

1. **THE PARTIES**
The Supplier: Melbourne Desk Company Pty Ltd (ACN 006 509 673) of 19-21 Industry Place, Bayswater in the State of Victoria
The Customer: _____
2. **DEFINITIONS**
2.1. Any reference to **"the Customer"** includes any person engaging the Supplier on behalf of and with the authority of the person or entity that the Order is provided for.
2.2. The **"Order"** is defined as any request for the supply of Goods by the Customer to the Supplier which has been accepted by the Supplier.
2.3. The **"Goods"** are the commercial furniture and/or associated goods and products provided by the Supplier.
2.4. The **"Services"** is the delivery of the Goods to the Customer including any loading, packing, unloading or unpacking.
2.5. Any Reference to **"loss and damage"** includes indirect, reliance, special or consequential loss and/or damage including i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
2.6. **"Major failure"** is as defined under the *Competition and Consumer Act 2010 (Cth)*.
2.7. A reference to **"GST"** refers to goods and services tax under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
2.8. The terms **"security agreement"**, **"security interest"**, **"purchase money security interest"**, **"commingled goods"**, **"collateral"**, **"financing statement"**, **"financing charge statement"** are as defined in the *Personal Property Securities Act 2009 (Cth)*.
3. **GENERAL**
3.1. These terms and conditions together with the Supplier's quotation, credit application form and the Customer's written order or purchase order document (if any) constitutes the agreement between the Supplier and the Customer (**"the agreement"**).
3.2. Any Order is deemed to incorporate these terms and conditions, which may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these terms and conditions will prevail.
3.3. The terms and conditions are binding on the Customer, and the Customer's heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
3.4. In these terms and conditions, the singular shall include the plural, the neuter gender shall include the masculine and feminine and words importing persons shall apply to corporations and vice versa.
3.5. Where more than one Customer completes this agreement, each shall be liable jointly and severally.
3.6. 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 and the offending provision shall be deemed as severed from these terms and conditions.
3.7. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer in accordance with the terms herein.
3.8. The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
3.9. The Customer acknowledges that the Supplier may detail these terms and conditions on its website. In this event, the terms and conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such terms and conditions and/or amendments.
4. **QUOTATION AND PLACEMENT OF ORDERS**
4.1. Any quotation for the supply of Goods given by the Supplier will expire after sixty (60) days.
4.2. The Supplier does not represent that it will provide any Goods unless such Goods are included in the quotation or the Order.
4.3. A request for Goods must be placed by the Customer in writing ideally by email to order@mdesk.com.au. Upon receipt of the Order the Supplier will provide confirmation of the same and supply an ETA or promised date where applicable.
4.4. As a condition of acceptance, the Supplier may require the payment of a deposit in respect of the Price and in this event the Supplier may not be deemed to have accepted the Customer's request for Goods unless or until such deposit has been paid.
4.5. All prices quoted or advertised by the Supplier are based on taxes and statutory charges current at that time. Should these vary during the date of the Order to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.
5. **PRICE AND PAYMENT**
5.1. GST will be charged on the Goods provided by the Supplier that attract GST at the applicable rate.
5.2. At the Supplier's sole discretion, the Price shall be either:
5.2.1. The Supplier's quoted or advertised Price for the Order;
5.2.2. As detailed on invoices provided by the Supplier to the Customer in respect of Goods supplied; or
5.2.3. As otherwise agreed, to in writing by the parties.
6. **PROVISION OF GOODS AND SERVICES**
6.1. The Supplier reserves its right to:
6.1.1. Decline requests for any Goods and Services requested by the Customer.
6.1.2. Cancel or postpone appointments at their discretion.
6.1.3. Alter or modify its range of colours and specifications of Goods without notice.
6.2. The dimensions of the Goods are nominal, as minor variations to the same may be required from time to time with respect to the size and thickness of the Goods. Please contact service@mdesk.com.au if you require further information.
Delivery of Goods
6.3. Delivery of the Goods shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer, the Customer's agent or to the carrier as nominated by the Supplier and/or Customer.
6.4. If the Customer is a wholesale provider of the Goods then standard deliveries will be made to its nominated principal place of business (e.g. its warehouse/loading dock) as provided by on the Credit Application Form, unless a written request is made to the Supplier with any given Order. The written request must be e-mailed to service@mdesk.com.au and upon the Supplier's approval of the request (subject to availability of the Supplier's delivery service) the Customer must provide instructions for the delivery by completing and returning the Supplier's MDC Delivery/Installation form. The form is available on the Supplier's website www.mdesk.com.au in the resources section.
6.5. The Supplier can offer installation and assembly of the Goods at the same rates as outlined above for Direct Deliveries. Estimations for installation and assembly of Goods are available upon request.
6.6. The Supplier will not be liable for any delays incurred as a result of the Customer providing incorrect/insufficient information and the Customer will indemnify the Supplier for any costs/expenses it incurs as a result of the same.
6.7. If the Customer fails to make all arrangements necessary to take delivery of the Goods the Customer shall, at the discretion of the Supplier, be liable for a non-delivery fee equivalent to the time lost based on the rates above and the Supplier shall be entitled, also at its discretion, to charge a reasonable fee for redelivery and storage of the Goods.
6.8. Unless specified to the contrary in the quotation or the Order, the Supplier does not warrant that it will be capable of delivering the Goods on a specific day or at a specific time requested by the Customer.
- 6.9. Subject to otherwise complying with its obligations the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of delivering the Goods to the Customer.
6.10. The Supplier is unable to deliver to and/or install on premises that are controlled by Unions.
7. **PAYMENT AND CREDIT POLICY**
7.1. **Non-Account Customers** must make full payment to the Supplier (on a pre-pay or partial deposit or on delivery of the Goods (COD) as negotiated or details on the supplier's quotation) unless otherwise specified or agreed between the Parties in writing.
Credit
7.2. Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed credit application form.
7.3. On the acceptance by the Supplier of a completed credit application form, **Account Customers** must make full payment to the Supplier within thirty (30) days from the date of issue of the Supplier's invoice for the Goods, unless otherwise specified in the credit application form or agreed between the parties in writing.
7.4. Any credit, or credit limit granted by the Supplier may be revised by the Supplier at any time and at its discretion.
7.5. The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these terms and conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.
7.6. The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.
Account Customer's Privacy
7.7. The Customer agrees:
7.7.1. For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Supplier.
7.7.2. That the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.
7.7.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (pursuant to the *Privacy Act 1988*).
8. **DEFAULT**
8.1. In this clause the **"default date"** is:
8.1.1. The day after the date of delivery of the Goods to the Non-Account Customer; or
8.1.2. The day after the date by which payment of the Supplier's invoice(s) was due to be made by the Account Customer to the Supplier.
8.2. In this clause the **"outstanding balance"** is:
8.2.1. The Price of the Order, less any payments made by the Non-Account Customer prior to the default date; or
8.2.2. The sum of the Supplier's invoices to the Account Customer less any payments made by the Account Customer prior to the default date.
8.3. The Customer will be liable for a dishonoured cheque fee of \$40.00 for each cheque issued by the Customer and rejected by the Supplier's bank.
8.4. A signed statement from a duly authorised representative stating the amount due by the Customer is sufficient proof of the amount owing by the Customer to the Supplier unless proven otherwise by the Customer.
8.5. If the Supplier does not receive the outstanding balance by the default date the Customer will be liable for:
8.5.1. Interest on the outstanding balance from the default date at the rate of twelve per centum (12%) per annum calculated on a daily basis;
8.5.2. An account keeping fee of \$15.00 to be charged at the end of each calendar month after the default date until the outstanding balance has been paid;
8.5.3. Any debt collection or recovery costs incurred by the Supplier; and if the Supplier's debt collection agency (**"the agency"**) charges commission on a contingency basis then the Customer shall pay as a liquidated debt the commission payable by the Supplier to the agency, at the agency's prevailing rate as if the agency achieved one hundred per cent recovery and the following formula shall apply:
$$\text{Total Debt including Commission and GST} = \frac{\text{Original Debt} \times 100}{100 - \text{Commission \% charged by the agency (including GST)}}$$

(n.b. in the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au).
8.5.4. Any charges reasonably made or claimed by the Supplier's or the agency's lawyer for legal costs on the indemnity basis.
9. **RISK AND LIABILITY**
9.1. The Customer will ensure that there is sufficient and accurate information to enable the Supplier to execute the Order, including any special instructions for the storage, packing or delivery of the Goods.
9.2. The Supplier takes no responsibility and will not be liable for any loss and damage or costs as a result of the Goods and/or Services being faulty or not fit for purpose due to insufficient or inaccurate information provided by the Customer.
9.3. The Customer accepts all risk in relation to the Goods (including all risks associated with unloading or unpacking) when the Goods pass into the Customer's care or control; or that of its nominated carrier or agent.
9.4. The Supplier takes no responsibility for representations made in relation to the Goods by any third party or any delay in the delivery of the Goods by a third-party carrier nominated by the Customer.
9.5. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any loss and damage incurred as a result of delay, or failure to provide the Goods and/or Services or to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.
9.6. Subject to the Supplier's warranty for defective Goods, the Supplier's liability for any loss and damage associated with, arising from or in connection with the supply of the Goods may not exceed the Price of the Order, including but not limited to personal injury and damage to property.
10. **WARRANTY**
10.1. The Supplier warrants that the Customer's rights and remedies in the agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.
10.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* as may be amended from time to time.
Warranty for Goods
10.3. The Supplier's range of Goods generally carry a ten-year fault to base warranty, which is limited to manufacturing and material faults associated with the Goods. This warranty does not extend to post-delivery abuse or misuse of the Goods.
10.3.1. This excludes any electrical components, table bases, screens, height adjustable mechanisms for which are covered by their manufacturer's warranties. If your request falls into this category please contact service@mdesk.com.au.
10.3.2. The warranty is limited to manufacturing and material faults and does not include damage due to incorrect fitting of hardware and/or associated issues which were not caused by the Supplier.
10.3.3. The warranty does not extend to post-delivery abuse, misuse, accidental damage, exposure to temperature extremes, moisture, use of solvents or inappropriate cleaning, normal wear and tear. In this regard please refer to the Supplier's Care & Cleaning instructions on www.mdesk.com.au in the resources section.
10.4. The Customer will only be eligible for the warranty outlined paragraph 10.3, if all delivery dockets are signed by the Customer as the signature will verify that the Goods were received, inspected and found to be in good order.
10.5. Provided that the Customer reports any defect in any Goods supplied, preferably within fourteen (14) days from the date that the defect became apparent, the Supplier will rectify the defect within a reasonable period of time.
- 10.6. The Supplier provides the following warranty to Customers in respect of Goods and Services supplied:
"Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
 - To cancel your service contract with us; and
 - To a refund for the unused portion, or to compensation for its reduced value.*You are also entitled to choose a refund or replacement for major failure with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service."*
10.7. In respect of all claims under warranty, the Supplier reserves its right to inspect Goods alleged to be defective.
10.8. To the extent permitted by law the Supplier's liability in respect of defective Goods that does not constitute a major failure will be limited to:
10.8.1. The resupply by the Supplier of the defective Goods; or
10.8.2. The refund of the Price paid by the Customer in respect of the defective Goods.
10.9. The Supplier shall not be liable to compensate the Customer for any reasonable delay in rectifying Goods found to be defective or in assessing the Customer's claim.
10.10. The Customer warrants that it will use its best endeavours to assist the Supplier with identifying the nature of the defective Service claim.
Claims made under Warranty
10.11. Claims for warranty should be made in one of the following ways:
10.11.1. The Customer must send the claim in writing to the Supplier's address 21 Industry Place, Bayswater VIC 3153;
10.11.2. The Customer must email the claim to the Supplier to service@mdesk.com.au;
10.11.3. The Customer must contact the Supplier on the Supplier's business number (03) 9721 4444.
10.12. Any warranty claim should include the Supplier's Order Number or Job Number and all goods should be returned to the Supplier's factory unless prior arrangements are made with the Supplier to collect the goods from the Customer at an appropriate time.
11. **AGREED USE**
11.1. The Customer will forfeit any rights it may otherwise have against the Supplier for a warranty or breach of consumer guarantee in the event that:
11.1.1. The Goods are applied for any other use to which the Goods are not intended and/or not in accordance with any applicable manual, or the Supplier's instructions;
11.1.2. Any alteration or repair to the Goods is carried out other than in accordance with intended alterations and/or is carried out by a person or persons not authorized in advance by the Supplier to carry out such alteration or repair to the Goods.
11.2. The Customer further acknowledges sole responsibility for any damage or injury to property or person caused by using the Goods in any way and shall indemnify in full the Supplier, its servants and/or agents in relation to all such claims.
12. **TERMINATION & CANCELLATION**
Cancellation by the Supplier
12.1. The Supplier may cancel any Order to which these terms and conditions apply at any time before payment of the Price in full is made by the Customer by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any deposit or sum advanced in respect of the Price. The Supplier shall not be liable for any loss and damage whatsoever arising from such cancellation.
12.2. 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 in the event that:
12.2.1. Any money payable to the Supplier including any progress payment becomes overdue for payment; or
12.2.2. 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
12.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
Cooling off and cancellation by the Customer
12.3. The Customer may cancel any Order placed with the Supplier within twenty-four (24) hours of placing the Order (**"the cooling off period"**) without incurring any cost or cancellation fee or subject to any other charge.
12.3.1. This excludes Order's which the Supplier classifies as urgent, which by their nature would mean the production or purchasing of material would need to occur within the cooling off period. In this event the Supplier is still entitled to charge for any sub supplier charges like restocking fees and/or any material rendered unusable and any labour used.
12.4. Any request by a Customer to cancel an order must be made in writing by e-mail to service@mdesk.com.au and the cancellation will not be valid until acknowledged and approved in writing by the Supplier.
12.5. In the event that the Customer cancels the Order outside of any relevant cooling-off period then the Customer shall be liable for any loss and damage suffered by the Supplier; but not exceeding the Price of the Order.
12.6. The Supplier may retain any deposit or other sum paid in respect of the Price of the Order and offset such sum or deposit in satisfaction or partial satisfaction of any loss and damage suffered by the Supplier as a result of the Customer's late cancellation of the Order.
13. **RETENTION OF TITLE FOR GOODS**
13.1. Legal and equitable title in the Goods shall remain with the Supplier pending full payment of the Price of the Goods to the Supplier's nominated bank account and if payment has not been cleared within 45 days then the Customer warrants/agrees that:
13.1.1. It holds the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested.
13.1.2. It is responsible for the Goods and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Customer's possession.
13.1.3. It will maintain insurance in respect of the full replacement value of the Goods;
13.1.4. It will store the Goods separately and in such a manner that the Goods are clearly identifiable as the property of the Supplier;
13.1.5. It will not allow any person to have or acquire security interest in the Goods whilst the Goods are in the Customer's possession.
13.2. The Customer may sell and/or use the Goods in the ordinary course of business upon legal and equitable title passing to the Customer.
13.3. If the Goods are sold by the Customer before the Customer has paid the Price in full to the Supplier, the Customer shall hold the proceeds of sale in a separate identifiable account on trust for the Supplier and promptly account the Supplier for any such proceeds.
13.4. Notwithstanding the provisions above, the Supplier shall be entitled to issue legal proceedings to recover the Price of the Goods.
14. **PERSONAL PROPERTY SECURITIES ACT 2009 (Cth) ("PPSA")**
14.1. This agreement is a security agreement for the purposes of the PPSA, which has the effect of creating a security interest in favour of the Supplier over all present and after acquired Goods supplied by the Supplier to the Customer to secure the payment of the Price of the Goods including future advances.
14.2. The security interest that the Supplier acquires is a purchase money security interest ("PMSI") over all present and after acquired Goods including any commingled goods.
14.3. The PMSI will continue to apply as an interest in the collateral for the purposes of the PPSA with priority over registered or unregistered security interests.
14.4. The Supplier may register the PMSI on the Personal Property Securities Register ("PPSR") without providing further notice to the Customer.
14.5. The Supplier is not required to disclose information pertaining to the Supplier's security interest to an interested party unless required to do pursuant to the PPSA or under the general law.

- 14.6. The Customer covenants and undertakes:
- 14.6.1. To sign any documents and/or provide further information reasonably required by the Supplier to register a financing statement or a financing change statement on the PPSR;
 - 14.6.2. To indemnify the Supplier for all expenses and/or costs incurred by the Supplier in registering a financing statement or financing change statement on PPSR including the costs of amending, maintaining, releasing and enforcing any security interests in the Goods;
 - 14.6.3. Not to register and/or make a demand to alter a financing statement in the collateral without prior written consent of the Supplier;
 - 14.6.4. To provide the Supplier with seven (7) days written notice of any change or proposed change to the Customer's business name, address, contact details or other changes in the Customer's details registered on the PPSR;
 - 14.6.5. To waive any rights of enforcement under section 115 of the PPSA for collateral not used predominantly for personal, domestic or household purposes;
 - 14.6.6. To waive any rights to receive verification statement in respect of any financial statement or financing change statement under section 157 of the PPSA.

15. CHARGE/CAVEAT

- 15.1. You charge in favour of the Supplier your legal and beneficial interest in any real and/or personal property, both present and in future, with the amount of your indebtedness to the Supplier.

16. ENTIRE AGREEMENT

- 16.1. The agreement as defined herein constitutes the whole agreement between the Customer and the Supplier.
- 16.2. The agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.
- 16.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.
- 16.4. Nothing in these terms and conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010 (Cth)* or the *Fair Trading Acts* in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.

NAME:
 POSITION
 SIGNATURE:
 DATE:/...../20.....

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