

TERMS AND CONDITIONS OF SALE

These are the entire Terms and Conditions of Sale of all goods merchandise and services ("the goods") supplied by Decor Systems Australia and its associated and subsidiary companies (all of which are referred to as "DSA") to any person, firm or company placing an order with DSA for the purchase of any goods ("the Customer"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of DSA and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer.

GENERAL

1. No quotation by DSA shall constitute an offer.
2. All orders placed with DSA shall only be accepted subject to these Terms and Conditions. DSA may at any time, and from time to time alter these Terms and Conditions of Sale and such altered Terms and Conditions of Sale shall apply after notification by DSA to the Customer.
3. If a Customer cancels or alters any order or part order for special goods or standard goods with special materials at any time after DSA has received the order then DSA reserves the right to charge to the Customer the costs of any special goods or materials already acquired for the order together with the cost of any labour and tooling expended to the date of such cancellation or alterations.
4. Goods and Services Tax ("GST") Sales Tax or any other applicable tax or duty payable shall be paid by or reimbursed by the Customer to DSA on demand and the Customer shall indemnify and keep indemnified DSA in respect of all taxes and duties including GST arising out of any sale of goods or the subsequent use of goods after the sale to the Customer.

PRICES

5. Prices quoted are firm for thirty (30) days and thereafter are subject to increases without notice.
6. Prices are quoted ex- store.

7. TERMS OF PAYMENT

- a) Unless otherwise stated in writing all prices are strictly nett. The granting of credit to a Customer shall be at the absolute discretion of DSA and unless otherwise demanded by DSA the Customer shall make payment of all amounts payable within twenty-eight (28) days after the end of the month of delivery.
- b) Customers shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off. The Customer agrees to pay DSA Administration and Handling fees in respect of any copies of documents required or other processing involved in the conduct of the account including but not limited to account administration fees, Merchant or other fees incurred as a result of payment by credit or charge card or Bpay or payment by any other means and such fees will be charged to the Customer's account.

8. If the Customer fails to make payment in accordance with Clause 7, DSA shall be entitled to:
 - a) Require the payment of cash upon delivery of any further goods;
 - b) Charge an interest charge at the rate of one point seven five percentum (1.75%) per month on a cumulative basis on all overdue amounts (including late payment charges and amounts other than the price) calculated on a day to day basis on any monies due but unpaid, such interest charge to be computed from the due date for payment AND the parties agree that such interest charge is not a penalty but is a true measure of damages incurred by DSA. Payments received from the Customer will be credited first against any interest charge and all such fees shall be payable on demand;
 - c) Claim from the Customer all costs, expenses and charges incurred on any account whatsoever including but not limited to any action taken by DSA to recover monies or goods due from the Customer including but not limited to any mercantile agents costs and legal costs and disbursements on a solicitor-client basis; and
 - d) Cease any further deliveries to the Customer and to terminate any agreement in relation to goods that have not been delivered.
 - e) In the event that DSA requires payment by the Customer of a security deposit then the Customer must pay to DSA the amount of that Security Deposit at the time of the Customer's order. This Security Deposit will be non-refundable.

DELIVERY

9. The Customer shall be responsible for the cost of any delivery made ex-DSA store. If DSA is requested to arrange for delivery of products beyond the store, the Customer shall pay the delivery charges stipulated by DSA from time to time. DSA shall in all cases be entitled to choose the method of transport.
10. Any date or time quoted for delivery is an estimate only and DSA shall endeavour to effect delivery at the time or times required by the Customer but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer or render DSA liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.

11. The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery or any strike, lockout, unavailability of materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, floods, storm or tempest, transport delays, acts of God, restrictions or intervention imposed by any laws, regulations, governments or agencies thereof and any other cause beyond the control of DSA or any other cause whatsoever.

12. DSA's obligation to deliver shall be discharged on arrival of the goods at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Customer shall unload the goods upon delivery, **provided that** if the Customer is unable or unwilling to accept physical delivery of the goods when the goods are ready for delivery, DSA shall be entitled to charge a fee for any delay experienced or arrange for the storage of the goods at the risk and cost of the Customer including all transportation, storage and other consequential costs. DSA may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions of Sale.

INSPECTION

13. The Customer shall examine the goods immediately after delivery and DSA shall not be liable for any misdelivery, shortage, defect or damage unless DSA receives details in writing within two (2) days of the date of delivery of the goods.

PROPERTY AND RISK

14. Notwithstanding delivery of the goods or their installation, property in any given goods shall remain with DSA until the Customer has paid and discharged any and all other indebtedness to DSA on any account whatsoever, including all applicable GST and other taxes, levies and duties. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.
15. The risk in the goods shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer.

16. The Customer acknowledges that it is in possession of the goods solely as a bailee for DSA until payment as defined in clause 5 has been made in full to DSA and until such payment:
 - a) The Customer shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following delivery; and
 - b) The Customer shall store the goods separately from its own goods and those of any other party and in a manner which clearly identifies the goods, whether as separate chattels or as components, as the property of DSA.

- c) The Customer shall maintain records of goods owned by DSA identifying them as DSA's property, of the persons to whom the goods are sold or disposed to and of the payments made by such persons for such goods. The Customer shall allow DSA to inspect these records and the goods themselves on request.

17. The Customer hereby irrevocably grants to DSA, its agents and servants, an unrestricted right and licence, without notice to enter premises occupied by the Customer to identify and remove any of the goods the property of DSA in accordance with the Terms and Conditions of Sale without in any way being liable to the Customer or any person claiming through the customer. DSA shall have the right to sell or dispose of any such goods removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.

18. The Customer shall be at liberty to agree to sell the goods (independently or affixed to other materials) subject to the condition that until payment has been made in accordance with clause 5, the Customer shall sell as an agent and bailee for DSA and that the entire proceeds from the sale thereof shall be held in a separate account on trust for DSA.

19. The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade may be revoked at any time by DSA and shall automatically cease if a Receiver is appointed over any of the assets on the undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or administration or calls a meeting of, or makes any arrangement or composition with, creditors or commits any act of bankruptcy or where the Customer is in default of any of its obligations to DSA.

WARRANTY

20. Subject to payment in full being made as defined in clause 5, DSA shall use its best endeavours to pass on to the Customer the benefit of any warranties or guarantees it receives in respect of goods or parts thereof supplied to the Customer.

LIMITATION OF LIABILITY

21. These Terms and Conditions of Sale do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which by law cannot be excluded, restricted or modified.

22. SALE TO NON-CONSUMERS

Unless prevented by statute of all implied terms, conditions and warranties are excluded. The company guarantees that the products will be free from defects but is not responsible for the use of the goods or the installations thereof by the purchaser or third party. The purchasers remedy for any breach of condition warranty or condition of goods shall be limited at the discretion of the company to the replacement of the goods and shall not include any consequential loss or damages in the event of any defect in or failure of goods. Any claim must be submitted in writing within two (2) days of delivery.

FORCE MAJEURE

23. DSA shall not be liable for any failure or delay in supply or delivery the goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of DSA including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

TERMINATION

24. If the Customer fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors of if a receiver or manager or administrator or controller is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator or administrator is appointed, DSA may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any goods not paid for in accordance with these Terms and Conditions.

RETURNS

25. Other than in respect of DSA's obligations pursuant to clause 20 hereof DSA shall not be liable to accept any returned goods but may in its absolute discretion accept the return of goods, provided that such goods shall only be accepted for return with the prior written approval of a duly authorised representative of DSA. Goods returned for credit pursuant to this clause will be subject to a handling and administration charge equivalent to 20% of the invoiced value of the returned goods. Return freight and other expenses will be paid for by the Customer and no returns of special goods will be accepted. Any returned goods must be accompanied with the relevant invoice numbers and/or a Goods Return Authority.

GOVERNING LAW

26. The Customer agrees that these Terms and Conditions of Sale shall be construed according to the laws of the State or Territory as DSA may in its sole discretion determine. Proceedings by either DSA or the Customer may be instituted and/or continued in such State or Territory as DSA may in its sole discretion determine. Failing such determination the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales.

SERVICE OF DOCUMENTS

27. The Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Customer.

STATEMENT OF DEBT

28. A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of DSA shall be prima facie evidence of the amount of indebtedness of the Customer to DSA at that time.

ELECTRONIC COMMUNICATIONS

- a) The customer agrees to accept service of notices under the Building And Construction Industry Security Of Payment Act 1999 (NSW) via e-mail (in addition to any and all other forms of service authorised under the Act (including section 31 of the Act), or regulations made pursuant to the Act).
- b) In addition to delivery in person, via post and via facsimile, the customer agrees to have invoices sent via email.
- c) The Customer agrees that email communications from DSA to the Customer constitute an "electronic communication" within the meaning of the Electronic Transactions Act 2000 (NSW).
- d) The Customer agrees that in agreeing to receive invoices via email, and the service of notices under the Building And Construction Industry Security Of Payment Act 1999 (NSW) via email, the Customer is in both instances designating "an information system for the purpose of receiving electronic communications" within the meaning of the Electronic Transactions Act 2000 (NSW).
- e) The Customer agrees that evidence of the "dispatch" (within the meaning of the Electronic Transactions Act 2000 (NSW)) by DSA of an email is also prima facie evidence of the "receipt" of the email by the Customer within the meaning of the Act. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.