
KROST BUSINESS FURNITURE CENTRE PTY LTD
ACN: 003 783 882
Terms And Conditions Of Trade

DEFINITIONS

“**Australian Consumer Law**” or “**ACL**” means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

“**Company**” means **Krost Business Furniture Centre Pty Limited** (ACN 003 783 882).

“**Customer**” means the party placing the Order with or purchasing Products from the Company.

“**Order**” means an offer by a Customer to purchase Products from the Company.

Made to Order “MTO” includes any Product that has been specially ordered for a Customer (whether locally or from overseas) or which is specially manufactured for the Customer or is not a stocked item.

“**PPS Act**” means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as varied from time to time.

“**PPSR**” refers to the Personal Property Securities Register established under the PPS Act.

“**Products**” includes any furniture, services or materials ordered by the Customer from the Company or supplied by the Company on the Order of the Customer.

“**Ts&Cs**” means these Terms & Conditions of Trade as varied and applicable from time to time.

“**Writing**” includes quotes, letters, fax, email and SMS or other similar electronic communication methods.

1. SALE TERMS

1.1 The current Ts&Cs applicable from time to time shall apply to all sales agreements between the Company and the Customer including all Orders or other sales and will prevail over all prior conditions previously agreed between the parties.

1.2 The Ts&Cs may be varied from time to time by the Company with variation effected by the Company publishing amended Ts&Cs on its website www.krost.com.au/tc. The Ts&Cs as published on the website, at the time of placing an Order or part of an Order shall apply to such Orders. The Company may choose, but shall not be required, to notify the Customer of the existence or content of any variations of the Ts&Cs by any other means.

2. ORDER AND ACCEPTANCE

2.1 Any Order submitted to the Company by a Customer shall be deemed to be made pursuant to the terms of the Ts&Cs.



- 2.2 Any Order placed or made by the Customer for the purchase of the Products shall be an irrevocable offer and shall constitute an unqualified acceptance by the Customer of the Ts&Cs.
- 2.3 The Company reserves the right to accept or reject an Order for any reason, including without limitation, the unavailability of any Product, an error in the Product description on the Company website, catalogue or proposal, or an error in the Order. The Company may require additional verification or information before accepting any Order.
- 2.4 The Company may accept any Order in whole or in part by providing confirmation of the Order. Acceptance may be oral or in writing at the Company's discretion. Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent and (subject to the conditions set out herein) there is no right of return and where consent is provided may be subject to an Order Cancellation Charge of 20% of the value of the Products Ordered.

3. PRICE

- 3.1 The price of the Products shall be as agreed between the parties and where there is no written confirmation of the price, the price shall be the Company's usual price for Products of that kind or failing that an amount indicated on a Tax Invoice provided by the Company to the Customer regarding Products ordered.
- 3.2 The Company may charge in addition to the price of the Products an amount for delivery, freight, demurrage and handling at rates dependent on distance and volume of Products supplied. The rates to be applied will be the Company's usual rates for matters or services of that kind or if there are no such usual rates then reasonable rates. The Company's usual rates are subject to change from time to time.

4. CREDIT GRANTING AND PAYMENT

- 4.1 The Company may accept an Order and allow credit for part or all of its value or may accept an Order and require a deposit or pre-payment as a condition of delivery.
- 4.2 Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all Products supplied is required before delivery (cash or cleared funds). Where credit has been approved for the Customer, all Tax Invoices issued by the Company are due and payable by the date for payment agreed in writing by the Customer and the Company but if no agreement in writing is made then the last business day of the month following the date of the Tax Invoices provided by the Company to the Customer regarding Products ordered.

5. CREDIT POLICY AND DEFAULT

- 5.1 In the event that the Customer fails to make any payment payable pursuant to the Ts&Cs within the payment terms or breaches any of the warranties, obligations or agreements, the Customer shall be in default.
- 5.2 The Company may charge interest on all amounts not paid by the Customer within the term for payment at a rate of 1.5% per calendar month calculated from the due date and accruing monthly therefrom until the date of payment. If the Customer is in default the Customer must reimburse and indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" basis and the fees charged to the Company by any



mercantile agency. If the Customer fails to pay the price by the due date, the Company may at its sole discretion:

- (a) cancel any provision of credit to the Customer;
- (b) reverse any rebates and discounts allowed;
- (c) change credit payment terms including require cash pre-payment for any further Products ordered;
- (d) provide to a credit reporting agency details of the payment default;
- (e) commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
- (f) decline to supply Products to the Customer and terminate any other agreement with the Customer; and;
- (g) exercise any other rights at law including pursuant to the PPS Act.

5.3 A certificate of debt signed by a representative of the Company shall be prima facie evidence and proof of money owing by the Customer to the Company at the time of certificate.

6. GST

6.1 The Company reserves the right, upon production of a Tax Invoice, to recover from the Customer any Goods and Services Tax (GST) payable in respect of supply of Products.

6.2 Unless expressly included all amounts expressed or described in any agreement or in Tax Invoices are GST exclusive.

7. DELIVERY

7.1 Delivery of the Products shall be deemed to have taken place when:

- (a) the Customer takes possession of the Products at the Company's address if the Products are collected; or
- (b) the Products are delivered at the Customer's nominated address (in the event that the Products are delivered by the Company or the Company's nominated carrier). Delivery to any person reasonably appearing to be an employee or agent of the Customer shall be deemed effective; or
- (c) the Customer's nominated carrier takes possession of the Products in which event the carrier shall be deemed to be the Customer's agent.

7.2 The Customer's nominated address shall be the address specified in the Commercial Account Application Form or agreed in writing by the Company.

7.3 Delivery of Products may not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by the Company.

7.4 The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery.

7.5 Delivery of Products to a third party or place nominated in any way by the Customer is deemed to be delivery to the Customer pursuant to these Ts&Cs.



7.6 The Company shall not be liable for any loss or damage or expense arising from failure by the Company to deliver the Products at a specified time, promptly or at all and the failure of the Company to deliver at a specific time or at all shall not entitle either party to treat this contract as repudiated.

8. PRODUCT INFORMATION, PHOTOS AND IMAGES

8.1 The Product range on the Company website may vary from printed catalogues. Product information, photos and images may differ from the actual Products. Photos and images on the website and in printed material are for general illustration purposes only.

9. INSTALLATION AND ASSEMBLY

9.1 Products are delivered either assembled or may be delivered unassembled and assembled on site.

9.2 The delivery area must be clean and cleared prior to delivery. The Customer must ensure adequate access is available via stairways, doors and lifts.

9.3 Our professional delivery team are not computer technicians or electricians and under no circumstances will touch existing electronics or wiring.

10. PASSING OF RISK

10.1 The Risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery to the customer, the Customer's agent or courier as the case may be.

11. RETENTION OF THE TITLE TO THE PRODUCTS PENDING PAYMENT

11.1 Ownership of the Products shall remain with the Company and shall not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any credit or other account with the Company or pursuant to these Ts&Cs.

11.2 Until ownership of the Products has passed to the Customer, the Customer shall keep the Products in question as fiduciary agent and bailee for and on behalf of the Company and shall store them so that they are separately identifiable from any other goods held by the Customer. The Customer must notify the Company of all premises at which it holds any Products supplied under this Agreement. The Customer must allow the Company to enter upon its premises to inspect the Products in its possession upon reasonable notice from time to time.

11.3 If:

- (a) the Customer fails to pay any amount (whether in part or whole) payable in respect of any Products by the time required for payment;
- (b) the Customer is the subject of an insolvency event (such as receivership, administration or liquidation);

the Company may, without notice to the Customer, enter at any reasonable time any premises where Products are located (or believed by the Company to be located) and take possession of those Products not paid for and any other Products to the value of the amount owing. The Company's permission to enter the Customer's premises for that purpose is irrevocable. The Company is not liable to the Customer in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by the Customer as a result of any action taken by the Company under this clause.



12. PPS Act

- 12.1** Words in *italics* shall have the meaning and definitions set out in the PPS Act.
- 12.2** The Customer acknowledges that by virtue of these Ts&Cs the Company has a *security interest* in the Products for the purposes of the PPS Act and the *proceeds of sale* of such Products and to the extent applicable, the PPS Act applies to any agreement pursuant to these Ts&Cs.
- 12.3** The Customer acknowledges that the Company may do anything reasonably necessary, including but not limited to registering any security interest which the Company has over the Products or the *purchase money security interest (PMSI)* in the Products on the PPSR in order to *perfect* the security interest and comply with the requirement of the PPS Act. The Customer agrees to do all things reasonably necessary to assist the Company to undertake the matters set out above.
- 12.4** The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a *financing statement*, *financing change statement* or a *verification statement* in relation to any registration on the PPSR.
- 12.5** The rights of the Company under this document are in addition to and not in substitution for the Company's rights under other law (including the PPS Act) and the Company may choose whether to exercise rights under this document, and/or under such other law, as it sees fit.
- 12.6** The following provisions of the PPS Act do not apply and, for the purposes of section 115 of the PPS Act are "contracted out" of this document in respect of goods that are not used predominantly for personal, domestic or household purposes:
- (a) sections 95 (notice of removal of accession to the extent it requires Company to give a notice to the Customer), 96 (retention of accession), 125 (obligations to dispose of or retain collateral);
 - (b) section 130 (notice of disposal to the extent it requires Company to give a notice to the Customer);
 - (c) section 132(3)(d) (contents of statement of account after disposal);
 - (d) section 132(4) (statement of account if no disposal);
 - (e) section 135 (notice of retention);
 - (f) section 142 (redemption of collateral); and
 - (g) section 143 (re-instatement of security agreement)
- 12.7** The following provisions of the PPS Act:
- (a) section 123 (seizing collateral);
 - (b) section 126 (apparent possession);
 - (c) section 128 (secured party may dispose of collateral);
 - (d) section 129 (disposal by purchase); and
 - (e) section 134(1) (retention of collateral)

confer rights on the Company. The Customer agrees that in addition to those rights, the Company shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that the Company may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

- 12.8** The parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Act. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Act continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to the Company the benefit of section 275(6)(a) and the



Company shall not be liable to pay damages or any other compensation or be subject to injunction if the Company breaches this sub-clause.

12.9 The Customer undertakes:

- (a) promptly to do all things including signing any further documents and providing any further information which the Company may reasonably require to enable it to perfect and maintain the *perfection of its security interest* or PMSI (including by registration of a *financing statement* or *financing change statement* on the PPSR and the Customer warrants that any such information the Customer provides will be complete, accurate and up-to-date in all respects);
- (b) to give the Company not less than 14 days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including, but not limited to, changes in its address, phone or facsimile number and trading name).

13. RETURNED CHEQUES

13.1 An administration fee of \$55 including GST plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for whatever reason. This fee may increase without notice to cover the Company's expenses and cost.

14. CURRENCY

14.1 Payments must be made in Australian dollars. Payments remitted in foreign currency must include all related bank charges and currency conversion costs both on the payment and receiving end.

15. DEFECTS, CLAIMS AND RETURNS

15.1 Subject to clause 18:

- (a) the Customer accepts that minor defects in the Products do not constitute grounds for a claim or return.
- (b) the Customer accepts that MTO Products may not be returned.
- (c) refunds or returns will not be given.

15.2 The Customer will inspect and check all Products received and within 7 days of receipt notify the Company in writing of any shortage in quantity, defect, incorrect specification, damage or Products not in accordance with the Customer's Order. The Customer is responsible for checking that Products comply with those Ordered prior to use. After use or expiry of the time stated herein the Product shall be deemed to be free from any defect or damage at delivery.

15.3 The Customer agrees that it will not return any of the Products without first informing the Company so that a Returns Authorisation ("RA") number may be issued by the Company for valid returns. The RA is valid for 7 days. Subject to clause 18, returned Products must be unmarked, in a saleable condition and must include the original packaging, delivery document and invoice.

15.4 Subject to clause 18, no credit or replacement will be given unless and until Products so returned have been verified as being valid for return or are defective and are returned with a valid RA number. The Company reserves the right to recover its costs where the returned Products prove not to be valid for return or are not defective. Returned Products must be returned to the Company at an address agreed by the Company.

15.5 All freight, handling and other charges in relation to returning Products (other than Products defective or not ordered) are the responsibility of the Customer.



15.6 Subject to clause 18, the Customer shall be liable for a Restocking Fee on all Products accepted for return. The Restocking Fee shall not apply to Products returned for being defective, damaged or for failing to comply with the Order. The current Restocking Fee is 30% of the price of the Products returned.

16. DISPUTED CHARGES

16.1 Subject to clause 18, the Customer accepts that minor defects in the Products do not constitute grounds to dispute an invoice or part thereof and the Customer accepts that incomplete installation does not constitute grounds to dispute an invoice or part thereof.

16.2 If the Customer objects to any invoiced item or amount, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever occurs first), the undisputed amount of the invoice is paid in full and notice in writing of the dispute is given to the Company, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. The Company will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice and the basis of the decision. Invoiced amounts that are not objected to in writing within 30 days of the due date will be deemed to be correctly charged and accepted by the Customer and the Customer waives all claims against the Tax Invoice.

17. SET-OFF AND ASSIGNMENT

17.1 The Customer shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.

17.2 The Customer may not assign or subcontract any contract for the purchase of Products or its rights or obligations under an agreement the subject of the Ts&Cs.

18. WARRANTIES, LIMITATION OF LIABILITY AND THE ACL

18.1 The Australian Consumer Law (**ACL**) provides consumers with guarantees that cannot be excluded, restricted or modified. This Agreement does not affect any rights the Customer has under the ACL or any other legal rights which cannot be excluded or modified. However, to the extent permitted by the ACL and subject to any other legal restriction, the Company excludes:

- (a) any terms, conditions, warranties, guarantees or other liability that might apply in respect of this Agreement, any Product or anything done under it; and
- (b) any liability for any indirect, special, consequential or economic loss or damage whether or not arising from default or negligence by the Company or its employees or agents.

18.2 For goods other than those of a kind ordinarily acquired for personal, domestic or household use or consumption, the Company limits its liability, as permitted by the ACL, at its option to:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the cost of replacing the goods or the cost of acquiring equivalent goods;
- (c) the repair of the goods or payment of the cost of repair of the goods.

18.3 For services other than those of a kind ordinarily acquired for personal, domestic or household use or consumption the Company limits its liability, as permitted by the ACL, at its option, to the re-supply of the services or the payment of the cost of having the services supplied again.

18.4 Subject to this clause 18, the Customer acknowledges and agrees that in entering into an agreement the subject of the Ts&Cs it has not relied in any way on the Company's



representations and that it has satisfied itself as to the suitability of the Product for the Customer's purposes.

19. FORCE MAJEURE

19.1 The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure to complete an Order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war or the inability of the Company's suppliers to supply necessary materials or any other matter beyond the Company's control.

20. PRIVACY CONSENT

20.1 The Company may give information to third parties about the Customer, its guarantors, directors or proprietors for the following purposes:

- (a) to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
- (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors;
- (c) for registration on the PPSR or other public records or registers; and
- (d) to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.

21. WAIVER TERMS OF AGREEMENT

21.1 The failure or indulgences by the Company to exercise, or delay in exercising, any right, power or privilege available to it under an agreement the subject of the Ts&Cs will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power and the Company shall be entitled to require strict compliance at all times.

22. PROPER LAW

22.1 An agreement the subject of the Ts&Cs is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.

22.2 The parties agree to submit to the non-exclusive jurisdiction of the Courts of the State of NSW if the Local Court has jurisdiction the parties consent to the exclusive jurisdiction of the Local Court closest to the Company's place of business.

22.3 An agreement formed pursuant to the Ts&Cs shall be deemed to have been entered into at the Company's place of business.

23. GENERAL PROVISIONS

23.1 This document represents the entire agreement between the parties and no agreement or understanding varying or extending the terms of these Ts&Cs shall be legally binding upon either party unless in writing and signed by both Parties or allowed by these Ts&Cs.

23.2 The Company may serve any notice or Court document on the Customer by hand or by forwarding it by post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address. Such notices shall be deemed to be given:

- (a) where delivered by hand, on the day of delivery;
- (b) where sent by post, two (2) business days after the day of posting; and
- (c) where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.

23.3 If any term of an agreement the subject of the Ts&Cs shall be invalid, void, illegal or unenforceable, they shall be severed from the agreement and the remaining provisions shall not be affected, prejudiced or impaired by such severance.

23.4 The Company may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the Customer's agreement or consent.

23.5 In the event that the Customer sells or otherwise disposes of its business (or any part thereof), the Customer shall be responsible to immediately notify the Company in writing of such sale to enable the account to be closed. If the Customer fails to so notify then the Customer shall be jointly and severally liable with the third party acquiring the business (or part thereof) to the Company for the payment of Products subsequently sold to the third party on the Customer's account before the Company received such notice as if the Customer had ordered the Products itself.