

# Terms and Conditions of Trade

Rev 1.2

Updated: 04/07/2024

## **No one likes the small print.**

While it might feel a bit time-consuming to read the fine print, we do believe it is the best way to manage expectations and avoid any surprises. Our terms of trade set out what we will deliver to you and what we expect from you. The last thing we want is a mismatch in understanding and a poor outcome for you.

We believe in providing great service and we take pride in our standards. The terms of trade below serve as the criteria for all of the work we carry out. These terms override any agreements made in person, over the telephone, or in any other communication.

When you ask Okuri to carry out work on your behalf, you agree to uphold your obligations under these terms of trade.

If you have any questions please contact us at [ben@okuri.com.au](mailto:ben@okuri.com.au). If you are unhappy with the work we provide, or have any problems or comments, please let us know immediately. We will do our best to fix any problems right away. If you do not give us feedback or if you delay payment, it makes it difficult for us to put things right.

We take pride in what we do and would love for you to use us again and tell your friends. You can be sure that we want you to get the outcome you are after, as much - if not more- than you do.

## Cancellations/Rescheduling Appointments

- We are always happy to reschedule an appointment free of charge
- If you need to cancel your appointment, please provide us with at least 24 hours notice.
- A cancellation fee may apply to appointments that are not cancelled within 24 hours of your appointment
- We always endeavour to make our appointments at the agreed upon time. Unfortunately, sometimes things outside of our control will mean we will have to reschedule

## Payment Terms

- Once your job is complete, you will be sent a final invoice by email.
- Please let us know before work commences if you would prefer an invoice to be mailed to you, as our default communication is email.
- Depending on the size of the job balance payments may be required, these will be noted on the quote provided
- Work completed outside of the scope of work will be charged at the rates listed below unless otherwise agreed on a quote or contract
- For call-out jobs and emergency jobs, payment is due when the work is complete, unless we have made other arrangements. If you have been sent an invoice, payment is due as per the payment date on the invoice.

## Deposits

- Large jobs will require a deposit before work commences
- If a deposit invoice is sent and remains unpaid before the work commences, we reserve the right to halt work until payment is made. We also reserve the right to cancel the contract entirely, if payment is late or delayed.
- Unless prior agreed to in writing, work will not be started until the downpayment is cleared

## Progress Invoices

- Progress invoices are claims for work done on site or in the workshop, before the entire job is completed. This covers labour and materials for work done to date. The cost of materials and the amount of time spent on your job will dictate whether you will be sent progress invoices.
- As part of our agreement, you accept to pay these progress invoices when they are due. You understand that you cannot withhold payment for any reason.
- If for any reason work has paused on your job, you can request an invoice to settle the account by contacting the office.
- We reserve the right to stop work if progress payments have not been made.

## Discounts

- Discounts applied to your account are administered at our discretion.
- Discounts may be revoked and the full amount may be charged to you if an invoice remains unpaid for more than 20 days or any other agreed date.

## Disputed Invoices

- If you need to discuss any aspect of payment, please contact us immediately.
- If you are dissatisfied with the invoice, it is your responsibility to contact us immediately.

## Unpaid Accounts

- Interest on overdue invoices shall accrue from the date when payment is due daily until the date of payment
  - This will be charged at the Westpac Bank Standard Variable Rate on home loans at the time the payment becomes overdue plus 5% per annum.
- Debt Collection costs, including but not limited to, solicitors and debt collection agencies may be added to invoices that remain outstanding for over 5 days from the due date.
- The debt may be passed to a debt collection agency in the event of non-payment for more than 14 days

## Charges

- Certain contracts and quotes may list different prices than those below. In this event please refer to the prices listed on the quote/contract provided

Interior & Furniture Design	\$117/hour excl GST	Transport Fee	\$66 excl GST
General Labour	\$117/hour excl GST	After Hours Call Out Fee (First hour included)	\$200 excl GST
After Hours Labour	\$175.5/hour excl GST		

## Transport Fee

- We allow up to 30 minutes travel time to your site. This cost is covered in the transport fee. If we take longer than 30 minutes to travel to your job, the cost of this additional travel time may be charged to you.
- If in the course of undertaking work for you, we are required to pay for parking or any other vehicle travel costs, these will be passed on to you.
- If any fines or towing charges are incurred after being instructed to park in a space designated by the client these charges will be passed on to you.
- In some circumstances, if your property is located outside of normal travel routes, you may be charged for the time it takes for the tradespeople to travel back to the office/workshop. If it is more than 30 minutes, you may be charged for the extra time it takes the tradespeople to reach their destination. The exception to this is normal travel to and from home in peak motorway traffic. This condition usually applies to work outside of the city.

## After Hours Call Out Fee and Charges

- We define our normal hours of business from 8.00am-5.00pm Monday to Friday. Work done outside of these hours may be subject to an after hours call out fee.
- If, in the course of a job, you ask us to do work which falls outside of normal working hours, we will have to charge you additional fees. If it has been arranged as a call-out, call-out fees will be applied. If not, additional fees will be applied to cover the overtime rates.

# Terms of Trade

## 1. Definitions

- 1.1. "Okuri" means Okuri Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Okuri Pty Ltd.
- 1.2. "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting Okuri to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - I. if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - II. if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - III. includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3. "Goods" means all Goods or Services supplied by Okuri to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4. "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.5. "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.
- 1.6. "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Okuri and the Customer in accordance with clause 6 below.
- 1.7. "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

## 2. Acceptance

- 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, accepts delivery of the Goods or makes a downpayment listed on a quote.
- 2.2. In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3. Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

- 2.4. Any advice, recommendation, information, assistance or service provided by Okuri in relation to Goods or Services supplied is given in good faith, is based on Okuri's own knowledge and experience and shall be accepted without liability on the part of Okuri and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.
- 2.5. The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Okuri and it has been approved with a credit limit established for the account.
  - I. In the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, Okuri reserves the right to refuse delivery and/or request an alternative payment method.
- 2.6. The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Okuri reserves the right to vary the Price with alternative Goods as per clause 6.2.
- 2.7. The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 2.8. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### **3. Errors and Omissions**

- 3.1. The Customer acknowledges and accepts that Okuri shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - I. resulting from an inadvertent mistake made by Okuri in the formation and/or administration of this contract; and/or
  - II. contained in/omitted from any literature (hard copy and/or electronic) supplied by Okuri in respect of the Services.
- 3.2. In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Okuri; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

### **4. Authorised Representative**

- 4.1. The Customer acknowledges that Okuri shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to Okuri, that person shall have the full authority of the Customer to order any Services and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to Okuri for all additional costs incurred by Okuri (including Okuri profit margin) in providing any Services or variation/s requested thereto by the Customer's duly authorised representative.
- 4.2. When instructed, the terms of 4.1. will also apply to additional authorised representatives

## **5. Change in Control**

5.1. The Customer shall give Okuri not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Okuri as a result of the Customer's failure to comply with this clause.

## **6. Price and Payment**

6.1. At Okuri's sole discretion, the Price shall be either:

- I. as indicated on any invoice provided by Okuri to the Customer; or
- II. Okuri's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

6.2. Okuri reserves the right to change the Price if a variation to Okuri's quotation is requested. Any variations (including, but not limited to the availability of stock or increases to Okuri in the cost of taxes, levies, materials and labour etc) will be charged for on the basis of Okuri's quotation, and will be detailed in writing, and shown as variations on Okuri's invoice. The Customer shall be required to respond to any variation submitted by Okuri within five (5) working days. Failure to do so will entitle Okuri to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion, or as otherwise specified on the variation/additional invoice

6.3. In the event that a latent condition becomes apparent following commencement of the work, we may advise you of additional services that are required to remedy the latent condition

6.4. At Okuri's sole discretion, a deposit may be required for cash sales.

6.5. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Okuri, which may be:

- I. on delivery of the Goods;
- II. before delivery of the Goods
- III. by way of instalments/progress payments in accordance with Okuri's payment schedule;
- IV. the date specified on any invoice or other form as being the date for payment; or
- V. failing any notice to the contrary, the date which is twenty (20) days following the date of any invoice given to the Customer by Okuri.

6.6. Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Okuri.

6.7. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Okuri nor to withhold payment of any invoice because part of that invoice is in dispute.

6.8. Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Okuri an amount equal to any GST Okuri must pay for any supply by Okuri under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any

other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## 7. Delivery of Goods

7.1. Delivery ("Delivery") of the Goods is taken to occur at the time that:

- I. the Customer or the Customer's nominated carrier takes possession of the Goods at Okuri's address; or
1. (or Okuri's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

7.2. Subject to clause 7.3 it is Okuri's responsibility to ensure that the Services start as soon as it is reasonably possible.

7.3. The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Okuri claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Okuri's control, including but not limited to any failure by the Customer to:

- I. make a selection; or
- II. have the site ready for the Services; or
- III. notify Okuri that the site is ready; or
- IV. make additional design changes; or
- V. require work outside of the scope of works; or
- VI. events outside the control of Okuri, such as;
  1. natural disaster
  2. poor health
  3. material delays

7.4. The customer is unable to claim any cost or damages related to late delivery of the service

7.5. At Okuri's sole discretion, the cost of delivery is in addition to the Price.

7.6. Okuri may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions or the quote provided to the customer.

7.7. Any time specified by Okuri for delivery of the Goods is an estimate only and Okuri will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Okuri is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Okuri shall be entitled to charge a reasonable fee for redelivery and/or storage.

## 8. Risk

8.1. Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

8.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Okuri is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Okuri is sufficient evidence of Okuri's rights to receive the insurance proceeds without the need for any person dealing with Okuri to make further enquiries.

- 8.3. If the Customer requests Okuri to leave Goods outside Okuri's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8.4. Where Okuri is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Okuri shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.5. The Customer acknowledges that Goods supplied may:
  - I. exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. Okuri will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
  - II. expand, contract or distort as a result of exposure to heat, cold, weather; and
  - III. mark or stain if exposed to certain substances; and
  - IV. be damaged or disfigured by impact or scratching.
- 8.6. Timber is a hydroscopic material subject to expansion and contraction, therefore Okuri will accept no responsibility for gaps that may appear during prolonged dry or wet periods.
- 8.7. Timber is a hydroscopic material, therefore Okuri will accept no responsibility for water damage, rot or mould to items exposed to water

## **9. Accuracy of Customers Plans and Measurements**

- 9.1. Okuri shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Okuri accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2. In the event the Customer gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Okuri places an order based on these measurements and quantities. Okuri accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

## **10. Specifications**

- 10.1. The Customer acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in Okuri's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Okuri.

## **11. Access**

- 11.1. The Customer shall ensure that Okuri has clear and free access to the site at all times to enable them to undertake the Services. Okuri shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Okuri.
- 11.2. It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify Okuri against all costs incurred by Okuri in recovering such vehicles in the event they become bogged or otherwise immovable.

## **12. Underground and Hidden Services**

- 12.1. Prior to Okuri commencing the Services the Customer must advise Okuri of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.
- 12.2. Whilst Okuri will take all care to avoid damage to any underground or hidden services the Customer agrees to indemnify Okuri in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

## **13. Title**

- 13.1. Okuri and the Customer agree that ownership of the Goods shall not pass until:
  - I. the Customer has paid Okuri all amounts owing to Okuri; and
  - II. the Customer has met all of its other obligations to Okuri.
- 13.2. Receipt by Okuri of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3. It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 13.1:
  - I. the Customer is only a bailee of the Goods and must return the Goods to Okuri on request.
  - II. the Customer holds the benefit of the Customer's insurance of the Goods on trust for Okuri and must pay to Okuri the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - III. the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Okuri and must pay or deliver the proceeds to Okuri on demand.
  - IV. the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Okuri and must sell, dispose of or return the resulting product to Okuri as it so directs.
  - V. the Customer irrevocably authorises Okuri to enter any premises where Okuri believes the Goods are kept and recover possession of the Goods.

- VI. Okuri may recover possession of any Goods in transit whether or not delivery has occurred.
- VII. the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Okuri.
- VIII. Okuri may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

#### **14. Personal Property Securities Act 2009 (“PPSA”)**

- 14.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Okuri for Services – that have previously been supplied and that will be supplied in the future by Okuri to the Customer.
- 14.3. The Customer undertakes to:
  - I. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Okuri may reasonably require to;
  - 1. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - 2. register any other document required to be registered by the PPSA; or
  - 3. correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
  - II. indemnify, and upon demand reimburse, Okuri for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - III. not register a financing change statement in respect of a security interest without the prior written consent of Okuri;
  - IV. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Okuri;
  - V. immediately advise Okuri of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.4. Okuri and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 14.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7. Unless otherwise agreed to in writing by Okuri, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8. The Customer must unconditionally ratify any actions taken by Okuri under clauses 14.3 to 14.5.

14.9. Subject to any express provisions to the contrary (including those contained in this clause 14) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **15. Security and Charge**

- 15.1. In consideration of Okuri agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2. The Customer indemnifies Okuri from and against all Okuri's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Okuri's rights under this clause.
- 15.3. The Customer irrevocably appoints Okuri and each director of Okuri as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

## **16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 16.1. The Customer must inspect the Goods on delivery and must within a reasonable period following delivery notify Okuri in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Okuri to inspect the Goods.
- 16.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non- Excluded Guarantees).
- 16.3. Okuri acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4. Except as expressly set out in these terms and conditions or in respect of the Non- Excluded Guarantees, Okuri makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Okuri's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5. If the Customer is a consumer within the meaning of the CCA, Okuri's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6. If Okuri is required to replace the Goods under this clause or the CCA, but is unable to do so, Okuri may refund any money the Customer has paid for the Goods.
- 16.7. If the Customer is not a consumer within the meaning of the CCA, Okuri's liability for any defect or damage in the Goods is:
  - I. limited to the value of any express warranty or warranty card provided to the Customer by Okuri at Okuri's sole discretion;
  - II. limited to any warranty to which Okuri is entitled, if Okuri did not manufacture the Goods;

III. otherwise negated absolutely.

16.8. Subject to this clause 16, returns will only be accepted provided that:

- I. the Customer has complied with the provisions of clause 16.1; and
- II. Okuri has agreed that the Goods are defective; and
- III. the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- IV. the Goods are returned in as close a condition to that in which they were delivered as is possible

16.9. Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, Okuri shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- I. the Customer failing to properly maintain or store any Goods;
- II. the Customer using the Goods for any purpose other than that for which they were designed;
- III. the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- IV. the Customer failing to follow any instructions or guidelines provided by Okuri;
- V. fair wear and tear, any accident, or act of God.

16.10. Okuri may in its absolute discretion accept non-defective Goods for return in which case Okuri may require the Customer to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.

16.11. Notwithstanding anything contained in this clause if Okuri is required by a law to accept a return then Okuri will only accept a return on the conditions imposed by that law.

## **17. Intellectual Property**

17.1. Where Okuri has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Okuri. Under no circumstances may such designs, drawings and documents be used without the express written approval of Okuri.

17.2. The Customer agrees that Okuri may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Okuri has created for the Customer.

## **18. Default and Consequences of Default**

18.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment. This will be charged at the Westpac Bank Standard Variable Rate on home loans at the time the payment becomes overdue plus 5% per annum.

18.2. If the Customer owes Okuri any money the Customer shall indemnify Okuri from and against all costs and disbursements incurred by Okuri in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Okuri's contract default fee, and bank dishonour fees).

18.3. Further to any other rights or remedies Okuri may have under this contract, if a Customer has made payment to Okuri, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to

any further costs incurred by Okuri under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.

18.4. Without prejudice to Okuri's other remedies at law Okuri shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Okuri shall, whether or not due for payment, become immediately payable if:

- I. any money payable to Okuri becomes overdue, or in Okuri's opinion the Customer will be unable to make a payment when it falls due;
- II. the Customer has exceeded any applicable credit limit provided by Okuri;
- III. 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 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## **19. Cancellation**

19.1. Without prejudice to any other remedies Okuri may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Okuri may suspend or terminate the supply of Goods to the Customer. Okuri will not be liable to the Customer for any loss or damage the Customer suffers because Okuri has exercised its rights under this clause.

19.2. Okuri may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Okuri shall repay to the Customer any money paid by the Customer for the Goods minus work and material costs to that date. Okuri shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.3. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Okuri as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.4. Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## **20. Privacy Policy**

20.1. All emails, documents, images or other recorded information held or used by Okuri is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. Okuri acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Okuri acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Okuri that may result in serious harm to the Customer, Okuri will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information

must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

20.2. Notwithstanding clause 20.1, privacy limitations will extend to Okuri in respect of Cookies where transactions for purchases/orders transpire directly from Okuri's website. Okuri agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:

- I. IP address, browser, email client type and other similar details;
- II. tracking website usage and traffic; and
- III. reports are available to Okuri when Okuri sends an email to the Customer, so

Okuri may collect and review that information ("collectively Personal Information")

20.3. In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Okuri's website.

20.4. The Customer agrees for Okuri to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by Okuri.

20.5. The Customer agrees that Okuri may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:

- I. to assess an application by the Customer; and/or
- II. to notify other credit providers of a default by the Customer; and/or
- III. to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- IV. to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.

20.6. The Customer consents to Okuri being given a consumer credit report to collect overdue payment on commercial credit.

20.7. The Customer agrees that personal credit information provided may be used and retained by Okuri for the following purposes (and for other agreed purposes or required by):

- I. the provision of Goods; and/or
- II. analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- III. processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- IV. enabling the collection of amounts outstanding in relation to the Goods.

20.8. Okuri may give information about the Customer to a CRB for the following purposes:

- I. to obtain a consumer credit report;
- II. allow the CRB to create or maintain a credit information file about the Customer including credit history.

20.9. The information given to the CRB may include:

- I. Personal Information as outlined in 20.3 above;
- II. name of the credit provider and that Okuri is a current credit provider to the Customer;

- III. whether the credit provider is a licensee;
- IV. type of consumer credit;
- V. details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- VI. advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Okuri has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- VII. information that, in the opinion of Okuri, the Customer has committed a serious credit infringement;
- VIII. advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

20.10. The Customer shall have the right to request (by e-mail) from Okuri:

- I. a copy of the Personal Information about the Customer retained by Okuri and the right to request that Okuri correct any incorrect Personal Information; and
- II. that Okuri does not disclose any Personal Information about the Customer for the purpose of direct marketing.

20.11. Okuri will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

20.12. The Customer can make a privacy complaint by contacting Okuri via e-mail. Okuri will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## 21. Compliance with Laws

21.1. The Customer and Okuri shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

21.2. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.

## 22. Service of Notices

22.1. Any written notice given under this contract shall be deemed to have been given and received:

- I. by handing the notice to the other party, in person;
- II. by leaving it at the address of the other party as stated in this contract;
- III. by sending it by registered post to the address of the other party as stated in this contract;

- IV. if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- V. if sent by email to the other party's last known email address.
- VI. if sent by text to the other party's last known mobile number
- VII. if sent by other means when requested to use that method of communication by the customer.

22.2. Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### **23. Trusts**

23.1. If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Okuri may have notice of the Trust, the Customer covenants with Okuri as follows:

- I. the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- II. the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- III. the Customer will not without consent in writing of Okuri (Okuri will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;

23.2. the removal, replacement or retirement of the Customer as trustee of the Trust;

23.3. any alteration to or variation of the terms of the Trust;

23.4. any advancement or distribution of capital of the Trust; or

23.5. any resettlement of the trust property.

### **24. General**

24.1. The failure by either 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. 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.

24.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which Okuri has its principal place of business, and are subject to the jurisdiction of the Courts of Queensland.

24.3. Subject to clause 16 Okuri shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Okuri of these terms and conditions (alternatively Okuri's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

24.4. Okuri may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.

24.5. The Customer cannot licence or assign without the written approval of Okuri.

24.6. Okuri may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Okuri's sub-contractors without the authority of Okuri.

24.7. The Customer agrees that Okuri may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Okuri to provide Goods to the Customer.

24.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

24.9. Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

24.10. This contract is entered into via Signature, written confirmation or payment of a down payment where applicable