

**1. General**

- 1.1 The customer's attention is drawn to these terms and conditions of business. All quotations and contractual agreements with the company are subject to these terms and conditions at all times.
- 1.2 Nothing in these terms and conditions shall affect the statutory rights of a consumer.

**2. Definitions**

- 'the company' shall mean Schwarz Kitchens; whose registered office is at 19 New Road, Brighton, BN1 1EY, or any approved Schwarz Kitchens Dealer
- 'the customer' shall mean the person or persons, firm, business, partnership, company or other organisation by whom an order has been placed for the company to provide the goods and/or the works
- 'the goods' shall mean the goods supplied by the company to the customer as detailed in the contract and includes any other associated items and all replacements thereof and additions thereto
- 'the installation works' shall mean any supply of services or installation works in respect of the goods to be carried out by the company on behalf of the customer
- 'the removal works' shall mean any supply of services to remove any of the customer's items from the premises
- 'the works' shall mean both the installation works and the removal works [as appropriate], as herein defined
- 'Installation team' shall mean the company's installers who are responsible for and carry out the works, [as appropriate]
- 'appliances' shall mean goods which compromise electrical or mechanical appliances manufactured by a third party or parties
- 'items' shall mean old or pre-existing kitchen units, cabinets, worktops, cupboards, or appliances of the customer already at the premises or belonging to the customer and to be removed as part of the removal works
- 'the premises' shall mean the customer's address as detailed in the contract or any other premises or building agreed by the company where the goods are to be delivered and/or the works carried out
- 'the contract price' shall mean the amount payable by the customer under the terms of the contract

**3. Contract**

- 3.1 A contract for the supply of goods and/or works by the company to the customer shall only exist when an order has been placed by the customer and accepted by the company and the deposit has been paid in full.
- 3.2 No provisions, modifications, amendments, or variations of the contract by the customer shall apply unless they are in writing and are agreed and signed by or on behalf of the company. In such a case, these shall be deemed to be amendments to the contract and shall not constitute a new contract and the customer shall confirm any such variation in writing as soon as requested by the company, but the company shall not be obliged to request or obtain such confirmation.
- 3.3 Where any variation to the goods and/or the works is agreed by the company, after the date of the contract, the company reserves the right to amend the contract and/or the contract price accordingly.
- 3.4 Any typographical or clerical error or omission in any quotation, pricelist, contract, order, acceptance, invoice, or any other document issued by the company shall be subject to correction without any liability on the part of the company at whatever time and whenever such correction shall be necessary.
- 3.5 These terms and conditions shall apply to every contract. The company shall not be bound by any terms and conditions which may be inconsistent with these terms and conditions.

**4. Delivery**

- 4.1 In consideration of the payment of the contract price by the customer to the company, the company shall deliver the goods to the premises [and where the contract so provides, carry out the works] on a date to be notified, and, wherever possible, agreed with the customer.
- 4.2 The company shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all, nor shall such delay or failure entitle the customer to refuse to accept any delivery under or performance of the contract, or to repudiate the contract.
- 4.3 (i) Any dates quoted or provided by the company for the delivery and/or the works are approximate only although the company shall use its best endeavours to supply the goods and to carry out the works within any time notified by the company to the customer, but time shall never and not be of the essence at any point. The company shall not incur any liability whatsoever for failure to supply or deliver by any given or such date or dates.  
(ii) In the event that the company is unable to fully complete delivery of the goods as a result of the customer's actions (or those of the customer's servants, agents, or contractors) or as result of the customer's refusal to accept delivery on the date notified by the company to the customer, and as a result the goods are retained and held by the company, the company shall be entitled to charge to the customer a storage charge of £10.00 per day, such charge to be added to the contract price. This charge is to reflect the fact that the goods will have to be retained by the company at the company's own warehouse/premises, and also that the company will remain liable for the risk in the same until delivery has been effected.
- 4.4 The customer warrants in entering into a contract with the company to ensure that adequate access is available to the premises to enable the company to deliver the goods and for providing a safe means of access from the public highway to the premises. If the customer should fail to adhere to this warranty, the company shall deliver the goods at the closest point of accessibility which shall be determined by the company's employees or agents at their sole discretion and the customer shall not raise any objection or requisition thereto.
- 4.5 Where the contract provides for works to be carried out, the company shall use its best endeavours to carry out the works within any time notified by the company to the customer but time shall never be of the essence. The company shall not incur any liability whatsoever for failure to undertake or complete the works by any given date or within any given timescale.
- 4.6 The company reserves the right to employ subcontractors to carry out any works on its behalf at the company's sole discretion.
- 4.7 Where the company is supplying goods and also the works, then the same may take place separately, and, if applicable, on a piecemeal basis.

## 5. Examination and Approval of Goods and Works

- 5.1 Following delivery, or where appropriate, following completion of the installation works, the customer shall be afforded reasonable time to inspect the goods and/or the works and to advise the company of any shortages or defects reasonably discoverable upon careful examination.
- 5.2 The company considers a reasonable time to be 7 days from the date of delivery and/or completion of the installation works, but accepts that this may vary in circumstances where the customer has advised or notified the company at the time of entering into the contract of any unusual circumstances or any reason why the customer should reasonably require more time to examine the goods and/or the installation works, and the same having been accepted by the company.
- 5.3 If the customer does not notify the company within the said 7 days of such shortage or defect, in the absence of such notification the company excludes all liability in respect of any defects or shortages.
- 5.4 Any goods which the customer believes to be damaged or defective must be retained for inspection by or on behalf of the company.
- 5.5 If the company shall be reasonably satisfied that the goods and/or the installation works are satisfactory and are as detailed in the contract and the goods are not damaged and/or the installation works are not defective, then the contract shall be deemed to have been fulfilled insofar as the company's obligations under the contract are concerned.

## 6. Quality of Goods

- 6.1 The company hereby undertakes and warrants to the customer that
- All goods shall be manufactured with due care and attention
  - All goods will be of the appropriate quality and fitness for purpose in line with statutory legislation
  - The company shall endeavour to ensure that the goods shall comply with any relevant specifications provided by the customer
  - That the works shall be carried out with due care and attention
- 6.2 The customer's attention is drawn to the fact that (as appropriate) the goods supplied may be natural products. In particular, granite and wood worktops may be subject to changes in colour due to their natural properties (including changes in colour batches supplied by the company to the customer) and painted goods may experience colouration differences from the colour swatch to the final finish.
- 6.3 The company will not be held liable for any such variation in the goods as detailed in paragraph 6.2 above or otherwise, and the customer shall not be at liberty to reject goods displaying such tendencies, nor to regard the same as a breach of contract.

## 7. Price

- 7.1 The customer shall pay the company the contract price.
- 7.2 All prices quoted are inclusive of value added tax, and, where applicable of any duties, imports, fees or charges whatsoever and howsoever payable. For the avoidance of doubt, the cost of the delivery of the goods from Germany to the United Kingdom will be borne by the company, except where the company shall request additional goods outside the scope of the contract, when the company shall be entitled to add the additional charge to the contract price.

## 8. Payment

- 8.1 The customer shall pay the contract price as follows:
- The deposit of 30% of the contract price upon entering into the contract
  - The full balance due of the contract price on a date notified by the company to the customer, being usually forty two (42) days or six (6) weeks before anticipated date of delivery of the goods.
- 8.2 For the avoidance of doubt, payment is requested on 'an upfront basis' because the goods are bespoke, and are specifically made to order by the company's representatives in Germany, and the company would find it difficult if not impossible to sell the goods to any third party.
- 8.3 Payment shall be made either in cash, by credit or debit card, or by cheque drawn upon a UK clearing bank or by bank transfer.
- 8.4 The time for payment shall be of the essence at all times and there shall be no right of set-off.
- 8.5 In the event of any late payments whatsoever the company shall charge interest on a daily basis on any balance due at the rate of 4% over the Bank of England base rate, the interest being calculated from the date the payment falls due until the date of payment in full, plus interest. The customer shall reimburse the company all costs and expenses (including, but not limited to, legal costs) incurred in the collection of any overdue amount.

## 9. Risk

- 9.1 The risk in the goods shall pass to the customer immediately upon delivery to the premises and the customer shall take out and ensure that appropriate insurance is in place accordingly.

## 10. Retention of Title

- 10.1 Notwithstanding clause 9 above, the company shall retain title and ownership in the goods until the contract price and any other sums outstanding and owing by the customer to the company are paid in full.
- 10.2 Pending payment in full by the customer of the contract price, the following sub-clauses shall apply:
- The customer shall keep and store the goods separately and in such a way so they can be readily identifiable as belonging to and being the goods of the company.
  - The customer shall at the customer's own expense immediately return the goods to the company should the company or its authorised representatives so request at any time after payment is due.
  - In the event that the goods shall be in any way mixed, compounded, fixed, or entwined with the property of the customer or any third party or parties then the product or products thereof shall be deemed to be held in common with any such party or parties.
  - In the event that the goods shall be fixed to the premises or customer's property, and then comprise a fixture and/or fitting, this shall not affect the company's legal title and ownership to the goods, notwithstanding that the goods may have become a fixture within the customer's premises.
  - Without prejudice to clause 9 above, and clause 10.2.3 and 10.2.4 above, the customer shall hold the goods as the company's trustee and bailee and shall keep the goods separate, securely stored in appropriate conditions, protected, insured, and identified as being the company's property.
  - The customer shall not sell, give away, or otherwise dispose of the goods. In the event that the customer should do so (which for the avoidance of doubt is strictly forbidden) then any monies received and the proceeds of sale, or disposal, including any cheque received or other payment shall be held on trust by the customer for the company and the customer will forward the cheque or payment to the company immediately. Pending the same, the customer shall keep any monies received in a separate account so as to be identifiable as the company's monies. In particular, but without prejudice to the foregoing, the customer shall not pay the proceeds into any bank account which is overdrawn.
  - The company shall be entitled at any time following the date upon which payment is due and without additional notice to enter the premises to repossess the goods accordingly. The customer irrevocably consents to allow the company access onto the customer's premises for this purpose. The customer shall reimburse the company for all reasonable fees incurred (including legal expenses) in so doing.
  - The company shall be entitled to maintain an action for the price of the goods notwithstanding that title to the same shall not have passed to the customer.

- (ix) The customer will immediately notify the company of any damage to the goods and will hold any insurance monies received in trust for the company absolutely. The customer at all times irrevocably authorises the company to collect any insurance monies from the insurers. The company may apply any insurance monies as the company shall see fit.

## 11. Warranty

- 11.1 The company's sole liability in respect of any defect in or failure of the goods supplied or in the works or for any loss, injury or damage attributable thereto is limited to making good by replacement or repaired defects which under proper use appear therein and arise solely from defective design, workmanship, or faulty materials within a period of 5 years from the date of delivery, and/or completion of the installation works where the goods do not comprise appliances. Where the goods comprise appliances, the company's sole liability shall be for a period of 12 months from the date of delivery only, provided always that for certain items identified in the specification where the manufacturer's guaranteed life under the proposed conditions of use is less than 12 months, then the warranty period shall be reduced to the respective guaranteed life accordingly.
- 11.2 In respect of appliances, these are supplied to the company by a third party and carry a manufacturer's warranty, which is typically 12 months. It is the sole responsibility of the customer to ensure that appropriate warranty documents are returned to the manufacturers of the appliances and the company shall not be held liable for any failure of the customer in doing so.
- 11.3 Without prejudice to paragraph 11.2 above, the company guarantees that where the goods do not compromise appliances then the same carry a 5 year construction guarantee.
- 11.4 In respect of all goods supplied, the company shall not be liable for any defect in or failure of the goods as a result of misuse by the customer or any third party, due lack of care, lack of general maintenance, or faulty installation where the installation has not been carried out by the installation team.

## 12. Liability

- 12.1 The company shall only be liable as stated in clause 11 above. This clause is in lieu of all conditions, warranties and statements of whatever nature in respect of the contract whether express or implied, save that at all times the customer's statutory rights as a consumer are not affected.
- 12.2 Without prejudice to the foregoing, the company's liability for any loss or damage sustained by the customer as a direct result of any breach of the contract or any liability whatsoever the company (including negligence) in respect of the performance of the contract shall be limited to payment of damages not exceeding the contract price.
- 12.3 The company will not be liable for the following loss or damage which shall or may arise out of or in conjunction with any failure or defect of or in any part of the goods (including any appliance) (including any delay in supplying or any failure to supply the goods in accordance with the contract or at all) or its use by the customer or howsoever caused (even if foreseeable or in the company's contemplation)
- (a) Loss of profit or profits, business, or revenue whether sustained by the customer or any third party, and/or
  - (b) Special, indirect, or consequential loss or damage whether sustained by the customer or any third party, including, but not limited to, loss of profit, loss of interest, loss of contract, loss of chance, damage to property of the customer, damage to the premises, or to any third party, and/or
  - (c) Any loss arising from any claim made against the customer by any person or third party, and/or
  - (d) Any personal injury to the customer or any other person or individual where such injuries are not caused by the company's negligence.
- 12.4 These conditions do not purport to exclude or restrict any liability for death or personal injury which is prohibited by the Unfair Contract Terms Act 1977.

## 13. The Removal Works

- 13.1 Where the contract provides for removal works, the company cannot guarantee that items will be in good or useable condition after completion of the removal works by the installation team. The company therefore accepts no form of liability whatsoever for any damage caused to the items. The company recommends that if a customer wishes to reuse any items that the removal of the items is undertaken by the customer themselves.
- 13.2 The removal works shall include the removal and disposal of the items away from the premises by the installation team, but at no time shall the removal works include the disposal of any appliances. The responsibility for the safe and proper disposal of any appliances remains at all times with the customer. The company recommends that the customer contacts their local authority for information and details of appropriate safe disposal guidelines, and compliance with legislation. The customer shall indemnify the company against any breach of any form of legislation in respect of disposal of any appliances.
- 13.3 In the event that the company is not appointed by the customer to carry out the removal works, the safe and adequate removal of the items shall at all times remain with the customer, and shall take place before the installation works are to commence.

## 14. The Installation Works

- 14.1 Where the company is to carry out the installation works, the customer shall provide at the customer's sole expense by the date given by the company for delivery and shall thereafter maintain throughout the period of the installation works, the following facilities to the company:
- (a) The customer shall ensure that sufficient space is available to enable the company to carry out the installation works.
  - (b) The customer shall ensure that any items in the part of the premises where the installation works are to be carried out have been removed.
  - (c) Adequate electricity supplies are provided.
  - (d) That suitable environmental conditions are in place.
  - (e) The customer shall ensure that the company's employees, agents, and the installation team shall have safe, clear, and unobstructed access both inside and outside the premises.
- 14.2 The company cannot guarantee to avoid causing superficial damage to wallpaper, paintwork, and other items of décor in the immediate vicinity of the area where the installation works are to be carried out, and repair of any damage or replacement of such items will be the sole responsibility of the customer at all times. The company however undertakes to use all reasonable care in carrying out the installation works.
- 14.3 In the event that after the removal of the items (whether by the company or any third party), the company should find that additional time will be required, or additional work must be carried out to ensure that the premises are suitable for the installation works to be carried out, then the customer shall be advised by the company and/or the installation team of any additional or further work that may be required in order to ensure that the installation work can be carried out satisfactorily. The company reserves the right to charge for such additional works, and to increase the contract price accordingly. The company shall attempt to agree the increase in the contract price with the customer prior to carrying out the same, but in the event that the company is unable to do so the increase will be at the company's discretion (although the company undertakes to ensure that any increase will be wholly reasonable under all the circumstances and at the company's standard charge).
- 14.4 Whilst the company shall make good any damage to the premises or other property of the customer where the same has been caused as a result of the company's negligence, or the negligence of the company's installation team, in the event that such damage to the premises and/or property is as a result of any inherent defect in the premises, its construction or make-up, the company shall not be liable for any repair or mend of the same, although the company may at the company's sole discretion agree to do so if so instructed by the customer, upon receipt of payment for the same. In such an instance, such increase in payment shall constitute an increase in the contract price.
- 14.5 The customer is advised to ensure that all possible obstructions including, but not limited to, curtains, blinds, ornaments, and other personal interior and exterior possessions and effects within the immediate vicinity of where the installation works or removal works are to be carried out are removed and the company shall not accept any responsibility for any damage caused to such personal possessions and effects unless such damage shall be caused as a result of the company's negligence or that of the installation team.

## 15. Force Majeure

The company shall be entitled, without liability on its part and without prejudice to its other rights, to terminate any contract or any unfulfilled part thereof, or, at its option, to suspend or give partial performance under it, if performance by the company or its suppliers is prevented, hindered, or delayed whether directly or indirectly by any reason or any cause whatsoever beyond the company's or its supplier's reasonable control whether or not such cause existed at the date upon which any contract was entered into. Non-exhaustive illustrations include act or acts of God, war, riot, terrorism, explosion, abnormal weather conditions, fire, flood, government action, strike, lock-out, delay by suppliers, accidents and shortages of material, labour, or manufacturing facilities.

## **16. Intellectual Property**

The company shall have and shall retain the property, copyright, and all other intellectual or industrial property rights in drawings, designs, plans, proofs, models, prototypes, specifications and quotations prepared by the company.

## **17. Measurements and Designs**

- 17.1** In the event that the customer should submit drawings, designs, plans, proofs, measurements or specifications to the company then
- (a) The customer warrants that the use or performance of such will not infringe any third party's intellectual property rights and shall indemnify the company against any such infringement, and
  - (b) The company will not accept any liability whatsoever for any inaccurate or incomplete information, drawings, or specifications whatsoever (unless the company has failed to adhere to the same)
  - (c) The company shall not be liable for any defects in the goods or the installation works arising directly or indirectly from compliance with any drawings, designs, specifications or order of the customer, the customer's architects, builders, surveyors or any other advisor appointed by or upon the customer's behalf.

## **18. Termination**

In the event of any payment due by the customer to the company not being paid on the due date, or in the event of the customer becoming insolvent or bankrupt or a petition being presented or a resolution being passed for the liquidation or sequestration of the customer or a receiver, administrator, administrative receiver or judicial factor being appointed over all or any assets of the customer; or if any steps are taken in relation to any of the foregoing, or the customer making any voluntary arrangements with its creditors generally, then the company shall be entitled to treat any contract as repudiated and shall be entitled to suspend deliveries to the customer and the manufacture of any goods and the supply of the works for the customer upon giving notice thereof to the customer without being liable for any form of loss.

## **19. Termination due to Breach**

- 19.1** Either party shall be entitled to terminate this agreement (without prejudice to any other rights in respect of breaches or terms of this agreement by the other) with immediate effect in the event of any fundamental breach by the other of these terms and conditions, save that in the event of such a breach being remedial, then notice will be given to the defaulting party to rectify and remedy any breach within 14 days of the date of such notice.
- 19.2** The customer's statutory rights are not affected.

## **20. Cancellation**

Where the customer has entered into the contract on their own premises or premises other than those of the company they are entitled to a cooling off period of seven (7) days. If the customer decides during this seven day period that they wish to cancel the contract they should do so IN WRITING and deliver personally or send (which may be by electronic mail) this cancellation notice to the representative of the company. The cancellation notice is covered by 'the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008'. The form at the foot of this document may be used ONLY IF THE CUSTOMER WISHES TO CANCEL.

Following the seven (7) day cooling off period the customer may not cancel any contract unless the company agrees to the same, and then only upon the terms that the customer shall indemnify the company against all costs incurred (including the cost of all labour, materials, administration costs and services used), and expenses incurred by the company as a direct result of the cancellation.

Contracts entered into on the company's premises are not subject to this legislation and therefore the customer should ensure they are happy to be bound by the terms of this agreement before entering into it.

## **21. Entire Agreement and Representation**

- 21.1** The customer confirms that they have not relied upon any warranty, representation, or undertaking of or on behalf of the company or of any other person in respect of the subject matter of these conditions save for any representation or warranty or undertaking expressly set out in the body of these terms and conditions and/or the contract and/or the quotation.
- 21.2** At all times it is the responsibility of the customer to ensure that goods ordered from the company shall comply with all appropriate laws, codes of conduct, guidelines, and legislation of any kind. This shall include (this list being indicative only and non-exhaustive) compliance with building regulations, health and safety guidelines and legislation, planning permissions, and disability access requirements. The customer is advised to ascertain and verify compliance with all such matters with any appropriate third party prior to entering the contract.
- 21.3** Nothing in these terms and conditions is intended to restrict or limit the company's liability for fraud or fraudulent or negligent misrepresentation.

## **22. Miscellaneous**

- 22.1** The company may at the company's discretion subcontract the performance of any contract in whole or in part.
- 22.2** In the event of these terms and conditions conflicting with any other terms and conditions, then these terms and conditions shall prevail.
- 22.3** Each right or remedy of the company under a contract is without prejudice to any other right or remedy of the company whether under that contract or not.
- 22.4** No waiver by the company of any breach of contract by the customer shall be construed as a waiver of any subsequent breach of the same or any other provision hereof.
- 22.5** Obligations by more than one person are joint and several and where any party at any time is more than one person references to it are to each person individually as well as jointly with others comprising it.
- 22.6** Failure or delay by the company in enforcing or partially enforcing provision of the contract shall not be construed as a waiver of its rights generally under the contract.
- 22.7** For the avoidance of doubt nothing in these terms and conditions or in any contract shall confer upon any third party any benefit or the right to enforce any term or terms of these terms and conditions or any contract.
- 22.8** If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part then the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected thereby.
- 22.9** Words importing the singular also include the plural and vice versa where the context so requires.
- 22.10** These terms and conditions and any contract shall be governed by and construed in accordance with the law of England and Wales and the parties shall submit to the jurisdiction of the English Courts in their entirety.

## SCHEDULE 1

### Cancellation Notice

This Cancellation Notice is set out in the form required by The Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008.

If you wish to cancel the contract you **MUST DO SO IN WRITING** and deliver personally or send (which may be by electronic mail) this to the person named below. You may use this form if you want to but you do not have to.

(Complete, detach and return this form **ONLY IF YOU WISH TO CANCEL THE CONTRACT.**)

To: Schwarz Kitchens, 24 Grove Road, Eastbourne, BN21 4TR.

I/We (delete as appropriate) hereby give notice that I/we (delete as appropriate) wish to cancel my/our (delete as appropriate) contract.

Signed

Name and Address

  

Date