

# Decor Engineering (Aust) Pty Ltd – Terms & Conditions of Trade

<b>1. Definitions</b>		
1.1 "Decor" means Decor Engineering (Aust) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Decor Engineering (Aust) Pty Ltd.		
1.2 "Client" means the persons buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.		
1.3 "Goods" means all Goods or Services supplied by Decor to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).		
1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Decor and the Client in accordance with clause 5 below.		
1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999".		
<b>2. Acceptance</b>		
2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.	9.0	
2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Decor.	9.1	
2.3 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Decor reserves the right to vary the Price with alternative Goods as per clause 5.2. Decor also reserves the right to halt all Services until such time as Decor and the Client agree to such changes.	9.2	
<b>3. Electronic Transactions (Victoria) Act 2000</b>		
3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.	9.3	
<b>4. Change in Control</b>		
4.1 The Client shall give Decor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, or business practice). The Client shall be liable for any loss incurred by Decor as a result of the Client's failure to comply with this clause.		
<b>5. Price and Payment</b>		
5.1 At Decor's sole discretion, the Price shall be either:		
(a) as indicated on any invoice provided by Decor to the Client; or		
(b) Decor's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise a period of thirty (30) days.		
5.2 Decor reserves the right to change the Price if a variation to Decor's quotation is requested. Variations will be charged for on the basis of Decor's quotation, and will be detailed in writing, and shown as variations on Decor's invoice. The Client shall be required to respond to any variation submitted by Decor within ten (10) working days. Failure to do so will entitle Decor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.	9.4	
5.3 At Decor's sole discretion, a deposit may be required.	9.5	
5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Decor, which may be:	9.6	
(a) on delivery of the Goods;	9.7	
(b) by way of instalments/progress payments in accordance with Decor's payment schedule;	9.8	
(c) the date specified on any invoice or other form as being the date for payment; or	9.9	
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Decor.	10.0	
5.5 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Decor.	10.1	
5.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Decor nor to withhold payment of any invoice because part of that invoice is in dispute.	10.2	
5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Decor an amount equal to any GST Decor must pay for any supply by Decor under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	10.3	
<b>6. Delivery of Goods</b>		
6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:		
(a) the Client or the Client's nominated carrier takes possession of the Goods at Decor's address; or	11.0	
(b) Decor (or Decor's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.	11.1	
6.2 At Decor's sole discretion, the cost of delivery is in addition to the Price.	11.2	
6.3 Decor may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	11.3	
6.4 Any time specified by Decor for delivery of the Goods is an estimate only and Decor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Decor is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Decor shall be entitled to charge a reasonable fee for redelivery and/or storage.	11.4	
<b>7. Risk</b>		
7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.	11.5	
7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Decor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Decor is sufficient evidence of Decor's rights to receive the insurance proceeds without the need for any person dealing with Decor to make further enquiries.	11.6	
7.3 If the Client requests Decor to leave Goods outside Decor's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.	11.7	
7.4 The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. Decor will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.	11.8	
7.5 Where the Client has supplied materials for Decor to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quantity, quality and any faults inherent in the materials. Decor shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), however arising from the use of materials supplied by the Client. In the event that the Client supplies insufficient paint or other materials for the Services, full responsibility shall rest with the Client, and Decor accepts no liability for availability of the product, nor for any variation in colour (in accordance with clause 7.4 above).	11.9	
7.6 Whilst every care is taken by Decor to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of the Goods. Decor shall be under no liability whatsoever for any errors not corrected by the Client in the final proof reading. Should the Client's alterations require additional proofs this shall be invoiced as an extra.	12.0	
7.7 Decor shall not be liable for the loss of or damage to any of the Client's materials whilst at Decor's premises, unless caused by the negligence of Decor or Decor's employees. Insurance is the Client's responsibility.	12.1	
7.8 Decor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Decor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.	12.2	
7.9 Any advice, recommendation, information, assistance or service provided by Decor in relation to Goods or Services supplied is given in good faith, is based on Decor's own knowledge and experience and shall be accepted without liability on the part of Decor and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.	12.3	
<b>8. Title</b>		
8.1 Decor and the Client agree that ownership of the Goods shall not pass until:	13.0	
(a) the Client has paid Decor all amounts owing to Decor; and	13.1	
(b) the Client has made all of its other obligations to Decor.	13.2	
8.2 Receipt by Decor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.	13.3	
8.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 8.1:		
(a) the Client is only a bailee of the Goods and must return the Goods to Decor on request.		
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for Decor and must pay to Decor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.		
(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes		
or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Decor and must pay or deliver the proceeds to Decor on demand.		
(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Decor and must sell, dispose of or return the resulting product to Decor as it so directs.		
(e) the Client irrevocably authorises Decor to enter any premises where Decor believes the Goods are kept and recover possession of the Goods.		
(f) Decor may recover possession of any Goods in transit whether or not delivery has occurred.		
(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Decor.		
(h) Decor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.		
<b>Personal Property Securities Act 2009 ("PPSA")</b>		
In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.		
Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to Decor for Services – that have previously been supplied to the Client and/or will be supplied in the future by Decor to the Client.		
(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Decor may reasonably require to:		
(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;		
(ii) register any other document required to be registered by the PPSA; or		
(iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);		
(b) indemnify, and upon demand reimburse, Decor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;		
(c) not register a financing change statement in respect of a security interest without the prior written consent of Decor;		
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Decor;		
(e) immediately advise Decor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.		
Decor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.		
The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.		
The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.		
Unless otherwise agreed to in writing by Decor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.		
The Client must unconditionally ratify any actions taken by Decor under clauses 9.3 to 9.5.		
Subject to any express provisions to the contrary (including those contained in this clause 9) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.		
<b>Security and Charge</b>		
In consideration of Decor agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).		
The Client indemnifies Decor from and against all Decor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Decor's rights under this clause.		
The Client irrevocably appoints Decor and each director of Decor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.		
<b>Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</b>		
The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify Decor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Decor to inspect the Goods.		
Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ( <b>Non-Excluded Guarantees</b> ).		
Decor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.		
Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Decor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Decor's liability in respect of these warranties is limited to the fullest extent permitted by law.		
If the Client is a consumer within the meaning of the CCA, Decor's liability is limited to the extent permitted by section 64A of Schedule 2.		
If Decor is required to replace the Goods under this clause or the CCA, but is unable to do so, Decor may refund any money the Client has paid for the Goods.		
If the Client is not a consumer within the meaning of the CCA, Decor's liability for any defect or damage in the Goods is:		
(a) limited to the value of any express warranty or warranty card provided to the Client by Decor at Decor's sole discretion;		
(b) limited to any warranty to which Decor is entitled, if Decor did not manufacture the Good; or		
(c) otherwise negated absolutely.		
Subject to this clause 11, returns will only be accepted provided that:		
(a) the Client has complied with the provisions of clause 11.1; and		
(b) Decor has agreed that the Goods are defective; and		
(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and		
(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.		
Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Decor shall not be liable for any defect or damage to the Goods which may be caused or partly caused by or arise as a result of:		
(a) the Client failing to properly maintain or store any Goods;		
(b) the Client using the Goods for any purpose other than that for which they were designed;		
(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;		
(d) the Client failing to follow any instructions or guidelines provided by Decor;		
(e) fair wear and tear, any accident, or act of God.		
Notwithstanding anything contained in this clause if Decor is required by a law to accept a return then Decor will only accept a return on the conditions imposed by that law.		
<b>Intellectual Property</b>		
Where Decor has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Decor. Under no circumstances may such designs, drawings and documents be used without the express written approval of Decor.		
The Client warrants that all designs, specifications or instructions given to Decor will not cause Decor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Decor against any action taken by a third party against Decor in respect of any such infringement.		
The Client agrees that Decor may (at its cost) use the Client's designs, drawings or documents for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Decor has created for the Client.		
<b>Default and Consequences of Default</b>		
Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Decor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.		
If the Client owes Decor any money the Client shall indemnify Decor from and against all costs and disbursements incurred by Decor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Decor's contract default fee, and bank dishonour fees).		
Further to any other rights or remedies Decor may have under this contract, if a Client has made payment to Decor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Decor under this clause 13 which can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.		
13.4 Without prejudice to Decor's other remedies at law Decor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Decor shall, whether or not due for payment, become immediately payable if:		
(a) any money payable to Decor becomes overdue, or in Decor's opinion the Client will be unable to make a payment when it falls due;		
(b) the Client has exceeded any applicable credit limit provided by Decor;		
(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or		
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.		
<b>14. Cancellation</b>		
14.1 Without prejudice to any other remedies Decor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Decor may suspend or terminate the supply of Goods to the Client. Decor will not be liable to the Client for any loss or damage the Client suffers because Decor has exercised its rights under this clause.		
14.2 Decor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Decor shall repay to the Client any money paid by the Client for the Goods. Decor shall not be liable for any loss or damage whatsoever arising from such cancellation.		
14.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Decor as a direct result of the cancellation (including, but not limited to, any loss of profits).		
14.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.		
<b>15. Privacy Act 1988</b>		
15.1 The Client agrees for Decor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit history, credit history) about the Client in relation to credit provided by Decor.		
15.2 The Client agrees that Decor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:		
(a) to assess an application by the Client; and/or		
(b) to notify other credit providers of a default by the Client; and/or		
(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or		
(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.		
15.3 The Client consents to Decor being given a consumer credit report to collect overdue payments on commercial credit.		
15.4 The Client agrees that personal credit information provided may be used and retained by Decor for the following purposes (and for other agreed purposes or required by):		
(a) the provision of Goods; and/or		
(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or		
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or		
(d) enabling the collection of amounts outstanding in relation to the Goods.		
Decor may give information about the Client to a CRB for the following purposes:		
(a) to obtain a consumer credit report;		
(b) allow the CRB to create or maintain a credit information file about the Client including credit history.		
15.6 The information given to the CRB may include:		
(a) personal information as outlined in 15.1 above;		
(b) name of the credit provider and that Decor is a current credit provider to the Client;		
(c) whether the credit provider is a licensee;		
(d) type of consumer credit;		
(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);		
(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Decor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);		
(g) information that, in the opinion of Decor, the Client has committed a serious credit infringement;		
(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).		
15.7 The Client shall have the right to request (by e-mail from Decor):		
(a) a copy of the information about the Client retained by Decor and the right to request that Decor correct any incorrect information; and		
(b) that Decor does not disclose any personal information about the Client for the purpose of direct marketing.		
15.8 Decor will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.		
15.9 The Client can make a privacy complaint by contacting Decor via e-mail. Decor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <a href="http://www.oaic.gov.au">www.oaic.gov.au</a> .		
<b>16. Unpaid Seller's Rights</b>		
16.1 If the Client has left any item with Decor for repair, modification, exchange or for Decor to perform any other service in relation to the item and Decor has not received or been tendered the whole of any monies owing to it by the Client, Decor shall have, until all monies owing to Decor are paid:		
(a) a lien on the item; and		
(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.		
16.2 The lien of Decor shall continue despite the commencement of proceedings, or judgment for any monies owing to Decor having been obtained against the Client.		
<b>17. Service of Notices</b>		
17.1 Any written notice given under this contract shall be deemed to have been given and received:		
(a) by handing the notice to the other party, in person;		
(b) by leaving it at the address of the other party as stated in this contract;		
(c) by sending it by registered post to the address of the other party as stated in this contract;		
(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;		
(e) if sent by email to the other party's last known email address.		
17.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.		
<b>18. General</b>		
18.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable for the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.		
18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which Decor has its principal place of business, and are subject to the jurisdiction of the courts in that state.		
18.3 Subject to clause 11 Decor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Decor of these terms and conditions (alternatively Decor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).		
18.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.		
18.5 The Client agrees that Decor may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Decor to provide Goods to the Client.		
18.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.		
18.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.		

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