

BERKOWITZ TERMS AND CONDITIONS

- 1. AGREEMENT**
 - 1.1 This Agreement, including a quotation, an Order, an invoice and/or any annexure to these Terms and Conditions will constitute the entire agreement ("Agreement") between us and you and supersedes all prior communications and representations, inducements, undertakings, agreements or arrangements except expressly as provided by this Agreement.
 - 1.2 By signing the Agreement, you agree to be bound by these Terms and Conditions and no such Agreement will be construed as giving effect to a contractual relationship between you and us until we confirm our acceptance of your offer by signing the Agreement.
 - 1.3 Any changes to this Agreement must be in writing and clearly noted under Special Conditions on all copies of this invoice.
 - 1.4 We may amend these General Terms and Conditions from time to time at our discretion. Any changes to the Terms and Conditions made will not affect the Agreement entered into by you before the changes are made.
 - 2. PRICE, DELIVERY FEE AND PAYMENT**
 - 2.1 The Price for the Goods supplied will be as indicated on this Invoice.
 - 2.2 We may amend the quoted Price to take into account:
 - (a) correction of errors or any omission made by us; or
 - (b) any GST or government or statutory charges, taxes and duties which may become applicable after the Price is quoted.
 - 2.3 Verbal quotations are subject to written confirmation on this invoice.
 - 2.4 At our sole discretion, you will be required to pay a deposit when you place an order with us.
 - 2.5 Payment (including Delivery Fee if applicable) must be made in full within 14 days of availability of stock in our warehouse and cleared at least 3 days before the Delivery Date.
 - 2.6 Personal cheques may only be accepted if received no less than 14 days before the Delivery Date.
 - 2.7 A surcharge of 3% of the Price will apply if payment is made by American Express credit card. There will be card payment fee for payments made by all other credit cards.
 - 2.8 We may, in our absolute discretion, refuse to deliver the Goods if payment is not made in full in accordance with the terms of payment.
 - 3. CANCELLATION**
 - 3.1 If you cancel the Order:
 - (a) any deposit paid by you may not be refundable "as of right";
 - (b) you will be liable to pay for all our costs, charges and expenses incurred by us; and
 - (c) the deposit will be applied to cover our costs and expenses.
 - 3.2 If the deposit is not enough to cover our costs and expenses, we reserve our rights to sue you for damages.
 - 4. COLLECTION AND DELIVERY OF GOODS**
 - 4.1 Once you are notified that the Goods are ready for collection, if the Goods are not collected within 7 days we may charge you a storage fee in accordance with our usual storage rate.
 - 4.2 If you have requested us to deliver the Goods, you may be required to pay us Delivery Fee in addition to the Price.
 - 4.3** We may select a carrier to deliver the Goods to the address nominated by you in accordance with the provisions in this clause.
 - 4.4** You must ensure access by us or the carrier to the premises and neither we nor the carrier will be liable for any additional costs or damage incurred as a result of inadequate access to the premises. Additional Delivery Fee will apply if you fail to take delivery at the nominated address at the first instance.
 - 5. RISK AND TITLE**
 - 5.1 Risk in the Goods passes to you:
 - (a) when the Goods are collected by you or by any person or carrier authorised to collect the Goods on your behalf; or
 - (b) on delivery to the street address nominated by you (if we are appointed by you to deliver the Goods).
 - 5.2 The property and title in the Goods will not pass to you until payment required under this Agreement is paid in full.
 - 5.3 While the property and the title in the Goods remains with us and until such time it passes to you, you must not:
 - (a) charge or encumber the Goods in anyway;
 - (b) grant or otherwise give any interest in the Goods to a third party;
 - (c) convert the Goods and, if so converted, we will be the owner of the end Goods; and
 - (d) sell or dispose of the Goods and, if so sold or disposed of, you will hold any proceeds of the sale or disposal on trust for us until you have paid for the Goods in full.
 - 6. RETURNS**
 - 6.1 Subject to Clause 7, we do not accept Goods returned to us if you change your mind or that the Goods you purchased do not fit your home or the size of the lift in your apartment. You must therefore select the Goods carefully before you buy them.
 - 6.2 However if we decide at our discretion to accept the Goods, then:
 - (a) proof of purchase must be presented;
 - (b) the Goods must be in a re-saleable condition; and
 - (c) the Goods must be returned to the location they were originally purchased from.
 - (d) costs will be incurred associated with the terms on said invoice.
 - 6.3 You assume all risk of the Goods and are responsible for delivery costs associated with returning the Goods to us.
 - 7. UNCOLLECTED GOODS**
 - 7.1 If the Goods are not collected by you, or we are unable to deliver the Goods within 30 days after the Delivery Date, we may charge you for storage in addition to our right to dispose of the Goods as "uncollected goods" pursuant to Australian Consumer Law and Fair Trading Act 2012.
 - 7.2 If we sell the Goods pursuant to this provision we will refund the proceeds of sale to you less our costs and expenses including, but not limited to, storage charges and handling and administration fee \$100.00.
 - 8. OUR LIABILITIES**
 - 8.1 Upon delivery of Goods you must inspect the Goods and notify us in writing within 72 hours of delivery of any faults, defects, damages or inconsistency with the quantity, quality, description or quotation in respect of the Goods delivered. If you fail to comply with this clause the Goods will be deemed to be free of any defect and you are deemed to have waived any right of claim in respect of the Goods under this clause. We will not be liable for:
 - 8.2 (a) any costs or losses suffered by you including any consequential loss, damages or loss of profit as a result of any defects in the Goods or any failure, malfunction, breakdown or deterioration of the Goods;
 - (b) due to a cancellation of an Order by us or any delay in or failure of delivering the Goods; and
 - (c) any change in the law that becomes effective after the Order is placed, which may affect the Goods supplied.
 - 8.3 In any event our liability will be limited to damages to the Goods and the Price of the Goods.
 - 9. YOUR REPRESENTATION AND ACKNOWLEDGEMENT**
 - 9.1 You are not entitled to repudiate, rescind or cancel this Agreement due to, sue for damages or claim restitution arising out of:
 - (a) any delay by us in delivering the Goods howsoever caused; and
 - (b) any misrepresentation, undertaking or promise made to you by any of our servants or agents or any person purporting to act on our behalf.
 - 9.2 You acknowledge that:
 - (a) you buy the Goods relying solely upon your own skill and judgement; and
 - (b) we are in no way bound by or responsible for any term, condition, representation or warranty other than those contained in this Agreement.
 - 10. FORCE MAJEURE**
 - 10.1 We will not be liable for failing to comply with our obligations under this Agreement due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond our reasonable control.
 - 11. PRIVACY**
 - 11.1 All information supplied to us by you will be maintained by us in accordance with its obligation under the Privacy Act.
 - 11.2 When you place an Order with us, we may require additional information about you or your business for the purpose of providing you with quality service. You have the right to refuse to provide us with certain sensitive information.
 - 11.3 We do not disclose your personal information to any person or organisation outside our company or our related companies unless:
 - (a) the disclosure is necessary in order to fulfill our obligations under this Agreement;
 - (b) the disclosure is to credit-rating agencies for the purpose of creating or obtaining a credit report about you; or
 - (c) you provide us with an authorisation to disclose your personal information.
 - 11.4 Your information is always available to you, subject to some exceptions allowed by law. If you would like to obtain your personal information, you must put your request in writing.
 - 12. DEFINITIONS AND INTERPRETATION**
 - 12.1 In these Terms and Conditions, unless the context otherwise requires:
 - (a) "Australian Consumer Law" means the *Competition and Consumer Act 2010* (Cth) and any other Acts, bylaws, regulations and laws applicable in the State or Territory in which the Goods are sold.
 - (b) "You" means the person, firm or company purchasing the Goods.
 - (c) "Delivery Fee" means the fee charged by us in addition to the Price to deliver the Goods to you.
 - (d) "Goods" means the goods supplied by us pursuant to an Order accepted by us.
 - (e) "Invoice" means the invoice on the reverse side of these Terms and Conditions or annexed to these Terms and Conditions.
 - (f) "Order" means an order placed with us for the supply of Goods.
 - (g) "Price" means the price for the Goods ordered as agreed between us and you and specified in this Invoice.
 - (h) "Privacy Act" means the *Privacy Act 1988* (Cth).
 - (i) "We" or "us" means Berkowitz Furniture.
 - 12.2 Save and except for the express terms, conditions and warranties contained in this Agreement all other terms, conditions and warranties expressed or implied by statute, the common law, equity or otherwise howsoever are expressly excluded provided that nothing in this Agreement is intended to exclude or limit our liability or your rights and remedies for any breach of a term or condition implied by the Australian Consumer Law, the exclusion or limitation of which is not permitted by law. If any provision in these terms and conditions does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of the terms and conditions.
 - 12.3 If you are more than one person, then these terms and conditions will bind them jointly and each of them separately.
 - 13. ONLINE**
 - 13.1 Actual product timber and colour visuals can vary due to different screen device settings or the lighting in the installation of your location. Devices are not calibrated equally and colour reproduction on the Internet is not precise. Choose carefully with this in mind before purchasing.
 - 13.2 Dimensions are approximate only and are subject to variation.
 - 14. ACKNOWLEDGEMENT**

I/WE HEREBY ACKNOWLEDGE THAT I/WE:

 - (a) have checked the Goods and take them in good condition;
 - (b) have read, understood and agreed to these Terms and Conditions,
- Signed.....Date.....
- Name.....
- Witness.....