

# MICHAEL MURRAY STUDIO LIMITED

## Terms and Conditions

### 1. Definitions and Interpretation

**Client** means any company, person or other body which orders or requests, either itself or through an agent, the supply of Goods and/or Services from the Company 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.

**Company** means Michael Murray Studio Limited a company incorporated in New Zealand, company number 8221432 whether acting itself or through one or more of its agents.

**Goods** means all goods supplied by the Company to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' and 'Services' shall be interchangeable with each other).

**GST** means goods and services tax, pursuant to the Goods and Services Tax Act 1985.

**Price** means the price payable (plus GST unless stated in writing to the contrary by the Company) for the Goods and/or Services as agreed between the Company and the Client in accordance with clause 3 below.

**Terms** shall mean the terms and conditions of trade contained within this documents and any variation by the Company to this document.

**Services** means any Services provided for by the Company to the Client.

### 2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms if the Client places an order for either Goods or Services, irrespective of whether the Goods are delivered or the Services are completed. The Client is not required to sign a copy of these Terms to confirm acceptance.

2.2 These Terms may only be amended with the consent of the Company in writing.

2.3 These Terms shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Company

### 3. Price and Payment

3.1 The Price (which prior to an order being accepted by the Company may be changed without notice at the Company's sole discretion) shall be the Company's quoted price (subject to clause 4.1) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

3.2 At the Company's sole discretion a non-refundable deposit may be required.

3.3 Time for payment for the Goods and Services being of the essence, the Price will be payable by the Client on the date/s determined by the Company, which may be:

- in accordance with the times specified in the Company's estimate or quote;
- the date specified on any invoice or other form as being the date for payment; or
- by way of progress payments in accordance with the Company's payment schedule specified on an invoice.

3.4 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed by the Company.

3.5 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 the Company nor to withhold payment of any invoice because part of that invoice is in dispute.

3.6 Unless otherwise stated the Price does not include GST. In addition to the Price, 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.

### 4. Variations

4.1 The Company reserves the right to change the Price for the Goods and/or Services without notice:

- if a variation to the Goods and/or Services which are to be supplied is requested; or
- in the event of unforeseen circumstances occurring which are beyond the Company's control, including but not limited to variations in:
  - delivery costs relating to the Goods;
  - taxes, duties and/or any other levies; and
  - foreign exchange rates.

4.2 Variations will be charged for on the basis of the Company's quotation, and will be detailed in writing, and shown as variations on the Company's invoice. Payment for all variations must be made in full at the time of the invoice is issued.

4.3 In the event of any variation, the Company may extend the date of delivery by a period of time considered necessary and reasonable in the circumstances.

4.4 Any expense incurred by the Company as a consequence of such a variation shall be added to the Price.

### 5. Delivery of Goods

5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that the Company's nominated carrier delivers the Goods to the Client's nominated address or the Client collects the Goods from the Company's premises.

5.2 Unless otherwise expressly included, the cost of Delivery is in addition to the Price.

5.3 Any time specified by the Company for Delivery of the Goods is an estimate only and the Company 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 reasonable endeavours to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Company is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Company shall be entitled to charge a reasonable fee for redelivery, storage, demurrage and/or any other charges resulting from the forgoing action or inaction. Late Delivery shall not constitute a breach of contract by the Company and the Purchaser shall not be entitled to cancel the contract because of late delivery.

5.4 The Company takes no responsibility in regard to wrongly delivered Goods, late Delivery or late installation. Any delay in Delivery or installation shall not excuse or relieve the Client from its obligation to pay for the Goods.

5.5 Where a Client claims Goods delivered do not conform to any specifications, the Client must notify the Company in writing with details of non-conformity within 5 working days from the date of Delivery. Such notice of non-conformity does not entitle the Client to withhold payment of the Price for Goods unless agreed to in writing by the Company.

### 6. Risk

6.1 Any risk in relation to any Goods passes to the Client upon the Goods leaving the Company's premises or any other location that they are stored on behalf of the Company. The Company accepts no liability for any damage to Goods whilst in transit to the Client.

6.2 At the Company's sole discretion, the Company may enter into an arrangement with the Client regarding insurance of any Goods to be delivered. Should an arrangement be made between the Company and the Client regarding insurance of the Goods, such an arrangement must be made in writing subject to the following provisions:

- If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Company is entitled to receive all insurance proceeds payable for the Goods, less any amounts already paid by the Client.
- The production of these Terms by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- The Company will be entitled to pass on the costs of any insurance policy to the Client by adding such costs to the Price.

6.3 The Company accepts no responsibility for any damage or performance related problems with any Goods where they have not been handled, used, stored, installed, fitted and/or maintained in accordance with the Company's and/or the manufacturers' recommendations.

6.4 The Company shall be entitled to rely on the accuracy of any plans, specifications, quantities and/or any other information provided by the Client in relation to any Goods or Services. The Client acknowledges and agrees that in the event that any information provided by the Client is inaccurate, subject to the Company acting reasonably, the Company accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

6.5 The Client acknowledges that all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in the Company's fact sheets, price lists, catalogues, brochures or advertising material are indicative only and that the Client has not relied on such information.

6.6 Any advice, recommendation, information, assistance or service provided by the Company in relation to Goods supplied is given in good faith, is based on the Company's own knowledge and experience and shall be accepted without liability on the part of the Company. The Client shall be solely responsible for ensuring that the Goods ordered are suitable for their intended use.

6.7 Where the Client has supplied items for the Company to complete the Services, the Client acknowledges that the Client accepts responsibility for the suitability of purpose, quality and any faults inherent in the items. The Company shall not be responsible for any defects in the items, any loss or damage (or any part thereof), howsoever arising from the use of items supplied by the Client.

6.8 The Company shall not be responsible for any loss or damage or defect or maintenance if it relates to work performed by the Client or the Client's contractor.

6.9 Where delays to installation are a result of the Client or the Client's contractors, the Company shall be entitled to charge the Client the Company's reasonable costs as a result of the delay.

6.10 The Client acknowledges that:

- Goods (including but not limited to paint, timber, tiles) supplied may exhibit variations in shade tone, colour, texture, markings, veining, surface and finish, and may fade or change colour over time. The Company will make every effort to match batches and samples of the Goods supplied in order to minimise such variations, but shall not be liable in any way whatsoever where such variations occur.
- Goods such as Marble and Granite are porous products and although they may be sealed for protection, they are prone staining and discolouration occurring if acidic or oil based substances are left on surfaces for some time.

6.11 The Client agrees to indemnify the Company against any damage occurring after delivery and installation.

6.12 The Client acknowledges that Goods supplied may:

- expand, contract or distort as a result of exposure to heat, cold, weather; and
- mark or stain if exposed to certain substances; and
- be damaged or disfigured by impact or scratching.

### 7. Plans and Specifications

7.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless the Client and Company agree otherwise in writing.

7.2 The Company shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.

7.3 If the giving of an estimate or quotation for the supply of Goods involves the Company estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of the Company's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.

7.4 Should the Client require any changes to the Company's estimated measurements and quantities, the Client must request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

### 8. Work Site Access

8.1 The Client shall ensure that the Company has clear and free access to the work site at all times to enable them to deliver the Goods. The Company shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Company.

### 9. Title

9.1 The Company and the Client agree that ownership of the Goods shall not pass until:

- the Client has paid the Company all amounts owing to the Company; and
- the Client has met all of the Client's other obligations to the Company.

9.2 Title in all Goods supplied by the Company passes to the Client only when the Client has made payment in full for the Goods and of all other sums due to the Company by the Client whatsoever. Until such stage all sums due to the Company by the Client have been paid, the Company continues to have a security interest in the Goods and all present and after acquired property of the Client.

9.3 If the Goods are attached, fixed, or incorporated into any property of the Client, by way of any manufacturing or assembly process by the Client or any third party, title in the Goods shall remain with the Company until full payment for the Goods has been made by the Client. Where those Goods are mixed with other property so as to be part of or a constituent of any new goods, title to these new goods shall be assigned to the Company as security for the full satisfaction by the Client of the new amounts owing between the Company and Client.

9.4 The Client gives irrevocable authority to the Company to enter any premises occupied by the Client or on which Goods are situated at any reasonable time after default by the Client or prior to default if The Company believes (acting reasonably) a default is likely to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. The Company shall not be liable for any costs, damages, expenses or losses incurred by the Client or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. The Company may either resell any repossessed Goods return the net proceeds of sale to the Client (after deduction of all repossession, storage, selling and other costs) or may retain any of the repossessed Goods and apply a credit to the Client's at the invoice value the Goods thereof less such sum as the Company reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit, restocking fees and/or costs.

9.5 The Client is only a bailee of the Goods and must return the Goods to the Company on request.

9.6 The Client holds the benefit of the Client's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance (less any amounts already paid by the Client) in the event of the Goods being lost, damaged or destroyed.

9.7 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 the Company and must pay or deliver the proceeds to the Company on demand.

9.8 If the Credit (Repossession) Act 1997 applies to any transaction between the Client and the Company, the Client has the rights provided in that Act despite anything contained in these Terms.

### 10. Personal Property Securities Act 1999 (PPSA)

10.1 The Client hereby acknowledges and agrees that:

- These Terms constitute a security agreement for the purposes of the PPSA and;
- The Client grants the Company a security interest in all Goods and all collateral being a monetary obligation of the Client for order for Goods previously supplied by the Company to the Client and that may be supplied in the future by Company to the Client.
- The Client further grants the Company a security interest over all present and after acquired property of the Client to further secure the performance by the Client of its obligations under these Terms (including, but not limited to, the payment of any money).

10.2 The Client undertakes to:

- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register (PPSR);
- indemnify, and upon demand reimburse the Company for all expenses incurred in registering financing statements in accordance with this clause 10 or financing change statements on the PPSR or releasing any financing statement;
- not to register a financing change statement or a change demand without the prior written consent of the Company; and
- not to register a financing statement over the assets of the Client, in favour of the Client, which have the intention of defeating any of the Company's claims against the Client's property.

10.3 The Client and the Company agree that nothing in Sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.

10.4 The Client waives its rights as a debtor under Sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

10.5 Unless otherwise agreed in writing by the Company, the Client waives its right to receive a verification statement in accordance with Section 148 of the PPSA.

10.6 The Client irrevocably appoints the Company and each director of the Company as the Client's true and lawful attorney to affirm 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.

10.7 The Client indemnifies the Company from and against all of the Company's costs and disbursements, any claims against the Company and legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause 10.

10.8 Where Goods are retained by the Company pursuant to this clause 10 the Client waives the right to receive notice under Section 120 of the PPSA and to object under Section 121 of the PPSA.

- 10.9 The following shall constitute defaults by the Client under this clause 10:
- Non-payment of any sum by the due date.
  - The Client intimates that it will not pay any sum by the due date.
  - Any Goods are seized by any other creditor of the Client or any other creditor intimates that it intends to seize Goods.
  - Any Goods in the possession of the Client are materially damaged while any sum due from the Client to The Company remains unpaid.
  - The Client is bankrupted or put into liquidation or a receiver is appointed to any of the Client's assets or a landlord distains against any of the Client's assets.
  - A Court judgment is entered against the Client and remains unsatisfied for seven (7) days.
  - Any material adverse change in the financial position of the Client.
11. **Warranty**
- 11.1 Subject to the conditions of warranty set out in clause 11.2 the Company warrants that if any defect in any workmanship of the Company becomes apparent and is reported to the Company within five (5) years of the date of delivery (time being of the essence) then the Company will either (at the Company's sole discretion) replace or remedy the workmanship.
- 11.2 The conditions applicable to the warranties given by clause 11.1 are:
- the warranty shall be void in relation to any defect or damage which may be caused or partly caused by or arise through:
    - any tampering with the Goods on the part of the Client; or
    - failure on the part of the Client to properly store/install/maintain/use any Goods; or
    - failure on the part of the Client to follow any instructions or guidelines provided by the Company; or
    - any use of any Goods otherwise than for any application specified on a quote or order form; or
    - the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - fair wear and tear, any accident or act of God.
  - If Goods have been installed, the Company must be notified in writing of any defects within 30 days of the date of installation.
  - If due to installation the defective Goods or parts of Goods cannot be returned to the Company, the Client shall arrange for an on-site assessment to take place no later than 90 days from the date of installation.
  - The warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the Goods are repaired, altered or overhauled without the Company's consent.
  - in respect of all claims the Company shall not be liable to compensate the Client for any delay in either replacing the Goods and/or remedying the workmanship or in properly assessing the Client's claim.
  - The Company shall not be liable for consequential or special damages under any circumstances.
- 11.3 Any Goods or components not manufactured by the Company are subject to the supplier's warranty only and are subject to the terms of the supplier's warranty. The Company will act reasonably so that the Client receives the benefit of the supplier's warranty.
- 11.4 The Company is not liable under clause 11.1 unless the Goods have been paid for in full.
12. **Cancellation of Orders and Returns**
- 12.1 An order for Goods and/or Services may not be cancelled once placed by a Client and the Company is not obliged to accept any cancellation of order or return of Goods and/or Services.
- 12.2 Goods may only be accepted for return in accordance with 12.1 above provided that:
- the Company in their sole discretion has agreed in writing to accept the return of the Goods; and
  - the Goods are returned at the Client's cost to the Company's premises within seven (7) days of the date of despatch; and
  - the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition.
- 12.3 Subject to clause 12.2 the Company may (in its sole discretion) accept the return of Goods but shall be entitled to charge a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.
- 12.4 The Company reserves the right to cancel any order for Goods and/or Services if the order provides impractical (in the Company's sole opinion) to fulfil.
13. **Default and Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue on any sum which remains unpaid after the due date for payment, until the date of payment, at a rate of 10 percent (10%) per month and at the Company's sole discretion such interest shall compound monthly at such a rate after as well as before any judgment.
- 13.2 If the Client owes the Company any money the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor/client basis, the Company's collection agency costs, and bank dishonour fees).
- 13.3 Further to any other rights or remedies the Company may have under these Terms, if a Client has made payment to the Company, 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 the Company under this clause 13.
- 13.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:
- any money payable to the Company becomes overdue, or in the Company's reasonable opinion the Client will be unable to make a payment when it falls due;
  - the Client has exceeded any applicable credit limit provided by the Company.
  - 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 the Client's creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
14. **Cancellation**
- 14.1 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these Terms the Company may suspend or terminate the supply of Goods to the Client. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company has exercised its rights under this clause.
- 14.2 The Company may cancel any contract to which these Terms 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 the Company shall repay to the Client any money paid by the Client for the Goods. The Company 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 direct loss incurred by the Company 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-stocklist items, will not be accepted once production has commenced, or an order has been placed.
15. **Service of Notices**
- 15.1 Any written notice given by a party under these Terms shall be deemed to have been given and received:
- by handing the notice to the other party, in person; or
  - by leaving it at the address of the other party; or
  - by sending it by registered post to the address of the other party; or
  - if sent by email to the other party's last known email address.
- 15.2 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.
16. **Compliance with Laws**
- 16.1 The Client must comply with the provisions of all statutes, customs (prohibited export) regulations of New Zealand or any applicable jurisdiction, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and/or Services.
17. **Jurisdiction**
- 17.1 These Terms and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Courts of New Zealand.
18. **Intellectual Property**
- 18.1 Where the Company has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Company.
- 18.2 The Client warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.
- 18.3 Unless expressly agreed to otherwise in writing between the parties: copyright and intellectual property rights in all Goods and other things capable of ownership commissioned and paid for by the Client as part of the order shall vest in the Company.
- 18.4 The Client agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Company has created for the Client.
19. **Guarantee**
- 19.1 The party who signs these Terms shall be deemed as the guarantor of the Client (**Guarantor**). The Guarantor shall be bound by these Terms.
- 19.2 In consideration of the Company agreeing to provide the Client with Goods and/or Services at the Guarantor's request, the Guarantor guarantees payment in accordance with the Terms. The Guarantor covenants with the Company that:
- No release delay or other indulgence given by the Company to the Client or to the Client's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
  - As between the Guarantor and the Company, the Guarantor may for all purposes be treated as the Client and the Company shall be under no obligation to take proceedings against the Client before taking proceedings against the Guarantor.
  - The guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the payment.
  - Should there be more than one Guarantor, their liability under this guarantee shall be joint and several.
20. **Consumer Guarantees Act 1993**
- 20.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Company to the Client.
21. **Privacy Act 2020**
- 21.1 The Client authorises the Company or the Company's agent to:
- access, collect, retain and use any information about the Client;
    - (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - for the purpose of marketing products and services to the Client.
  - disclose information about the Client, whether collected by the Company from the Client directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 21.2 Where the Client is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.3 The Client shall have the right to request the Company for a copy of the information about the Client retained by the Company and the right to request the Company to correct any incorrect information about the Client held by the Company.
22. **General**
- 22.1 The failure by the Company to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 The Company 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 the Company of these Terms.
- 22.3 The Company will not be liable to the Client if delivery of the Goods or completion of any Services is prevented or delayed, by reasons of any circumstances beyond the Company's reasonable control.
- 22.4 The Company may licence and/or assign all or any part of its rights and/or obligations under these Terms without the Client's consent.
- 22.5 The Client cannot licence or assign without the written approval of the Company.
- 22.6 The Company may sub-contract all or any part of its rights and/or obligations under these Terms without the written consent of the Client.
- 22.7 The Client agrees and accepts that the Client has no authority to give any instruction to any of the Company's sub-contractors without the authority of the Company.
- 22.8 The Company shall not 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.
- 22.9 The Client warrants that they have the power to enter into these Terms and have obtained all necessary authorisations to allow them to do so, that they are not insolvent and that these Terms create binding and valid legal obligations on them.
- Signed:.....
- Name:..... Designation:.....
- Date:..... Day of..... 20.....