

**SPECIAL CONDITIONS**

**in relation to Haven Kitchens by Formica**

By requesting the Ancillary Services, requesting a quote, or placing an order for one or more products or services from Haven Kitchens by Formica™, the Customer agrees that the following Special Conditions will apply.

These Special Conditions are to be read with our standard terms and conditions of sale which can be viewed at <https://www.havenkitchens.com.au/t-and-cs/special-conditions> (**Terms**). Our Terms are incorporated to the express exclusion of any current or future terms and conditions offered by the Customer. These Conditions prevail to the extent of any inconsistency.

**1. INTERPRETATION**

**1.1 In these Special Conditions ("Special Conditions"):**

- (a) **Accessories** mean the accessories selected by the Customer (if any) and included in the Design Documents. The Accessories are not manufactured by the Supplier;
- (b) **Appliances** mean the appliances selected by the Customer (if any) and included in the Design Documents. The Appliances are not manufactured by the Supplier;
- (c) **Ancillary Services** mean the activities described in clause 5.3;
- (d) **Background IP** means all intellectual property rights held by a party prior to the date of the Contract, or developed by a party independently of this Contract;
- (e) **Check Measure** means checking the Customer's measurements of the Site to reduce errors and minimise wastage;
- (f) **Customer Supplied Items** means any products, accessories, appliances or other materials supplied by the Customer to be incorporated into or with the Works;
- (g) **Domestic Builder** means a building practitioner as defined under the Building Act 1993 (VIC) who is required to be registered with the Victorian Building Association to oversee or carry out the Works;
- (h) **Design Documents** means all design documentation (including any design brief, drawings, layout, schedules, specifications, calculations, renders, reports, Site inspection details) in electronic and written form relating to the Goods supplied and/or verified by the Customer including any information created, amended, improved, modified from time to time by the Supplier or its subcontractors for the Goods in accordance with the terms of this Contract (including any Ancillary Services);
- (i) **Goods** means the goods including the Products, Appliances, and Accessories supplied by us from time to time;
- (j) **Products** means the products selected by the Customer (if any) and included in the Design Documents. The Products are not manufactured by the Supplier;
- (k) **Referral Program** means the trade / installer program in which each participating Customer is required to verify

that they have, hold and will maintain any required licence and/or registration to perform the Works;

- (l) **Site** means where the Customer will perform the Works;
- (m) **Specification** means the documents, drawings and Design Documents, supplied and/or verified by the Customer;
- (n) **Standards** mean all applicable standards published by Australian Standards setting out specifications and procedures designed to ensure products, services and systems are safe, reliable and consistently perform the way they are intended to;
- (o) **Works** means and includes all works and services necessary for the measuring, design, assembly, fabrication, installation, testing and commissioning of the Goods on Site by the Customer.

**2. CUSTOMER WARRANTY**

**2.1** By requesting the Ancillary Services, requesting a quote or placing an order with the Supplier for our Haven Kitchens by Formica™ range, the Customer warrants and undertakes to the Supplier that the Customer:

- (a) has, holds and will maintain at all relevant times all consents, approvals, permits, registration and licences which are required by Law or are otherwise necessary for the design, assembly, fabrication and installation of the Goods and related services for your client, including registration as Domestic Builder of the relevant class to oversee or carry out the Works (if required);
- (b) assumes all responsibility for the Specification, design (including the Design Documents), assembly, fabrication, installation and commissioning of the Goods;
- (c) has read and understood the Haven Kitchen by Formica™ product literature including the installation manual, care and maintenance and warranties;
- (d) has all relevant expertise to oversee and/or perform the Works and services for its client(s);
- (e) is not the owner of the site on which the Works will be performed;
- (f) intend to on-sell the Goods to its client(s);
- (g) will certify each stage of the Works as meeting all applicable Standards, codes, and Laws;
- (h) is not relying on the Supplier's due care and skill in respect of any free Ancillary Services provided by the Supplier other than to supply the Goods in accordance with its order;
- (i) has, holds and maintain all insurances that may be required in performing the Works for its client;
- (j) has the necessary resources (including financial resources) sufficient to enable it to perform the Works;
- (k) will ensure that any Intellectual Property Rights or other proprietary rights of any other person will not be infringed by the

Suppliers use of (or reliance on) the Design Documents to manufacture and supply of the Goods; and

by supplying Goods in accordance with its order (including the Design Documents), the Goods will be:

- (l) free from defects in design;
- (m) fit for sale to its client and fit for any purpose held out by its client or made known to the Customer prior to the Customer placing your order.

2.2 In relation to the Works, the Customer warrants and undertakes that:

- (a) the Customer will perform and commission the Works:
  - (i) in a proper and safe manner, with the degree of professional expertise, skill, care and diligence that can reasonably be expected of a professional service provider experienced in providing services in the nature of the Works;
  - (ii) in a timely and expeditious manner;
  - (iii) in accordance with best industry practice;
  - (iv) in a manner that ensures that when complete, the Works:
    - (A) are fit for purpose including any purpose held out by your client or made known to the Customer prior to the Customer placing your order;
    - (B) are in accordance with the Design Documents (including your clients design brief); and
    - (C) meet all applicable codes, Standards and Laws;
- (b) it will, at its cost, make good any errors, defects or omissions in the Works (other than manufacturing defects in the Goods);
- (c) where the Customer sell the Goods to a Consumer, the Customer will be liable for all claims, costs, losses or damages that a consumer may claim under the Australian Consumer Law in respect of the Works (other than manufacturing defects in the Goods);
- (d) it will manage all warranty claims made by its client in respect of the Works and advise the Supplier of any claim within 3 business days of receipt.

2.3 **No limitation:** The warranties provided in clauses 2.2 (b), (c) and (d), are in addition to any obligations that the Supplier may owe under the Australian Consumer Law.

2.4 The Supplier relies on the Customer's express warranties and undertakings set out in the Terms and these Special Conditions in submitting a quote or accepting your request for the Ancillary Services; and/or your order.

### 3. CUSTOMERS RESPONSIBILITIES

3.1 The Customer is solely responsible for:-

- (a) conducting a preliminary Site inspection to verify the location of any gas, electrical,

plumbing, telephone and other connections;

- (b) arranging the disconnection, reconnection and/or installation of any gas, electrical, plumbing, telephone and other connections as may be necessary for the Works;
- (c) verifying the structural support, fire ratings, load ratings or other requirements as may be necessary to ensure the Site is suitable for the Works and installing the Goods;
- (d) ensuring safe and clear access to Site for any of the Supplier's employees or agents to perform one or more Ancillary Services and must accompany the Supplier whenever the Supplier is required to attend Site;
- (e) collecting the Goods from the Suppliers nominated premises;
- (f) any loss of or damage to the Product, Appliances or Accessories to the extent that it occurs after collection or delivery (including, without limitation, as a result of any acts or omissions of the Customer, or any third party, such as a trades person or installer, engaged by the Customer);
- (g) all works and services that may be required to prepare the Site for the Works including any demolition, removal, disposal, and reinstatement of existing materials or installing new third party products, appliances or materials (as may be required);
- (h) the assembly, fabrication, installing and commissioning the Goods on Site. The Supplier is not responsible for any claim, damage or loss in connection with the assembly, fabrication, installation and commissioning of the Goods;
- (i) the Customer Supplied Items; and
- (j) obtaining their clients written sign off following completion of the Works.

### 4. SUPPLIERS RESPONSIBILITIES

- (a) Subject to the Terms and these Special Conditions, the Supplier is solely responsible for:
  - (i) supplying the Goods in accordance with the Customer's Design Documents; and
  - (ii) performing the Ancillary Services with reasonable skill and care.
- (b) The Supplier's Referral Program identifies tradespeople for related works. The Supplier does not warrant, endorse or assume any responsibility for any works performed by these or any other tradespeople. If the Customer engages any such person, it does so independently of the Supplier and at its own risk. The Customer must make and rely on its own enquiries to ensure any trade person it engages has the requisite skill and expertise to perform any related works and that all registration, licences and other qualifications remain current before retaining anyone from the Referral Program.

### 5. CUSTOMER'S DESIGN

- 5.1 Without limiting sections 2 and 3 of these Special Conditions, the Customer:
- (a) is solely responsible for the design of the Works including the preparation and content of the Design Documents submitted to or developed in consultation with the Supplier;
  - (b) warrants that by providing the Supplier with any Design Documents, it has verified that the design meets all applicable Standards and Laws;
  - (c) warrants that prior to the date of this Contract, it checked and carefully considered their client's design brief and that the content of the Design Documents are accurate, complete, reliable and suitable for the Site into which the Goods are to be installed and for fulfilling the Customer's obligations under its agreement with their client;
  - (d) must carry out all Works, tasks and activities additional to those contemplated by their client's design brief which are necessary or otherwise desirable to ensure that its obligations are fulfilled; and
  - (e) acknowledges and agrees that it is not entitled to make any claim arising out of, or in any way connected with, any defects in the Goods arising as a result of the Design Documents or any deficiency, incompleteness, discrepancy, faults, lack of coordination or integration within or between the design it provides to the Supplier under this Contract and the Customer's obligations to its client.
- 5.2 The Supplier shall not be bound to review or comment upon the Design Documents or to check the Design Documents for errors, omissions or compliance with the requirements of this Contract, codes, Standards or Laws. The Supplier's receipt of, or review of, or direction in respect of, or comment on, the Design Documents and any other documents provided by the Supplier (including performing the Ancillary Services), shall not relieve the Customer from responsibility for the design or the Works. The Supplier is responsible for errors or omissions or departure from the warranties given, or liabilities expressly assumed by the Supplier in this Contract.
- 5.3 At the request of the Customer or otherwise, in addition to clause 5.2, the Supplier may provide free Ancillary Services including:
- (a) lead generation and/or referral;
  - (b) issuing a quote;
  - (c) a Check Measure;
  - (d) 3D rendering of the Goods (in situ), and drawings, specifications, calculations, notes and any other necessary documentation strictly for illustrative purposes;
  - (e) any prefabrication, assembly, advice, recommendation, information or assistance provided by the Supplier including any such services under clause 5.2 and section 9;
- 5.4 The Customer acknowledges that the Ancillary Services are provided:
- (a) solely for the Customer (and not for any third party including any client of the Customer);
  - (b) for information purposes only, do not constitute technical, engineering, design or other professional advice and cannot be relied upon in any respect;
  - (c) "as is" without any express or implied warranty or guarantee of any kind including as to its fitness for a particular purpose, accuracy, reliability, currency, completeness or that they comply with relevant Standards or codes;
  - (d) to assist the Customer to finalise its order of Haven Kitchens by Formica™ products; and
- the Customer must adapt, modify, amend and verify the Ancillary Services to ensure they meet all applicable codes, Standards and Laws before incorporating any part of the Ancillary Services into the Design Documents.
- 5.5 To the extent permitted by law, the Supplier expressly disclaims all liability to the Customer arising from any reliance the Customer places on the Ancillary Services.
- 6. MANUFACTURERS WARRANTY**
- 6.1 The Appliances and Accessories are supplied subject to warranties offered by other manufacturers. The Contract does not alter any manufacturer's warranties, which are supplied separately (where applicable) by the third-party manufacturer.
- 6.2 The Customer must pass all manufacturer warranties and any associated product literature (including any relating to the Goods), to its client upon completion of the Works.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 All Intellectual Property Rights in any Background IP held by a party prior to entry into the Contract, or developed by a party independently of the Contract, remains the property of that party (as relevant).
- 7.2 All Intellectual Property Rights, other than improvements or modifications to the Customer's Background IP, developed under the Contract will immediately vest in the Supplier upon creation.
- 7.3 The Supplier grants the Customer a non-exclusive, revocable license to use its Background IP and any improvements or modifications to its Background IP (if necessary) developed under the Contract, only to carry out the Work and for no other purpose. The Supplier does not grant any rights to amend, alter, modify, exploit or develop the Intellectual Property Rights other than as set out in these Special Conditions.
- 7.4 The Customer grants the Supplier a non-exclusive revocable license to use its Background IP only to manufacture and supply the Goods and for no other purpose. The Customer does not grant any rights to amend, alter, modify, exploit or develop the Intellectual Property Rights other than as set out in these Special Conditions.
- 8. DELAY**
- 8.1 The Supplier is not responsible for any delay or inability to supply the Goods or complete the Works provided such Goods are delivered or made available within a reasonable time.
- 8.2 The Supplier will use its reasonable endeavours to perform its obligations as soon as reasonably practicable.

8.3 In addition to clause 7.6 of the Terms, if for any reason the Supplier is unable to supply a particular item of Product, Appliance or Accessory, the Supplier will notify the Customer and request the Customer to choose a substitute item of similar standard and value.

## 9. DESIGN DEVELOPMENT

9.1 The Customer may submit its own design and/or develop its design in consultation with the Supplier as part of the Supplier's Ancillary Services.

9.2 If the Customer relies on its own design, the Supplier will issue a quote for review and approval.

9.3 If any design is developed in consultation with the Supplier, clause 5 of these Special Conditions apply. In developing the Customer's design, the Supplier will carry out design of the Goods based on the Customer's instructions. The Customer must provide all information, documents and directions required for the Supplier to develop the design. The Supplier will promptly submit to the Customer all designs prepared by it including drawings, specifications, calculations, notes and any other necessary documentation required to complete the design in accordance with the Customer's requirements together with a quote for review and approval. No comment, consultation, review, modification or design development performed by the Supplier will relieve the Customer of any its responsibility for the design.

9.4 Within 30 calendar days of receipt of a design and/or quote under clauses 9.2 or 9.3, the Customer will notify the Supplier in writing if the design and/or quote is accepted. If the design is not accepted the Customer must provide any comments, adjustments or variations to the design to reach acceptance. In the event the design documentation submitted under clause 9.3 is rejected, the Supplier must re-submit amended design documentation within 5 business days for further review and approval by the Customer. Either party may terminate the design development process at any time by written notice.

9.5 By accepting:

- (a) the design, the Customer warrants that the design is sufficient to discharge its obligations under these Special Conditions; and
- (b) the quote, the Customer confirms its order for the Goods.

9.6 The Supplier will not commence manufacture of the Goods relating to any design until such acceptance is received.

9.7 The Supplier will rely on the Customer's acceptance to order any Appliances, Accessories and materials necessary to manufacture Product and supply the Goods in accordance with the Customer's design.

9.8 If the Customer requests a variation to the design after acceptance has been issued, the Supplier may be required to requote for the Goods.

## 10. LIABILITY

10.1 Subject to section 7 of the Terms, to the maximum extent permitted by law:

- (a) the Customer indemnifies the Supplier against any action, claim, demand, cost,

loss, damage, expense or liability suffered or incurred by the Supplier arising out of or in connection with the:

- (i) performance or non-performance of the Works including any failure of the Works to comply with applicable codes, Standards or Laws;
- (ii) Design Documents, including any breach of any third-party Intellectual Property Rights; or any defect, error, omission in the Goods caused by the Customers design;
- (iii) failure by the Customer to provide any manufacturer warranties and any associated product literature (including any relating to the Goods), to its client,

except to the extent that such action, claim, demand, cost, loss, damage, expense or liability is caused by the Supplier's negligence, breach of law or breach of the Contract; and.

- (b) the Supplier's total aggregate liability to the Customer for any loss or damage arising out of or in connection with this Contract is limited to the price of the Goods.

## 11. RETURNED GOODS

This section 11 replaces section 8 of the Terms and applies to Goods from Haven Kitchens by Formica™.

- (a) You may only return Goods with the prior approval from the Trade Centre manager where the order was placed. Goods accepted for return by the Supplier must be returned within 14 days from the date of the invoice in an unsoiled, undamaged and, in the Supplier's opinion, in a resalable condition and in the original packaging. You may be charged handling and repackaging fee for any returned Goods.
- (b) Your proof of purchase must accompany all Goods returned to the Supplier.
- (c) Where Goods are returned to us, credit will only be issued subject to the following conditions set out in clauses 11(d) to (h).

### CREDIT

- (d) All claims for credit must be supported by:
  - (i) carrier's consignment note or similar receipt of delivery/collection; and
  - (ii) our relevant invoice number.

### UNACCEPTABLE RETURNS

- (e) Without in any way limiting our discretion to refuse to accept the return of any Goods, the following Goods will not be returnable:
  - (i) any Goods that have been held by Customer or your agent for more than seven (7) days; or
  - (ii) any Goods which are not in original condition; or
  - (iii) any Goods that are manufactured as made to order items unless faulty due to a manufacturing defect;
  - (iv) any Goods that have been

damaged/ cut/ modified/ drilled/  
screwed/ customised, affixed,  
painted or otherwise changed from  
their original condition;

- (v) the packaging or any protective material has been opened or removed unless faulty due to a manufacturing defect;
- (vi) cardholder/account owner not present or cannot be verified.

#### *FAULTY GOODS*

- (f) If you are not a Consumer, we will only recognise claims for faulty Goods that are lodged within 14 days of you receiving the Goods.

#### *CARRIER*

- (g) Goods accepted for return may be returned by you to the relevant Trade Centre or by third party carrier specified by us.

#### *REPACKAGING AND LOGISTICS FEE*

- (h) You agree to pay us a repackaging and logistics fee at the rate advised by us from time to time. Please contact the Trade Centre where the order was placed to confirm the relevant fees.

## **12. DISPUTE RESOLUTION**

- (a) A party must not start formal proceedings in respect of a dispute arising out of or in connection with this Contract (Dispute) unless it has complied with this clause 12.
- (b) Either party may raise a Dispute by written notice. The parties will attempt to resolve any Dispute through negotiations between the parties' respective senior managers.
- (c) If the Dispute is not resolved by the senior managers within 14 days of the written notice, either party may refer the Dispute to mediation in accordance with the Resolution Institute Mediation Rules.
- (d) In the absence of any agreement by the parties, either party may request a mediator be appointed by the local Resolution Institute.
- (e) The parties must comply with the directions of the mediator for the conduct of the mediation.
- (f) The costs of the mediation will be met equally by the parties.
- (g) Nothing contained in this clause 12 prevent either party from seeking injunctive relief from an appropriate court.