

These Conditions are the standard terms and conditions which apply to the provision by Ashton Woodcraft Ltd, Registered Number 07283291, whose registered office is at Kingfisher House, 140 Nottingham Road, Long Eaton NOTTINGHAM NG10 2EN (the “**Supplier**”), of manufacture, delivery, fitting and painting services to customers who require any such services to be provided at their home.

**These Terms of Business (the “Conditions”), together with any and all other documents referred to herein, set out the terms under which we provide goods/services to you. Please read these Conditions carefully and ensure that you understand them before making use of our Services.**

## 1 INTERPRETATION

**1.1 Definitions.** In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with “Charges and Payment” clause below.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with the Conditions.

**Contract:** the agreement / contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions and the Order.

**Customer:** the person or firm who purchases Services from the Supplier.

**Deliverables:** the deliverables supplied as part of the Services and as set out in the Order produced by the Supplier for the Customer.

**Order:** the order form overleaf, which contains prompts for all required information and which is subject to and incorporates these Terms and Conditions.

**Services:** Manufacture, delivery, fitting, and painting services,, supplied by the Supplier to the Customer as specified in an accepted quotation and displayed on the reverse of these Conditions in the form of an order form.

**Supplier:** Ashton Woodcraft Ltd inc Allwood Kitchens & Interiors (registered in England and Wales with company number 07283291).

**1.2 Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- (d) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (e) any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (f) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (g) a reference to **writing** or **written** includes faxes and e-mails.

## 2 BASIS OF CONTRACT

**2.2** After the Customer has contacted the Supplier initially to request the Services, and the Supplier has visited the Customer’s premises, taken measurements and discussed its requirements with the Customer and obtained any necessary further detail and clarification of any matters, the Supplier will prepare and send the Customer a written quotation detailing the Services to be provided and the corresponding price(s). Following acceptance of the quotation by the Customer, the Supplier shall re-visit the Customer’s premises and complete and present the Customer with an Order. The Order will reflect the price set out in the quotation and the required deposit as a percentage of the Charges. The deposit will be 30% of the Charges and must be paid in full by the Customer at the time of signing the Order. The deposit is non-refundable unless expressly stated otherwise in these Conditions.

**2.3** The Order shall only be deemed to be accepted when the Customer has signed and dated the Order and paid the required deposit, at which point and on which date the Contract shall come into existence (**Commencement Date**).

**2.4** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that she has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

**2.5** Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier’s catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

**2.6** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.7** Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 6 months or, in the case of discounted Services, for a period of 30 days from its date of issue (unless notified otherwise by the Supplier at the time of issuing the quotation to the Customer).

## 3 SUPPLY OF SERVICES

**3.2** The Supplier shall supply the Services to the Customer in accordance with the Order (and any additional drawings, plans and/or specifications agreed in writing between the parties) in all material respects. The Supplier will ensure that the Services are performed with reasonable care and skill and to a reasonable standard which is consistent with best trade practice. The Supplier will at all times hold a valid employer and public liability insurance policy.

**3.3** The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services and the Supplier will not be liable for any loss or damage the Customer suffers as a result of the delivery of any of the Services being delayed or postponed for any reason.

**3.4** The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirements, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

## 4 CUSTOMER'S OBLIGATIONS

**4.2** The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer’s premises and other facilities as reasonably required by the Supplier in order to supply the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer’s premises for the supply of the Services, as the Supplier may reasonably require in order to supply the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required from third parties (such as landlords, planning authorities, local authorities or similar) before the date on which the Services are to start; and
- (g) either give the Supplier a set of keys to the premises (which the Supplier promises will be kept safely and securely) or be present at the agreed times to give the Supplier access to the premises as necessary.

**4.3** If the Supplier’s performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier’s performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier’s failure or delay to perform any of its obligations as set out in this clause; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- (d) Any sums due from Customer whether overdue or not shall become due for payment immediately upon the commencement of any act or proceeding in which the Customer’s solvency is involved or brought into question.

## **5 CHARGES AND PAYMENT**

**5.2** The Charges for the Services shall be as set out in the Order.

**5.3** Any deposit paid by the Customer will only be returned in the event that the Supplier is unwilling or unable (see clause 13) to perform the Services. The deposit will not be returned if Customer cancels the order prior to delivery or at any stage thereafter. We will invoice the balance of the Charges at the stages set out in the Order, in each case in the amount which the Order states is payable at that stage. Such amounts must be paid by the due date stated on the corresponding invoice.

**5.4** Payment shall be made by cash, bank transfer or bankers draft (dependent on permission by Supplier).

**5.5** Supplier reserves the right to require full payment 7 days prior to delivery.

**5.6** The Supplier reserves the right to withhold or suspend provision of the Services in the event Customer fails to pay as per these Conditions and any terms stipulated in the Order.

**5.7** If Customer fails to make any payment due, Supplier is entitled to cease installation, remove Deliverables and charge Customer for any costs incurred.

**5.8** Unless otherwise stated, the price of the Services will be inclusive of amounts in respect of value added tax (**VAT**). Where exclusive of VAT, the Customer shall pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services.

**5.9** If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% per cent per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

**5.10** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **6 PERFORMANCE DATES**

**6.2** Any dates scheduled for the provision of the Services are estimates only and should not be relied upon. Dates are given in good faith but are subject to change at any time. The manufacture of the bespoke Deliverables provided as part of the Services is ongoing during the fitting process and as such the Supplier may extend fitting dates.

## **7 TITLE AND INSPECTION**

**7.2** The responsibility (or 'risk') for damage to or loss of any Deliverables provided as part of the Services remains with the Supplier until it has been physically delivered to the Customer's premises at which point the risk will pass to the Customer (even if the product is fitted later).

**7.3** Legal and beneficial title to any Deliverables supplied to the Customer shall remain with the Supplier (even if risk in those Deliverables has passed to the Customer) until payment in full in cash or cleared funds for all Deliverables supplied to Customer, including work that is part installed, has been received by Supplier in accordance with these terms or until such time as the Supplier sells the Deliverables to its customer at full market value. If the Supplier does not receive payment in cash or cleared funds of any properly issued invoice for any Deliverables within the time which the corresponding invoice permits, the Supplier shall be entitled to repossess those Deliverables without notice. If necessary, the Customer must allow the Supplier to detach or remove those Deliverables from any other products or items in or forming part of the installation fittings. The Customer hereby irrevocably authorises the Supplier to enter its premises for the purpose of exercising its rights under this clause.

**7.4** The Customer agrees to inspect all Deliverables upon delivery/completion of fitting with reasonable care and attention. The signing of a delivery note by or on behalf of the Customer shall constitute acceptance that the transaction has been completed in good order and Customer's actual knowledge of any defects reasonably apparent.

**7.5** The Supplier will not charge the Customer for remedying problems where they have been caused by the Supplier. If the Supplier determines that a problem has been caused by incorrect or incomplete information or action provided or taken by the Customer, it may charge the Customer for remedial work. If the Supplier determines that a problem has been caused by a third party contractor, the Supplier will not carry out any remedial work and instead will inform the Customer of the problem which the Customer may then follow up with the third party contractor in question..

## **8 INTELLECTUAL PROPERTY RIGHTS**

**8.2** All intellectual property rights in or arising out of or in connection with the provision of the Services and any items or information which the Supplier gives to the Customer in hard copy or electronic form at any time shall be owned by the Supplier and shall remain the Supplier's exclusive property. The Customer (or someone on its behalf) may use any such items or information for the sole purpose of implementing the fitting but the Customer may not copy, reproduce or communicate to any third party any such item or information or use it for any other purpose without the Supplier's prior written consent.

## **9 CONFIDENTIALITY**

A party ('receiving party') shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ('disclosing party'), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause shall survive termination of the Contract.

## **10 LIMITATION OF LIABILITY AND DISCLAIMERS**

**10.2** Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

**10.3** Subject to the aforesaid:

- (a) the Supplier provides the Services for domestic and private purposes only. It makes no warranty or representation that any Services are fit for commercial, business or industrial purposes of any kind and the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier will not be liable for any accommodation costs, costs of storage of furniture, or any other expenses the Customer suffers arising from provision of the Services;
- (c) the Supplier will not be liable for any loss or damage the Customer suffers which results from the Customer's failure to follow any reasonable instructions given by the Supplier; and
- (d) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges.

**10.4** The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**10.5** The Supplier will not remove floor or wall tiles or undertake gas, electrical or central heating works without prior written quotation.

**10.6** The Supplier will not carry out any structural survey or offer or provide opinions or advice structural or other building related matters.

**10.7** If it appears that any wall is incapable of holding any Deliverables or other items that the Supplier is to fit, or any utility supply or connection is unsafe, faulty, flawed or inadequate or of poor quality, the Supplier may suspend work until the Customer has had the necessary remedial works carried out.

**10.8** The Supplier will not take responsibility for any damage occurring to any items that the Customer leaves in place after the Supplier begins work where the Supplier has previously advised the Customer that they are at risk and/or an obstacle to the work and the Supplier has reasonably asked the Customer to move them.

**10.9** The Supplier will not be responsible for any damage that it causes to plastering, tiling, decoration, floor, ceiling, door or window resulting from its removal of existing fitted cabinets, appliances, lighting, fixtures, fittings or decorations except where it is due to the Supplier's negligence.

**10.10** The Customer will be responsible for any cleaning and redecorating (but not removal of waste) which is necessary to the installation area after the Supplier has completed the fitting services.

**10.11** The Supplier does accept any responsibility for any damage to the premises or any other part of the premises resulting from structural or other defects in the premises. The Customer must inform the Supplier of any structural defects or anomalies at the premises which might affect or be affected by the fitting services.

**10.12** The Customer must clear the installation area of all furniture and property prior to the Supplier commencing work. This includes any old kitchen units or fixtures, except where the Supplier has specifically agreed to remove and clear these.

**10.13** Once the Supplier has left any Deliverables or materials at the Customer's premises, they will be regarded as delivered to the Customer and the Customer will be responsible for them and will account to the Supplier for any loss or damage to them except if the Supplier causes the loss or damage.

**10.14** This clause shall survive termination of the Contract.

#### **11 CANCELLATION AND TERMINATION**

**11.1** If the Customer cancels the Services before the date on which the parties have agreed they will begin, the Supplier will retain from the deposit a sum to cover any net financial loss that it suffers due to the cancellation. The Supplier will refund the balance of the deposit to the Customer as soon as is reasonably possible, and in any event within 14 calendar days of cancellation. If the Supplier's net financial loss is more than the amount of the deposit, the Supplier will invoice the Customer for the shortfall and the Customer will be required to make payment in accordance with Clause 5.

**11.2** Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier, or terminate the Contract, if the Customer fails to pay any amount due under this Contract on the due date for payment or the Supplier believes that the Customer may be unable to pay its debts as and when they fall due. The Supplier may also need to terminate the Contract before the Services are due to commence due to the unavailability of required personnel or materials. If such cancellation is necessary, the Supplier will inform the Customer as soon as is reasonably possible and will refund any deposit paid as soon as is reasonably possible, and in any event within 14 calendar days of termination.

**11.3** Either party may terminate the Contract if the other party has breached the Contract in any material way and has failed to remedy that breach within 14 days of being asked to do so in writing by the other party.

**12 CONSEQUENCES OF TERMINATION** On termination of the Contract for any reason:

**12.1** the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

**12.2** the Customer shall return any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

**12.3** the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

**12.4** clauses which expressly or by implication survive termination shall continue in full force and effect.

#### **13 FORCE MAJEURE**

**13.1** For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**13.2** The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

#### **14 GENERAL**

##### **14.1 Assignment and other dealings.**

**14.1.1** The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

**14.1.2** The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

##### **14.2 Notices.**

**14.2.1** Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

**14.2.2** A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in this "Notices" clause; if sent by pre-paid first class post or other next working day delivery service, at 12.00 pm on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

**14.2.3** The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

##### **14.3 Severance.**

**14.3.1** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**14.3.2** If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

##### **14.4 Waiver.**

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

##### **14.5 No partnership or agency.**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

##### **14.6 Third parties.**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

##### **14.7 Variation.**

The Supplier and the Customer may agree in writing to vary the details in the Order from time to time by signing a written note of the variation concerned. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

##### **14.8 Governing law.**

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

##### **14.9 Jurisdiction.**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).