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## STANDARD TERMS AND CONDITIONS FOR INSTALLATION AND DESIGN SERVICES

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### 1. THESE TERMS

- 1.1. The terms and conditions contained herein ("these Terms") apply to any and all design and installation services ("the Services"), rendered by Building Frontiers t/a Kitchen Frontiers ("Kitchen Frontiers"), and the delivery of any goods, including various materials, paints or adhesives ("the Materials") supplied by Kitchen Frontiers to the client identified in the Quote ("the Client"), including any services provided prior to signature date.
- 1.2. Each Quote entered into and signed by the Client shall constitute a separate agreement with Kitchen Frontiers, incorporating these standard terms ("the Agreement").
- 1.3. By accepting the Quote, the Client:
  - 1.3.1. agrees to be bound by these Terms;
  - 1.3.2. confirms that the plan and designs are in accordance with the Client's requirements and specifications and were reviewed in detail with Kitchen Frontiers;
  - 1.3.3. confirms that the finishes, patterns, styles and the Materials have been correctly specified on the Quote and are as seen in the showroom (if applicable) and that all the relevant options have been explained to the Client; and
  - 1.3.4. accepts that it is the Client's responsibility to ensure that the Quote includes all additional accessories required. Should any additional accessories be required after acceptance of the Quote, an additional Quote will be prepared for acceptance by the Client subject to these Terms.
- 1.4. This Agreement applies to the exclusion of any document, notice, order, terms, agreement, quotation or any other document, whether past or future, which the Client purports to apply or

seeks to impose between Kitchen Frontiers and the Client in respect the provision of the Services and supply of the Materials.

- 1.5. Once the Quote has been accepted by the Client, the Client shall be unable to make changes to such Quote. Should the Client wish to amend the accepted Quote the Client must cancel the initial Quote on Kitchen Frontiers written consent and request a new Quote from Kitchen Frontiers with the Client's desired changes.
- 1.6. Kitchen Frontiers reserves the right to amend any Quote, whether accepted or not, should it become evident when conducting a final measurement that any such amendment is necessary.
- 1.7. The Client is required to confirm approval and sign-off by signature of the design perspectives and floor plan. Failure by the Client to confirm sign-off within 10 (TEN) days of a request by Kitchen Frontiers to do so shall constitute a deemed acceptance of the design perspectives and floor plan.

## **2. MATERIALS AND FINISHES**

- 2.1. The Client acknowledges that the Materials that have been ordered in terms of this Agreement are "special order goods" as set out in Section 20 of the Consumer Protection Act 68 of 2008 ("the CPA").
- 2.2. The Client acknowledges that:
  - 2.2.1. Where natural timber is used in the fabrication of the units, there will be substantial visible differences both in the grain of the timber as well as the colours of the timber;
  - 2.2.2. Where man-made simulated products are used in the fabrication of the units, there will be variations in the visible colours of the products; and
  - 2.2.3. No claim will arise as a result of visible variations in colour or grain.
- 2.3. All doors and exposed panels will not be sealed on a paint technique finish unless agreed in writing.
- 2.4. Built-in-cupboards, vanities, sinks, pantries and oven cupboards shall have no backing unless otherwise specified.
- 2.5. Paint, granite, solid wood, or semi-solid wood products are all-natural materials. These products can differ from the samples. However, care will be taken to ensure such differences are minimal.
- 2.6. Full extension or Metabox runners are used unless otherwise specified.
- 2.7. Appliances are quoted separately and require a 100% upfront payment.

2.8. The following guidelines apply for the delivery of the Materials:

Melamine or PVC foil material	6 (SIX) weeks from payment of deposit
Solid and semi-solid material	6 (SIX) to 8 (EIGHT) weeks from payment of deposit
Paint	6 (SIX) to 8 (EIGHT) weeks from payment of deposit

2.9. It is recorded that time is not of the essence for purposes of the delivery of the Materials and Services in terms of this Agreement, and Kitchen Frontiers will not be held liable for any delay in the delivery of the Materials.

2.10. Kitchen Frontiers does not accept the return of any of the Materials save for the return of defective the Materials in accordance with the terms of an express warranty, or in terms of the CPA.

### 3. INSTALLATIONS

3.1. Where the Agreement includes installation by Kitchen Frontiers, an installer will be allocated to the Client to ensure that the installation is performed in accordance with Kitchen Frontiers' standards.

3.2. It is the Client's responsibility to check all products supplied (for colour, specification and quality) before installation, and Kitchen Frontiers will not be liable for any costs associated with replacement of incorrectly installed the Materials, except in accordance with clause 2.10.

3.3. The Client will be liable for a call-out fee at Kitchen Frontiers' current rates (at present R1 000.00 (ONE THOUSAND RAND), excluding VAT) if the site is not ready for installation, to the satisfaction of Kitchen Frontiers, upon the arrival of the installer.

3.4. In the event that the site is not ready for a period exceeding 2 (TWO) weeks, irrespective of with whom the fault lies, the Client will be liable for a storage fee at Kitchen Frontiers' current rates (at present R150.00 (ONE HUNDRED AND FIFTY RAND) per day, excluding VAT).

3.5. In the event that the Client is forced to postpone the initial installation date for a period of 30 (THIRTY) days or longer, for whatever reason, the Client agrees to pay for all the Material in full, excluding the Materials that can only be ordered once the cupboards are installed. The Materials that can only be ordered once the cupboards are installed and installation costs will

be re-quoted at the time of installation. The new Quote, if applicable, will be subject to the terms and conditions set out herein. Kitchen Frontiers reserves the right to charge storage fees on a pro rata basis for the space that is occupied by the Materials in accordance with clause 3.4 above.

- 3.6. If Kitchen Frontiers finds the site defective or not in conformance with applicable modern-day standards, Kitchen Frontiers reserves the right to suspend the installation without remedy to the Client until the defect is remedied to the satisfaction of Kitchen Frontiers, or alternatively to amend the Quote to allow the installation to accommodate such defects. Any costs associated with the exercise of Kitchen Frontiers' rights will be for the Client.
- 3.7. Installation dates can only be given 5 (FIVE) business days after acceptance of the Quote or final measurement of the site, whichever is the latest.
- 3.8. Installation periods are dependent on the complexity of the installation, the type of material and pace of the installer, therefore the period of the installation cannot be determined, estimated or confirmed prior to commencement of the installation. Kitchen Frontiers shall take all measures possible to adhere to the completion date provided to the Client, completion is dependent on (1) timeous delivery of material, (2) availability of installers on date of installation, and (3) availability of material, all of which are not within the reasonable control of Kitchen Frontiers.
- 3.9. Clients should be aware and agree herewith that any and every change made after receipt of initial deposit, has an impact on the time-line of the project and such delays could add up. Kitchen Frontiers will in no way be held responsible for delays caused by changes on the part of the Client.
- 3.10. Kitchen Frontiers will not be liable, in any circumstances, for any measurements that have not been taken by Kitchen Frontiers and that have not been specified on the design layout plan.
- 3.11. Granite and re-constituted granite must be measured onsite once carcasses have been installed. The installation of granite and reconstituted granite products are dependent on the availability of the Materials. Installation dates are to be confirmed 2 (TWO) business days after measurement, and installation should commence 7 (SEVEN) to 10 (TEN) business days after measurement. Kitchen Frontiers reserves the right to amend any Quote for granite and reconstituted granite products based on final measurement.
- 3.12. In the event that the Client provided items such as hobs and sinks, such items must be onsite on the day that the worktops are scheduled to be installed. In the event that an installer needs to return to a site to fit these items, or make cut-outs, then the Client will be liable for a service fee at Kitchen Frontiers' current rates (at present R1 000.00 (ONE THOUSAND RAND) excluding VAT).
- 3.13. The Client must meet with Kitchen Frontiers to compile a detailed fault and/or snag list within

7 (SEVEN) business days after initial installation. The Client must take extreme care when compiling this list, as Kitchen Frontiers will not accept any other lists. It is recommended that the Client works with Kitchen Frontiers to compile the fault and/or snag list, however the Client can choose to complete the list independently.

#### **4. LIABILITY**

- 4.1. None of Kitchen Frontiers, or its directors, principals, employees, agents, subcontractors or servants ("Personnel"), shall be liable for, and the Client hereby indemnifies Kitchen Frontiers and its Personnel against, any loss or damage suffered by the Client or any third party arising out of this Agreement, except where such loss or damage was caused by the intentional or grossly negligent conduct of Kitchen Frontiers.
- 4.2. The Client shall be liable for and hereby indemnifies Kitchen Frontiers against all loss, liability, damage or expense of whatever nature caused by any contractor, or the contractor's Personnel, for electrical, turn-key, plumbing or similar services that they might recommend.
- 4.3. It is the Client's responsibility to ensure that water pipes, plumbing points, electrical cables and electrical points have been pointed out during the first measurement, final measurement and on the day of installation. Neither of Kitchen Frontiers or its Personnel will be held liable for any damage caused by drilling into water supply piping or electrical circuit wiring due to the Client's failure to adequately inform Kitchen Frontiers of the relevant piping and wiring.
- 4.4. Should Kitchen Frontiers be required to do any electrical or plumbing work, which would include adding or removing power points, wiring or any pipes, and such additions or removals result in an extra charge for any certificate that is required by law, such expense will be borne by the Client.
- 4.5. Kitchen Frontiers shall not be liable for any water damage to the site or the Materials the Client, caused by any natural causes or leaking pipes at the installation site or as a result of drilling.
- 4.6. Kitchen Frontiers shall not be liable for any damages caused to the site or the Materials by the Client, its Personnel or any third parties.
- 4.7. Kitchen Frontiers shall not be liable for any costs that may arise from agreements with any third parties, such as tilers, electricians, plumbers, or any other subcontractors or third parties, of whatsoever nature or howsoever arising, including costs due to any extended installation periods or any delay in installation start dates.

#### **5. WARRANTY**

- 5.1. All the Materials and components that are supplied to Client are guaranteed for a period of 2 (TWO) years from the date of commencement of installation, against any natural defect.
- 5.2. The warranty does not extend to any defect or damage caused by water damage, an act of

God, tampering, damage caused by the Client or any third party, or misuse of the installed the Materials, including but not limited to the overloading of units.

- 5.3. The warranty is limited to the supply of equivalent Materials to replace the defective Materials.

## **6. OWNERSHIP**

- 6.1. Risk in and to the Materials passes to the Client immediately after delivery or collection, as the case may be. The Client shall make adequate provision for the safe storage of the Materials prior to installation. The risk of damage to the Materials, particularly by third parties, rests with the Client.
- 6.2. Ownership of the Materials will not pass to the Client until payment for the Materials has been received in full by Kitchen Frontiers.
- 6.3. Until ownership of the Materials has passed to the Client in terms of this clause 6, Kitchen Frontiers shall be entitled to access the site and remove the Materials upon any breach by the Client.
- 6.4. Notwithstanding that the Materials may be installed at the installation site with some degree of permanence, the Materials shall not accede to the property and no ownership shall be transferred except as strictly in accordance with this clause 6.

## **7. PAYMENT TERMS AND DISCOUNTS**

- 7.1. The Client agrees to and accepts the following payment terms:
  - 7.1.1. 60% of the total sale value must be paid on acceptance of Quote ("the Deposit"). The Deposit is non-refundable. No order will be processed without receipt of the Deposit.
  - 7.1.2. 30% of the total sale value must be paid before installation commences. The Materials will not be released for installation without valid proof of such payment. Payment by electronic transfer must be made at least 2 (TWO) business days in advance in order to ensure reflection of the payment.
  - 7.1.3. All further amounts shall be immediately due and payable upon sign-off of the installation and successful completion of the project as set out in the Quote. Such final payments must be made within 7 (SEVEN) days after the installation.
- 7.2. Should any discounts be granted to the Client, the discounted amount will be applied to the final payment amount.
- 7.3. The Client will forfeit any and all discounts allowed and agreed to should the Client not meet any of the payment obligations as set out herein.

- 7.4. All payments shall be made free from any deduction or set-off.
- 7.5. All fees and prices are quoted exclusive of Value Added Tax ("VAT"), and the Client agrees to pay VAT on demand.

## **8. BREACH**

- 8.1. Should the Client breach any of the terms of this Agreement, and fail to remedy such breach within 7 (SEVEN) days of receipt of written notice to that effect, then Kitchen Frontiers shall be entitled, without prejudice to any other rights available to it in terms of this Agreement or otherwise, at its sole and absolute discretion, (1) to suspend deliveries or installation of any of the Materials, (2) to claim specific performance of the Client's obligations in terms of this Agreement, (3) to cancel this Agreement and retake possession of the Materials, and (4) in any such event claim damages for any loss which Kitchen Frontiers may have suffered due to breach by the Client.
- 8.2. Kitchen Frontiers shall be entitled, without prejudice to any other rights or remedies to which it may be entitled in such circumstances, to terminate this Agreement forthwith in any one or more of the following circumstances:
- 8.2.1. if the Client is wound up, liquidated, sequestrated, deregistered, placed in business rescue or placed under judicial management, whether provisionally or finally, and whether voluntarily or compulsorily, or passes a resolution for any such event, or has any such application or other process brought against or in respect of it; or
- 8.2.2. if the Client enters into a compromise or attempts to enter into a compromise with its creditors; or
- 8.2.3. if the Client has any judgment awarded against it and fails to satisfy such judgment within 30 (THIRTY) days after demand; or
- 8.2.4. if the Client commits any act that is calculated to harm the reputation of or goodwill attaching to Kitchen Frontiers; or
- 8.2.5. if either party is prevented in whole or in part of performing its obligations under this Agreement, whether by reason or due to any cause beyond the reasonable control of Kitchen Frontiers including, without limiting the generality of the foregoing, war, civil commotion, riot, insurrection, strikes, lock-outs, boycotts, fire, explosion, flood, embargoes, export control, international restriction, any order of any international authority, any court order, any requirements of any other competent authority, acts of any state or government or other authority and continuous disease, owner's death or other acts of God, it being specifically recorded that the inability to pay shall not constitute an event for termination in terms of this clause 8.2.5.

- 8.3. The Client waives the following legal benefits as reasons for non-payment: no cause of debt, no value received, revision of accounts and technical understanding of bill of quantities and specification of the Materials quoted. The waiver of these benefits does not prevent the Client from using them as a defence, but the onus will be on the Client to prove these defences.
- 8.4. If the Client fails to make payment of any amount payable in terms of this Agreement by due date thereof, without prejudice to any other right of or remedy available to Kitchen Frontiers in terms of this Agreement or otherwise, the Client shall be charged and agrees to pay interest on such outstanding amount at the rate of 2% per month, which interest shall accrue on a daily basis from the date that payment was due to the date that payment is made, provided that such interest shall not exceed the maximum rate of interest permitted under applicable law.
- 8.5. For the purposes of instituting any proceeding against the Client, the Client hereby consents to the Magistrates' Court with jurisdiction and the parties hereby consents to the jurisdiction of the Magistrates' Court in terms of Section 45 of the Magistrates' Court Act 32 of 1944 as amended.
- 8.6. Without prejudice to any other rights or remedies available to Kitchen Frontiers in terms of this Agreement of in law, the Client shall be liable for and hereby indemnifies Kitchen Frontiers against any and all costs, including legal costs on the attorney and own client scale incurred by Kitchen Frontiers, arising out of any breach by the Client of this Agreement or any events leading to the summary termination of this Agreement.
- 8.7. The signatory ("the Surety") hereby binds himself as Surety and co-principal debtor jointly and severally with the Client in favour of Kitchen Frontiers, for the repayment on demand of any sum of money which the Client now owes or may hereafter owe to Kitchen Frontiers arising from this Agreement and for the due fulfilment of all obligations of the Client to the Kitchen Frontiers of such indebtedness. The Surety hereby renounces the benefits of cession of action, excussion, division, *exceptio de duobus vel pluribus reis debendi*, exception of revision of accounts, exception of no value received, *exceptio errore calculi*, *exceptio non numeratae pecuniae*, and *exceptio non causa debiti*, the full force, meaning and effect of which the Surety declares himself to be fully acquainted with.
- 8.8. A certificate signed by any manager or director of Kitchen Frontiers, whose authority shall not be necessary to prove, as to the existence and amount of indebtedness of the Client and/or the Surety at any time and as to the fact that the same is due and payable shall be sufficient proof, for the purposes of any proceeding, including provisional sentence and summary judgment against the Client and/or the Surety in any competent court, of the existence of the debts referred to in such certificate, and amounts owing thereon and the fact that such amounts are liquidated, due and owing and have not been paid.



## 9. CONSENT TO CREDIT VERIFICATION

The Client hereby consents to a credit check being conducted on it and its principals with any credit bureau of Kitchen Frontiers' choice.

## 10. DOMICILIUM AND NOTICES

10.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notice or other documents or communications of whatsoever nature, the following addresses:

10.1.1. Kitchen Frontiers:

Email Address: matthys@kitchenfrontiers.co.za

Reference: The Managing Director

10.1.2. The Client: The physical address and email address as set out in the Quote.

10.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by email.

## 11. GENERAL

11.1. The Client shall not be entitled to cede or assign any of its rights or delegate any of its obligations under this Agreement without the written consent of Kitchen Frontiers.

11.2. Kitchen Frontiers shall be entitled to cede or assign any of its rights or delegate any of its obligations under this Agreement, on notice in writing to the Client, and the Client shall on the written request of Kitchen Frontiers promptly execute any document required to effect such cession or assignment.

11.3. Save as expressly provided for herein, each paragraph, clause, term and provision of this Agreement and any portion thereof shall be considered severable, and if for any reason any part of this Agreement is held to be invalid or unenforceable, same shall not impair the validity and operation of the remainder of this Agreement, which shall continue to be given full force and effect and be binding upon the Parties.

11.4. The use of the word "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it and *the eiusdem generis* rule shall not be applied in the interpretation of such general wording or specific example.

11.5. The quotes, annexures and schedules to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such quotes, annexures and schedules.

- 11.6. The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
- 11.7. This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. Neither Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 11.8. No addition to, variation of, or agreed cancellation of, this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 11.9. No relaxation, indulgence or extension of time, which any Party may grant to any other, shall constitute a waiver of the rights of that Party, or preclude that Party from exercising any existing or future rights.
- 11.10. Kitchen Frontiers shall in no event be liable to the Client for any losses which constitute indirect, special or consequential damages.
- 11.11. This Agreement shall be interpreted and governed by the laws of the Republic of South Africa.