

# APOLLO KITCHENS

Design • Supply • Installation

## **Terms and Conditions:**

### 1. INTRODUCTION

In these conditions the following terms shall have the following meaning:

“the Company” means Apollo Kitchens Ltd

“Contract” means the contract between the Company and the Customer for the sale and purchase of Goods and Services incorporating these terms and conditions

“Customer” means the person or persons who are purchasing the Goods and or Services from the Company.

“Goods” means the goods specified overleaf and agreed to be supplied to the Customer in accordance with these terms and conditions

“Price” means the price inclusive of VAT for the Goods and Services as stated overleaf and delivery charges

“Services” means the services to be carried out for the Customer as specified overleaf to be carried out in accordance with these terms and conditions.

### 2. BASIS OF THE SALE

(i) The Company shall sell and the Customer shall purchase the Goods and Services in accordance with these terms and conditions, which shall govern the Contract to the exclusion of any other terms and conditions made or purported to be made by the Customer.

(ii) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of an offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

### 3. VARIATION

All terms of the Contract between the Customer and the Company are contained in these terms and conditions. No representations or warranties are made or given by the Company save as appear herein. No variation or addition to the Contract shall have effect unless agreed in writing and signed by a Director of the Company and a fully authorised representative of the Customer. No alleged oral agreement will be accepted.

### 4. PRICE AND PAYMENT

(i) The Price shall be inclusive of any value added tax and any delivery charges which are set out overleaf and which the Customer shall pay at the times stated overleaf.

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(ii) The Customer shall pay to the Company the Price in cash or by cheque or bank transfer in pounds sterling at the times stated overleaf. Payment will only be deemed to have been made when the Company has received cleared funds.

(iii) The Customer shall not be entitled to deduct any monies from any payment due whether by way of set-off, counterclaim, discount, abatement or otherwise unless ordered by a valid court order.

(iv) All payments payable under the Contract shall become due for payment immediately on termination of the Contract in accordance with clause 19.

(v) Any variation to the applicable rate of VAT or any imposition of VAT or other taxes imposed by the legislation will be charged at the appropriate rate at the time of delivery/installation.

(vi) If the Customer fails to make any payment on the due date pursuant to the Contract the Customer shall be liable to pay interest on such sum from the due date until the date of payment at the annual rate of 4% above the base lending rate of Barclays accruing on a daily basis until payment is made whether before or after judgment and the Company further reserves the right to charge for all reasonable costs including administration to enforce payment of the outstanding sums such costs are to be added to the debt owed by the Customer.

## 5. CANCELLATION

(i) The Customer shall be entitled to cancel this contract within 7 days from the date of signing the Contract, provided that such cancellation is notified to the Company in writing within this time frame and the Customer pays to the Company the sum of £100 inclusive of VAT by way of cancellation fee plus any associated survey costs incurred by the Company. Thereafter the Customer shall not be entitled to cancel the Contract except with the written consent of the Company in which event the Customer will pay the Company by way of liquidated damages either 10% of the total value of the Contract or the value of the works already completed, whichever is higher. Any goods that have been ordered in from one of our Suppliers could be subject to a restocking charge, the Customer will be passed on the cost of restocking charges.

(iii) The Company reserves the right to terminate the Contract within seven days of receipt of the survey carried out by its Installation Manager's report. In this event all monies paid by the Customer will be refunded in full.

## 6. SERVICES

The Company shall use reasonable endeavours to provide the Services in all material respects in accordance with the plan agreed with the Customer within the time specified to the Customer. Any variation to the time specified will not affect the obligation on the part of the Customer to pay the Price. Time is not of the essence in the Contract.

## 7. ALTERATION TO ORDER

(i) Following any survey carried out by the Company, the Customer shall not make any alterations to its premises or the Services or the existing equipment of the Customer at its premises which could affect the installation of the Goods. The Company does not accept any liability if such alterations are made.

(ii) Any alterations required by the Customer prior to any survey carried out must be notified in writing to the Company and the Customer accepts that such alterations may incur delays in delivery of the Goods or provision of Services and/or additional costs and charges.

(iii) The Company reserves the right to make reasonable alterations to Goods and Services to accommodate the Customer's premises.

## 8. ACCESS AND PREPARATION

(i) The Customer shall grant the Company and all persons employed or subcontracted to the Company to supply the Goods and Services an irrevocable licence to enter the Customer's Premises at all times for the purpose of carrying out an installation survey, delivering the Goods, carrying out the Services and where the Customer's right to retain the Goods has terminated, to recover them.

(ii) The Customer shall ensure and be responsible for:

a. The necessary preparation of its premises as stated.

b. All main utility services being available at the premises including a suitable electrical supply.

c. The removal of units, radiators, tiles, carpet, or any other floor covering, skirting board, picture rails, cornicing or other fixtures and fittings unless otherwise provided for as part of the Services.

d. All wayleaves or other approvals necessary from planning, fire or similar authorities so as to allow the installation of the units and accessories in accordance with any design and plans submitted by the Company.

(iii) Failure by the Customer to fulfil the above obligations will result in delay of the provision of Services and the Company shall be entitled to recover any additional costs and charges it incurs as a result of such delay from the Customer as a debt due on demand.

(iv) If the Goods are installed as part of a general redecoration scheme at the Customer's premises the customer is advised to carry out any wall covering and carpeting after the Services have been provided.

(v) If a floor covering is in place on the Premises then the Goods will be fitted over such floor covering and at the Customer's risk.

(vi) If furniture is in place on the Premises that needed to be moved for access and has not been, we move such furniture at the Customer's risk.

## 9. DELIVERY

The Company will use its reasonable endeavours to supply the Goods and provide the Services at a time convenient to the Customer but for the avoidance of doubt normally during the hours of 8 am and 5 pm only. Dates and approximate times will be advised by the Company. If the Customer fails to take delivery on an agreed date and time the Company reserves the right to postpone the delivery and/or provision of Services by a reasonable period in which case the Company will advise the Customer of an alternative date and time. If the Customer postpones delivery of the Goods within the period of 2 weeks prior to the advised delivery date the Company reserves the right to charge at its entire discretion storage charges of £50 per week.

## 10. RISK AND TITLE

(i) All risks, damage or loss to Goods shall pass to the Customer on delivery. In the event that the Customer fails to take delivery without good reason, risk in the Goods shall also be deemed to have been passed to the Customer at the time of attempted delivery. The Customer must ensure that prior to the provision of the Services the Goods will be stored at a dry and secure location.

(ii) The Customer shall ensure that its premises and services at its premises are safe, so as not to cause injury or damage to the Company's employees, sub-contractors, equipments or the Goods. The Customer shall be liable to pay to the Company on demand all reasonable costs charges or losses sustained including direct, indirect and consequential loss, loss of damage to property and losses arising from injury or death of any person arising directly from the Customer's negligence or failure to perform their obligation under this clause.

(iii) Notwithstanding delivery or any other provision of these terms and conditions, the title and ownership in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the Price. Until ownership has passed the Customer shall hold the Goods on a fiduciary basis as the Company's bailee and must maintain the Goods in satisfactory condition and keep them insured on the Company's behalf.

## 11. GUARANTEE/WARRANTY

(i) Where the Company is not the manufacturer of the Goods, the Company shall use its reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

(ii) The Company warrants that subject to the other provisions of these terms and conditions upon delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

(iii) The Company shall not be liable for a breach of the above warranty:

(a) if the Customer fails to give written notice of any defect to the Company; or

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(b) if the Customer does not allow the Company a reasonable opportunity to inspect the Goods after receiving such notice; or

(c) If the Customer makes any further use of the Goods after giving such notice; or

(d) If the defect arises because of the Customer's mis-use, general wear and tear or if the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or

(e) If the Customer alters or repairs such Goods without the written consent of the Company; or

(f) if the Goods are altered, tampered with or in any way damaged by other contractors/ persons working on the premises after the initial installation has taken place.

(iv) Subject to the above clause 11 (iii) if any of the Goods do not conform with the above warranty the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company. In considering whether a full or partial refund is to be given, account will be taken of the benefit provided by the Goods to the Customer.

(v) If the Company complies with clause 11 (iv) it shall have no further liability for a breach of the warranty in respect of such Goods.

(vi) The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of these terms and conditions;

(b) any use made by the Customer of any of the Goods, or of any product incorporating any of the Goods; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

(vii) All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

(viii) The Guarantee/ Warranty does not affect the Customer's legal rights and, for the avoidance of doubt, nothing in these conditions excludes or limits the liability of the Company:

(a) for death or personal injury caused by the Company's negligence; or

(b) under section 2(3), Consumer Protection Act 1987; or

(c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

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(d) for fraud or fraudulent misrepresentation.

(ix) Subject to clauses 11 (vii) and (viii):

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and

(b) the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract

(x) The Guarantee/Warranty will be binding on the Company in respect of the following Goods and the following periods from the date of installation:

The cabinets carry a 10 year warranty, there is a lifetime warranty on hinges and drawers, while the frontages, decor panels and wirework carry a 3 year warranty.

## 12. ALTERNATIVE EQUIPMENT

If at the time of delivery the Company is unable to supply any of the Goods the Company will offer the Customer an alternative with any appropriate adjustment in the Price. If the alternative is not acceptable to the Customer the Company will at its entire discretion allow a deduction in the cost of such Goods from the overall Price to the Company.

## 13. DAMAGE

(i) The Company will make good any damage caused by the negligent performance of the Services to the reasonable satisfaction of the Customer but will not be responsible for any redecoration or retiling arising as a result of the Services.

(ii) The Company will not be held liable for any damage caused by third parties/persons other than the Company's employees or sub-contractors working on the Customer's premises after the initial installation has taken place.

## 14. CUSTOMER APPLIANCES

Where the Company is not the supplier of appliances to be installed together with the Goods, the Customer must provide the Company in writing all necessary technical details including without limitation appliance dimensions, necessary for the proper and safe installation of such appliances. The Company is not responsible for the suitability, condition or performance of such appliances.

## 15. COLOURS AND GLASS

(i) Whilst every effort will be made to supply the Goods in the colour/shade chosen by the Customer the exact colour/shade cannot be guaranteed neither can the Company guarantee that the colours/shades are identical to those shown in the Company's advertising material and brochures. In particular where natural timbers are used the Customers must expect variations in colour and grain. The Customer shall not be entitled to terminate or cancel the Contract or make a claim against the Company by reason of reasonably foreseeable variations of colour and grain. Exact colour/shade is not of the essence in the contract.

(ii) The Company will not be liable for any slight imperfection in any parts of the Goods made of glass.

## 16. FRONT FRAMES

If a kitchen frame is specified, a frame will be supplied. A kitchen frame is usually 100mm deep and does not include sides, floor or shelves.

## 17. DRAWINGS AND CONFIDENTIALITY

All drawings, descriptive dimensions and illustrations or any other pictures contained in any sales literature and price estimate supplied by the Company to the Customer are approximate only and shall not form part of the Contract. In addition any intellectual property rights in drawings or technical documents or any other information as may be supplied by the Company to the Customer, including specifications, shall remain at all times the property of the Company and such drawing or technical documents or any such other information may not be copied, reproduced or communicated to any third party without the Company's prior written consent.

## 18. PRODUCT RANGE REVISIONS

The Company continually seeks to improve its products and reserves the right to alter, delete or add any item, colour, size, finish, component or service from its range without prior notice. Every effort will be made to match the Goods with goods provided under previous order(s) but the Company is unable to give any guarantee that the colour, size, finish or component will match.

## 19. TERMINATION

(i) Without prejudice to any other provision in these terms and conditions and without prejudice to any rights or remedies either party may have against the other the Contract shall terminate immediately and the Customer's right to possession of any Goods shall terminate immediately if:

(a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors



(whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the grant-ing of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer or the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986

(ii) The accrued rights of the parties as at termination shall not be affected.

(iii) On termination the Customer shall be liable to pay all outstanding and unpaid invoices and the Company shall be entitled to raise an invoice for Services performed but not invoiced and such invoice(s) shall become due for payment immediately on receipt by the Customer.

## 20. FORCE MAJEURE

The Company shall not be liable to the Customer under the Contract in any way whatsoever for destruction, damage, delay or inability to carry out its business arising out of war or civil commotion, strikes, lockout and industrial disputes, failure of utility service or transport network, fire, storm, explosion, floods or bad weather, breakdown of machinery or plant, malicious damage, compliance with any law governmental order rule direction or regulation or any act of God or default of suppliers or sub-contractors. The Company shall further be under no liability to the Customer for any circumstances beyond the Company's control.

## 21. ASSIGNMENT

The Company may assign the Contract or any part of it to any person, firm or company but the Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## 22. GENERAL

(i) Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

(ii) If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect



(iii) Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. And any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

(iv) The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

## 23. COMMUNICATIONS

(i) All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

(a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or

(b) (in the case of the communications to the Customer) to the address overleaf

(ii) Communications shall be deemed to have been received:

(a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

(b) if delivered by hand, on the day of delivery; or

(c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

## 24. JURISDICTION

The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

THESE TERMS AND CONDITIONS SHALL NOT BE CONSTRUED AS TO AFFECT THE STATUTORY RIGHTS OF THE CUSTOMER.