:
- (a) the Customer must continue to perform its obligations in accordance with these Terms;
 - (b) Level-O may serve a written notice on the Customer requiring the Customer to remedy the breach within five (5) Business Days (**Default Notice**).
- 7.2 If the Customer has failed to rectify a breach by the time stipulated in the Default Notice, Level-O may by written notice to the Customer immediately terminate these Terms.
- 7.3 If an Insolvency Event occurs in respect of the Customer, Level-O may by written notice to the Customer immediately terminate these Terms. An "**Insolvency Event**" is any of the following:
- (a) the Customer informing Level-O in writing or creditors generally that the Customer is insolvent or is financially unable to proceed with these Terms or payment of the Purchase Price or other amounts due under these Terms;
 - (b) execution is levied against the Customer by a creditor;
 - (c) the Customer is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents its or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth); or
 - (d) in relation to the Customer being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a Deed of Company Arrangement;
 - (ii) the Customer enters a deed of company arrangement with creditors;
 - (iii) controller, receiver, liquidator or administrator is appointed;
 - (iv) an application is made to a court for the winding-up of the Customer;
 - (v) a winding-up order is made in respect of the Customer; or
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up).
- 7.4 If Level-O terminates these Terms for any reason then:
- (a) Level-O is released of its obligation to provide the goods and/or services specified in the Quotation;
 - (b) the Customer shall forfeit all payments made to Level-O and is liable to immediately pay Level-O all amounts due under these Terms, including the balance of the Purchase Price;
 - (c) Level-O is at liberty to deal with and/or destroy the goods specified in the Quotation;
 - (d) to the extent that any goods are in the possession, custody or control of the Customer:
 - (i) Level-O shall be entitled to repossess the goods;
 - (ii) the Customer shall make the goods available for removal and collection by Level-O its agents, contractors and employees and shall provide Level-O its agents, contractors and employees access to the premises where the Goods are located;
 - (iii) must not damage, uninstall or otherwise remove the goods except as directed by Level-O in writing.

- 7.5 In the event that the Customer fails to allow Level-O to recover the goods in accordance with this clause 7, in addition to Level-O's other rights, Level-O, its agents, contractors and employees may (subject to complying with any applicable law) take all necessary steps to enter any premises where Level-O considers the goods to be located and repossess the goods. The Customer authorises Level-O to produce a copy of these Terms to any government agency, regulatory body, police force or other enforcement body as sufficient evidence that Level-O, its agents, officers and employees are authorised by the Customer to enter the premises for the purposes permitted by this clause 7.
- 7.6 If the Customer fails to pay to Level-O any amounts due or do anything it is required to do in accordance with this clause 7, Level-O reserves the right to take action including but not limited to taking any enforcement action necessary to recover any amounts owing to Level-O by the Customer, or take measures for the recovery and repossession of the Goods in accordance with this clause 7 (**Enforcement Action**).
- 7.7 The Parties acknowledge that if Level-O incurs any costs in connection with taking Enforcement Action, such costs will be payable by the Customer. For the avoidance of doubt, costs in connection with taking Enforcement Action may include:
- (a) legal costs on a full indemnity basis; and
 - (b) costs incurred in relation to any the repossession of the goods.
- 7.8 If the Customer fails to pay any amount due under this clause 7, then without prejudice to the rights and remedies of Level-O, interest will accrue on the outstanding amount at the rate of 24% per annum. Interest accrues and is payable from day to day and is calculated daily on the basis of days elapsed and a 365-day year and compounds monthly in arrears.
- 8. Indemnity**
- 8.1 The Customer must indemnify and keep Level-O indemnified against all costs, loss and claims arising out of, or in connection with:
- (a) any negligent act or omission of the Customer or its agents;
 - (b) any wilful or malicious act or omission of the Customer or its agents;
 - (c) any personal injury or damage to property sustained by a party at the premises of the Customer where the goods are delivered or the services are provided;
 - (d) the Customer breaching a warranty under these Terms or any warranty becoming incorrect, false or misleading; and/or
 - (e) the Customer breaching these Terms.
- 9. Independent Advice**
- 9.1 The Customer acknowledges and represents to Level-O that it has had the opportunity to seek and obtain separate and independent legal advice before entering into these Terms. If the Customer has entered these Terms without first obtaining legal advice it has done so at its sole and absolute discretion and it will not be entitled to rely upon the absence of legal advice as a defence to any breach(es) of these Terms.
- 10. General**
- 10.1 Force Majeure**
- 10.2 For the purposes of this clause, "**Force Majeure**" means an act of foreign enemies, war, blockade or insurrection, act or terrorism, riot or civil disturbance, landslide, earthquake, flood, epidemic or any other serious, disruptive matter of similar character to the extent that any such events or circumstances did not arise directly or indirectly as a result of any act or omission of Level-O.
- 10.3 If Level-O is prevented from carrying out its obligations to the Customer as result of Force Majeure, then Level-O shall not be liable for any failure or delay whatsoever and shall resume its obligations once the event of Force Majeure is over.
- 10.4 Level-O has no entitlement and the Customer has no liability for any:
- (a) costs, losses, expenses, damages or the payment of any part of the Quotation price during an event of force majeure; and
 - (b) delay costs in any way incurred by Level-O due to an event of force majeure.
- 10.5 Assignments**
- (a) Level-O may assign or novate these Terms without obtaining the consent that the Customer. The Customer must do all things necessary to perfect such assignment or novation, including the execution of any documents requested.
 - (b) The Customer may only assign or novate these Terms with the prior written approval of Level-O, which may be held or granted in Level-O's discretion and may be conditional upon certain matters.
- 10.6 Severability**
- If a provision of these Terms is void or unenforceable for any reason, that provision is severed, without affecting the continued operation of these Terms.
- 10.7 Notices**
- (a) Level-O may give notices to the Customer by delivering them to the Customer personally or leaving it at, or sending it by post, facsimile or email, to the Customer's home, business, postal or email address last known to Level-O. An email notice will be deemed to be valid if not returned.
 - (b) The Customer consents to Level-O and/or its related bodies corporate sending commercial electronic messages to it.
- 10.8 Governing Law**
- These Terms are governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 10.9 Variation**
- An amendment or variation to these Terms is not effective unless it is in writing and signed or accepted by the parties.
- 10.10 Waiver**
- (a) Level-O's failure or delay to exercise a power or right does not operate as a waiver of that power or right;
 - (b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
 - (c) A waiver is not effective unless it is in writing.
 - (d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 11. Interpretation**
- (a) If there is more than one Customer, then Customer means each of Customer jointly and severally;

- (b) Reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
 - (v) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - (A) that Statutory Provision as amended or re-enacted from time to time; and
 - (B) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
 - (vi) money is to Australian dollars, unless otherwise stated.
 - (vii) "including" and similar expressions are not words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and the table of contents are for convenience only and do not form part of these Terms or affect its interpretation.
- (e) A provision of these Terms must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Terms or the inclusion of the provision in it.
- (f) If an act must be done on a specified day which is not a business day, the act must be done instead on the next business day.