



**ezy kitchens**  
and appliances



# Terms of Trade



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## 1 Terms of contract

Any Products supplied by us to you shall be subject to these Terms unless both of us agree in writing to change them. If you accept the Quote from us, that action by you will be deemed to be acceptance of these Terms.

## 2 Price

2.1 The price for Products will be our quoted price as indicated in the Quote (subject to clause 2.2) and will be valid for the period stated in the Quote or otherwise a period of 30 days.

2.2 Despite clause 2.1 above, unless otherwise agreed in writing, any quoted price may be altered before delivery of Products to you, if our costs fluctuate after the date of quotation. Further, quoted prices only apply to the total quantities, measurements, products, services and delivery dates specified in the quotation. Additional surcharges or other costs may apply as referred to in the Quote.

2.3 Unless otherwise referred to in the Quote or agreed in writing, all prices are inclusive of packaging, freight, insurance and delivery charges, but exclusive of any product or service not expressly included in the Quote as well as Goods and Services Tax and other government duties, levies or taxes in respect of the Products. These will be charged at the rates applying at the time of delivery.

## 3 Payment

3.1 You must pay all amounts set out in each invoice issued by us in full, without any set-off or deduction, by the due date and in the manner specified on the invoice.

3.2 If no other payment terms are specified on an accepted Quote, payment of the price for Products is due in cleared funds to our nominated bank account or by means of accredited charge cards approved in writing by us, prior to dispatch of the Products by us or collection by you.

3.3 If full payment for the Products is not made by the due date, then without prejudice to any other rights or remedies available to us:

(a) we may cancel or suspend the delivery of further Products (and/or any services in relation to Products already delivered);

(b) we may charge interest on overdue monies on a daily basis at 5% per annum above the current overdraft rate charged by our bankers at that time, and interest shall continue to accrue both before and after judgment.

(c) you will be responsible for all costs (including legal costs on a solicitor/client basis) incurred by us in recovering such monies; and

(d) any discount/promotion offered to you will be deemed to be withdrawn, and you will be liable for the full invoice price.

3.4 We may accept and apply payments from you in respect of any indebtedness, and we will not be bound by any conditions or qualifications attaching to the payments.

3.5 Where we have agreed to extend credit to you, we may, from time to time at our discretion, vary your credit limit with us and shall endeavour to notify you of any variation. If a purchase of Products would exceed your current credit limit, we may require payment in cash of the excess before delivery of them.

3.6 Despite clauses 3.1 to 3.3 above or any agreement to the contrary, all payments shall become immediately due and payable if we reasonably believe that the information which you have given us in your credit application is not correct or no longer correct, or if you default under any agreement with us, become insolvent or commit any act of bankruptcy, a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking or you make or attempt to make an arrangement or composition with your creditors.

#### **4 Ownership**

4.1 Ownership in the Products shall not pass to you at the time of delivery, but will remain with us until we have received full payment, in cash or cleared funds, of all monies owing by you to us.

4.2 Until all amounts owing have been paid:

(a) you will keep the Products separate from any other goods in your possession, and properly stored, protected and insured, and identified as our property;

(b) all sums received from any insurance claim made in respect of loss of or damage to the Products shall be treated as if they were proceeds of sale and held by you on trust for us and you will, if required by us, forthwith assign to us the benefit of any insurance claim made in respect of the Products; and

(c) we may, on giving reasonable notice, require you to re-deliver the Products to us and, if you fail to do so, our employees and agents may enter any premises where the Products might be stored and recover them.

#### **5 Risk and delivery**

5.1 Delivery of the Products will take place when they are received by you or your agent, whichever is earlier. When you ask us to deliver Products directly to another person, that person takes possession of the Products for you as your agent.

5.2 We will make every effort to ensure delivery of Products is on time. However, we shall not be liable to you for any failure to deliver (or install) any Products on a specified date or within a specified period, however that failure was caused.

5.3 Despite clause 4 above, risk in respect of the Products shall pass to you on delivery in accordance with clause 5.1 above. You are responsible for insurance of the Products from that time.

5.4 Without limiting the previous provisions of this clause 5, all claims for shortages or delivery damage must be made to the carrier and us within 48 Hours after delivery.

#### **6 Returns and cancellation**

6.1 Products may be returned for credit only if we have agreed in writing (except returns for defective Products). Returns (except returns for defective Products) must be in the same condition as they were delivered to you, must be sent at your expense, and with a copy of the original packing slip or invoice.

6.2 You may not cancel an order for Products, wholly or partly, without our written consent. As a condition of giving our consent, we may require reimbursement of any reasonable costs (including materials, handling fees and labour) incurred by us in connection with the order up to the date of our consent.

6.3 In addition to our rights under clause 3.4(a) above, we may cancel or suspend an order for Products (and/or associated services), wholly or partly and without liability to you, in any of the circumstances set out in clause 3.7 above.

#### **7 Installation**

7.1 Only persons authorised by us are to install the Products where it is necessary to comply with any applicable manufacturer warranty.

7.2 Where we do not install the Products, we will not be responsible for any loss, damage or injury once the Products have been delivered to the site or picked up by you (or on your behalf).

7.3 The cost of installation, removal of any materials (including any existing appliances or part of any existing kitchens), and any electrical or plumbing work, is not included in the price of the Products unless it is specified otherwise in the Quote.

7.4 If we are to install the Products then we will not be responsible for any costs or losses resulting from any delay in the installation.

7.5 It is your sole responsibility to ensure that the site and services (power, water, air and other external connections) are prepared to our specifications as required for the correct installation of the Products. If the site and/or services do not meet the specifications, then you will be liable for any additional time (at our standard rates) and costs arising from the delays and difficulties in the installation of the goods.

7.6 All electrical and plumbing work is to be undertaken by third-party suppliers and we have no liability whatsoever for their acts or omissions.

7.7 You are responsible, at your cost, for ensuring any applicable consents that may be required in connection with the Products and their installation are obtained.

## 8 Consumer Guarantees Act 1993/Building Act 2003

**8.1** If the CGA applies or any mandatory applicable provisions of the Building Act 2003 relating to residential building work, these Terms shall be read subject to your rights under those Acts.

**8.2** Where you are acquiring the Products for the purposes of a business (as provided in sections 2 and 43 of the CGA), the CGA shall not apply.

**8.3** Where clause 8.2 above applies and you are acquiring the Products for the purposes of resale, your terms of trade applying to the resale (and, if your customers acquire the Products for the purposes of resale, their terms of trade and the terms of trade of each other person in your distribution chain) must include a provision having the same effect as that clause. You agree to indemnify us, on demand, against any liability under the CGA as a result of any failure by you, your customers or any other person in your distribution chain to include such a provision.

## 9 Warranties

**9.1** We warrant that the Products will comply with the terms of the Warranty applicable to the particular Products as published on our website at the date of installation of the Products. Your remedy for a breach of the Warranty will be as outlined in the terms of the Warranty. **Ezy Kitchens Warranty Terms**

**9.2** We reserve the right to vary the terms of the Warranty from time to time by publishing revised terms on our website.

**9.3** To the fullest extent permitted by law:

**(a)** our maximum liability for any and all claims relating to any defect or damage or otherwise is limited to the price paid by you for the relevant Products (or installation);

**(b)** our liability under these Terms is in substitution for, and to the exclusion of, all other liabilities, warranties, representations, conditions or obligations imposed or implied by law, statute or otherwise in relation to the Products; and

**(c)** all liability for any indirect, special or consequential loss or damage (or for any loss of profit, revenue, opportunity or economic loss, whether direct or indirect) of any kind is expressly excluded.

## 10 Personal Property Securities Act 1999

**10.1** You acknowledge and agree that, by accepting these Terms, you grant us a security interest over the Products and their proceeds (by virtue of the retention of title in clause 4 above).

**10.2** You undertake to:

**(a)** do all acts and provide us on request all information we require to register a financing statement or financing change statement on the Personal Property Securities Register; and

**(b)** advise us immediately in writing of any proposed change in your name or other details on the Personal Property Securities Register.

**10.3** You:

**(a)** waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest;

**(b)** waive your rights and, with our agreement, contract out of your rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA; and

**(c)** agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections.

**10.4** Unless the context otherwise requires, the terms and expressions used in this clause 8 have the meanings given to them in, or by virtue of, the PPSA.

## 11 Privacy Act

**11.1** You authorise us to collect and hold personal information from any source we consider appropriate to be used for credit, administration, service and marketing purposes. You further authorise us to disclose personal information held by us for these purposes to any other person.

**11.2** You understand that you have a right of access to, and may request correction of, personal information held by us about you.

## 12 Intellectual property

**12.1** All intellectual property rights in any design, drawing or specifications prepared by us or on our behalf are, and will remain, exclusively owned by us or our licensor. Without limiting your intellectual property rights in any designs, drawings or specifications which you provide to us, neither we nor our suppliers transfer to you any right, title or interest in any copyright, trade marks, patents or other intellectual property rights of ours in or relating to the Products.

**12.2** You warrant that any designs, drawings or specifications which you provide to us will not infringe any intellectual property rights of any third party, and you agree to indemnify us, on demand, against any liability we may suffer as a result of our use of those designs, drawings and specifications.

## 13 Dispute resolution

**13.1** Where a dispute arises in connection with, relating to or under these Terms (Dispute), neither of us may commence court proceedings in relation to that Dispute unless this clause 13 has been complied with. The party claiming a Dispute must give written notice to the other party to the Dispute (Dispute Notice) which contains sufficient particulars to ensure the other party is informed of the matters in dispute.

**13.2** Within 10 Business Days of service of the Dispute Notice, both of us shall meet in good faith and use reasonable endeavours to resolve the Dispute.

**13.3** If the Dispute cannot be resolved under clauses 13.1 and 13.2, either of us may commence Court proceedings in relation to the Dispute.

## 14 General terms

**14.1** Entire agreement: These Terms, together with the relevant Quote and our invoice, constitute the entire agreement between you and us for the supply of the Products and supersede and exclude any previous representation, agreement, arrangement or correspondence on the matter, any terms or documents submitted by you and any terms implied by trade, custom, practice or course of dealing.

**14.2** Variation: We may vary these Terms from time to time. Any such variation will be effective in relation to any Products ordered after the date specified by us in any written notice provided to you or published on the Ezy Kitchens website at [www.ezykitchens.co.nz](http://www.ezykitchens.co.nz).

**14.3** Assignment: You will not assign or otherwise transfer any of your rights or obligations under this agreement to any other person without our prior written consent.

**14.4** Waiver: No delay or failure by us or you to exercise our or your rights under these Terms operates as a waiver of those rights. A partial exercise of those rights does not prevent their further exercise in the future.

**14.5** Severability: If a court decides that part of these Terms is unenforceable, the part concerned shall be deleted from the rest of these Terms, which will then continue in force.

**14.6** Law: These Terms will be interpreted in accordance with and governed by the laws of New Zealand, and the New Zealand Courts will have non-exclusive jurisdiction in respect of all matters between us.

**14.7** Event outside of control: We will not have any liability to you for any damage, delays, defects or failures resulting from an event outside of control, so long as we immediately notify you of the event, and use all reasonable endeavours to remedy as quickly as possible the effect of that event. But, the occurrence of an event outside of control will not relieve you of your liability to pay us any amount you owe us on the date for payment.

## 15 Defined terms and interpretation

15.1 In these Terms, the following words have the following special meanings:

"CGA" means the Consumer Guarantees Act 1993;

"event outside of control" means any circumstances beyond the reasonable control of either you or us (including, without limitation, any strike, lock-out or other industrial action) other than an inability to pay funds;

"Products" means (i) all Products subject to the Quote and any other products supplied by us to you at any time; and (ii), except where the context otherwise requires, all services supplied by us to you at any time, in conjunction with the supply of Products;

"PPSA" means the Personal Property Securities Act 1999;

"Quote" means the quotation provided by us relating to the supply of Products and Services as specified in that quotation (and as varied from time to time);

"Terms" means these terms of trade including the warranty (as amended from time to time);

"Warranty" means the **warranty** applicable to the relevant Products as published on our website (as amended from time to time);

"we", "our", "us" means the Ezy Kitchens franchisee named in the Quote; and

"you" means the customer named in any Quote or who otherwise requested the relevant Products from us, (or if not applicable, then as named in any order form or request to purchase Products from us).

15.2 For convenience, these Terms have been grouped under different headings, but the headings do not affect the meaning of these Terms.

15.3 In these Terms references to any law include any changes to that law which are in force from time to time.

15.4 For the avoidance of doubt, Ezy Kitchens Limited, being the franchisor of the "Ezy Kitchens" name and brand has no liability whatsoever for the supply of Products by us or otherwise under the Terms. These Terms are solely between you and the applicable franchisee.