

# URBAN STYLE INTERIORS – TERMS AND CONDITIONS

1. **Definitions**
  - 1.1 "Supplier" means Nicole Duke T/A Urban Style Interior Design, its successors and assigns or any persons acting on behalf of and with the authority of Nicole Duke T/A Urban Style Interior Design.
  - 1.2 "customer" means the person/s buying the Goods specified in any invoice, document or order, and if there is more than one Customer a reference to each Customer jointly and severally.
  - 1.3 "Goods" means all Goods or Services supplied by the Supplier to the Customer at the Customer'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 for the Goods as agreed between the Supplier and the Customer in accordance with the clause 5 below.
  2. **Acceptance**
  - 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
  - 2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.
  3. **Electronic Transactions (Queensland) Act 2001**
  - 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other 8. Applicable provisions of that Act or any Regulations referred to in 8.1 that Act.
  4. **Change in Control**
  - 4.1 The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.
  5. **Price and Payment**
  - 5.1 At the Supplier's sole discretion, the Price shall be either:
    - (a) As indicated on any invoice provided by the Supplier to the Customer, or
    - (b) The Supplier's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
  - 5.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested.
  - 5.3 At the Supplier's sole discretion, a deposit may be required.
  - 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date determined by the Supplier, which may be:
    - (a) On delivery of the Goods;
    - (b) Thirty (30) days following the end of the month in which a 9. statement is posted to the Customer's address or address for 9.1 notices;
    - (c) The date specified on any invoice or other form as being the date for payment; or
    - (d) Failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier
  - 5.5 Payment may be made by cash, cheque, bank cheque, electronic / on-line banking, or by any other method as agreed to between the Customer and the Supplier.
  - 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the customer 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.
  6. **Delivery**
  - 6.1 Subject to clause 6.2 it is the Supplier's responsibility to ensure that the Services start as soon as it is reasonably possible.
  - 6.2 The Services' commencement date will be put back and/or the completion date extended by whatever time reasonable in the event that the Supplier claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Customer to:
    - (a) Make a selection; or
    - (b) Have the site ready for the Services; or
    - (c) Notify the Supplier that the site is ready.
  - 6.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for the redelivery and/or storage.
  - 6.4 The Supplier 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.
  - 6.5 Any time or date given by the Supplier to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
  7. **Risk**
  - 7.1 if the Supplier retains ownership of the Goods under clause 10 then:
    - (a) where the Supplier is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that the Goods are delivered by the Supplier or the Supplier's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address). At the Supplier's sole discretion, any delivery costs shall be included in the Price; or
    - (b) where the Supplier is to both supply and install Goods then the Supplier shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Customer.
  - 7.2 Notwithstanding the provisions of clause 7.1, where the Supplier requires that Goods, fittings and appliances, or plant and tools required for the Services be stored at the work site, the Customer shall supply the Supplier a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Customer's responsibility.
  - 7.3 Where the Customer has supplied products for the Supplier to accept complete the Services, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those products. The Supplier shall not be responsible for any defects in the Services, any loss or damage to the products and/or Goods (or any part thereof), howsoever arising from the use of products supplied by the Customer.
  - 7.4 Where the Supplier is required to install the Goods, the Customer warrants that the structure of the premises or framing upon which these Goods are to be installed is sound and will sustain the installation and work incidental thereto, and that the Customer must advise the Supplier of the precise location of all wiring or plumbing that may be hidden behind any surface at the installation site and clearly mark the same. The Supplier shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or framing be unable to accommodate the installation or for any damage to hidden wiring or pipes (whether or not the Customer is aware of their exact location).
  - 7.5 The Customer acknowledges that Goods supplied may exhibit variation in texture, shade, colour, surface, finish, markings, grain, veining, and contain natural fissures, occlusions, and indentations, and may fade or change colour over time. The Supplier will make every effort to match dye lots/batches/sales samples supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variation occur.
  - 7.6 The Customer acknowledges that where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be defect in the Goods.
  - 7.7 The Customer acknowledges and accept that:
    - (a) Whilst fabric manufacturers make every effort to match dye lots, colours or shade may vary between batches of product and/or between sales samples and actual product supplied; and
    - (b) Fabric manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when installed; and
    - (c) The installation process for fabric products may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product.
  - 7.8 In the event the Customer orders insufficient quantities of Goods, the Supplier will take no responsibility for any variation of colour in additional Goods supplied to the Customer and/or the availability of additional Goods.
  8. **Customer's Responsibilities**

It shall be the Customer's responsibility to:

    - (a) Make the work site available on the agreed dates and times. If the Services are delayed or interrupted by the failure of the Customer to adhere to the installation schedule agreed to between the Supplier and the Customer, any additional costs will be invoiced to the Customer as per clause 5.2;
    - (b) Remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments, and have all areas clean and clear to enable the Services to be completed in accordance with the schedule of installation. The Supplier is not insured to remove furniture or fittings and will not do so, nor is the Supplier licensed to move gas or electrical appliances. Breakages and damages are the responsibility of the Customer. All care taken but no responsibility accepted by the Supplier in this regard;
    - (c) Provide adequate dust sheets (if required) to protect the Customer's furniture and décor. The Supplier will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by the provision of the services; provide the Supplier with a suitable free power source for the duration of the Services;
    - (d) The check quantities, with an on-site measurement prior to the installation of the Goods. Measurements taken off plans, or the Customer's figures, by the Supplier are approximate only and no responsibility is taken for their accuracy.
  9. **Compliance with Laws**
  - 9.1 The Customer and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
  - 9.2 The Customer shall:
    - (a) Be liable for any costs incurred by the Supplier due to the Customer's failure to comply with clause 9.1; and
    - (b) Obtain (at the expense of the customer) all licenses and approvals that may be required for the Services.
  10. **Title**
  - 10.1 The Supplier and the Customer agree that ownership of the Goods shall not pass until:
    - (a) The Customer has paid the Supplier all amounts owing to the Supplier, and
    - (b) The Customer has met all of its obligations to the Supplier.
  - 10.2 Receipt by the Supplier 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.
  - 10.3 It is further agreed that:
    - (a) Until ownership of the Goods passes to the Customer in accordance with clause 10.1 that the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request.
    - (b) The Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and, must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) The Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
  - (d) The Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
  - (e) The Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
  - (f) The Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) The Customer shall not change or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
  - (h) The Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- ## 11 Personal Property Securities Act 2009 ("PPSA")
- 11.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Customer 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 Customer to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
- 11.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information 9such information to be complete, accurate and up to date in all respects) which the Supplier may reasonably require to;
  - (i) register a financing statement or financing charge 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 11.3(a)(i) or 11.3(a)(ii);
- (b) Indemnity, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) Not register a financing charge statement in respect of a security interest without the prior written consent of the Supplier,
  - (d) Not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Supplier,
  - (e) Immediately advise the Supplier 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.
- 11.4 The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer must unconditionally ratify any actions taken by the Supplier under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- ## 12 Security and Charge
- 12.1 In consideration of the Supplier agreeing to supply the Goods, the Customer changes 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 12.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document or the Customer's behalf.
- ## 13. Defects, Warranties and Returns, competition and Consumer Act 2010 (CCA)
- 13.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such

defect becomes evident. Upon such notification the Customer must allow the Supplier to inspect the Goods.

13.2 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 (**Non-Excluded Guarantees**).

13.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.

13.5 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.

13.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer as paid for the Goods.

13.7 If the Customer is not a consumer within the meaning of the CCA, the Supplier'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 Customer by the Supplier at the Supplier's sole discretion;

(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;

(c) otherwise negated absolutely.

13.8 Subject to this clause 13, returns will only be accepted provided that:

(a) the Customer has complied with the provisions of clause 13.1; and

(b) the Supplier has agreed that the Goods are defective; and

(c) the Goods are returned within a reasonable time at the Customer'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.

13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

(a) the Customer's failing to properly maintain or store any Goods;

(b) the Customer using the Goods for any purpose other than that for which they were designed;

(c) the Customer 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 Customer failing to follow any instructions or guidelines provided by the Supplier;

(e) fair wear and tear, any accident, or act of God.

13.10 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.

**14. Default and Consequences of Default**

14.1 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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

14.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).

14.3 Further to any other rights or remedies the Supplier may have under this contract, if a Customer has made payment to the Supplier by credit card, and the transaction is subsequently reversed. The Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

14.4 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.

14.5 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;

(b) the Customer 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

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15.1 The Supplier 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 Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a result of the cancellation (including, but not limited to, any loss of profits).

15.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stock list items, will definitely not be accepted once production has commenced, or an order has been placed.

**16 Privacy Act 1988**

16.1 The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) credit report containing personal credit information (e.g., name, address, D.O.B., occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Supplier.

16.2 The Customer agrees that the Supplier may exchange information about the Customer with these credit providers and with related body corporates for the following purposes:

(a) to assess an application by the Customer, and/or

(b) to notify other credit providers of a default by the Customer, and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or

(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.

16.3 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

16.4 The Customer agrees that personal credit information provided may be used and retained by the Supplier 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 Customer'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 Customer, and/or

(d) enabling the collection of amounts outstanding in relation to the Goods.

16.5 The Supplier may give information about the Customer 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 Customer including credit history.

16.6 The information given to the CRB may include:

(a) personal information as outlined in 16.1 above;

(b) name of the credit provider and that the Supplier is a current credit provider to the Customer;

(c) whether the credit provider is a licensee;

(d) type of consumer credit;

(e) details concerning the Customer'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 Customer no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g., dates of payments);

(g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;

(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150)

16.7 The Customer shall have the right to request (by e-mail) from the Supplier

(a) a copy of the information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect information; and

(b) that the Supplier does not disclose any personal information about the Customer for the purpose of direct marketing.

16.8 The Supplier will destroy personal information upon the Customer'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.

16.9 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

**17. Building and Construction Industry Payments Act 2004**

17.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods and/or services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.

17.2 Nothing in the agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

**18. General**

18.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 These terms and conditions any contract to which they apply shall be governed by the laws of Queensland in which the Supplier has its principle place of business and are subject to the jurisdiction of the courts of Townsville in Queensland.

18.3 Subject to clause 13, the Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

18.4 The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

18.5 The Customer agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change. The Customer will be taken to have accepted such changes of the Customer makes a further request for the Supplier to provide Goods to the Customer.

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 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.