

Charlotte Minty Interior Design Limited
Terms of Trade

In these Terms of Trade, we have used **we, us,** and **our** to refer to Charlotte Minty Interior Design Limited and **you** to refer to you as our customer. By ordering Work or Goods from us, you agree to these Terms of Trade to the exclusion of your terms (if any).

1. Engagement

1.1 You engage us to provide the Work, and we accept that engagement, on the following terms and conditions.

2. Performance of Work

2.1 We will:

- (a) perform the Work with reasonable skill, care, and diligence in a professional manner;
- (b) endeavour to ensure that the Work is performed in accordance with any time frames agreed in writing with you; and
- (c) liaise with you during the course of performing the Work in accordance with your reasonable requirements.

2.2 You will give reasonable assistance to enable us to perform the Work by:

- (a) giving clear instructions;
- (b) promptly providing any information or content required from you for us to complete the Work; and
- (c) ensuring that the Work and products derived from the Work are fit for the purpose you intend to use them for and meet any applicable statutory, regulatory, governmental and industry and environmental controls, standards, or practices.

2.3 If we have given you a time frame for completion of the Work, unless agreed in writing to the contrary, such time frame is approximate only and is not deemed to be of the essence of the Terms of Trade.

2.4 If you do not fulfil your obligations under or in connection with these Terms of Trade (including its payment obligations and/or giving any approvals (or disapprovals)), then we will not be responsible or liable to you for any resulting delay(s) in our performance of the Work, and we will be allowed a reasonable extension of time to perform the Work.

3. Estimates

3.1 Unless stated otherwise, any price we give you for Work is an estimate (Estimate) on a plus GST basis of the anticipated cost for us to complete that Work. The Estimate is subject to clause 4 below.

3.2 Subject to clause 3.3 below, the Estimate is open for acceptance for six months after it is dated unless withdrawn by us prior to acceptance.

3.3 If we provide a quotation to you in respect of any Goods it is based on information available to us at that time and shall only be valid for a period of one month from the date

provided, unless withdrawn by us prior to acceptance. To the extent any Estimate given includes a quotation for Goods such Estimate shall only be valid and open for acceptance for a period of 1 month after it is dated unless withdrawn by us prior to acceptance. Unless otherwise agreed in writing, prices are quoted exclusive of GST.

3.4 We will not commence the Work until you have accepted the Estimate in writing.

3.5 We will advise you when 75% of the Estimate has been exceeded and when the Estimate has been reached.

4. Price

4.1 Notwithstanding any Estimate given, unless we have agreed in writing to be bound by a set price for the Work, you will pay to us our actual cost of completing the Work (Actual Cost) which will be calculated by totalling the following:

- (a) the number of hours of service multiplied by the hourly rates for the workers involved on the dates which the Work is undertaken or if the supply occurs over more than one day, the relevant hourly rates on the last day on which services are rendered;
- (b) any disbursements (including without limitation delivery costs) incurred by us on your behalf; and
- (c) the cost of any Goods supplied by us as part of the Work, including any reasonable mark-up.

4.2 The Actual Cost and all prices are plus GST and other taxes which are payable by you in New Zealand dollars.

4.3 Disbursements incurred by us on your behalf may include a reasonable mark-up by us.

4.4 In the event these Terms of Trade are terminated in accordance with clause 11.2(d) or by you under clause 20 prior to completion of the Work, you must immediately pay us the Actual Cost at the termination date plus 50% of the balance of the part of the Estimate that relates to the current stage of the Work as described in the agreed task description of the Work.

5. Terms of Payment

5.1 We may require you to pay a deposit, being an advanced payment for any Goods before we source such Goods from our suppliers.

5.2 Payment for the Work (and any associated expenses and disbursements) is due on the 20th day of the month following the date of our invoice except where we have agreed in writing that other terms will apply (Due Date).

5.3 If you do not make payment on the Due Date, you are in default and must pay default interest at the rate of 5% per annum, which will accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full.

- 5.4 Notwithstanding clause 5.3, if payment is outstanding for 7 days from the Due Date, we may suspend performing the Work on credit until the date of payment in full (subject always to clause 5.5).
- 5.5 We may notify you at any time that we have ceased to carry out the Work on credit. This cessation does not relieve you for amounts owing up to the date on which the Terms of Trade are terminated.
- 5.6 Payment of all money will be without set-off or deduction of any kind.
- 5.7 We will apportion payments to outstanding accounts as we think fit.
- 6. Ownership**
- 6.1 Ownership of Goods supplied under these Terms of Trade remains with us until payment for the Goods is made in full.
- 7. Risk and Delivery of Goods**
- 7.1 Delivery occurs at the time possession of the Goods passes to you (or a person nominated by you) from us. The risk in Goods supplied passes to you on delivery.
- 8. Personal Property Securities Act 1999 (PPSA)**
- 8.1 All terms in this clause 8 have the meaning given in the PPSA.
- 8.2 Clause 6.1 creates a security interest in Goods we supply to you as part of the Work.
- 8.3 You will not grant any other security interest or any lien over Goods that we have a security interest in.
- 8.4 At our request you will promptly sign any documents and do anything else required by us to ensure that our security interest constitutes a first ranking perfected security interest in the Goods.
- 8.5 We may at any time enter your premises and properties to uplift Goods that we have a security interest in.
- 8.6 If Goods that we have a security interest in are processed, included, or dealt with in any way causing them to become accessions, processed or commingled goods, our security interest will continue in the whole in which they are included. You will not grant any other security interest or any lien in either the Goods or in the whole.
- 8.7 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, and 133 of the PPSA.
- 8.8 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 8.9 You will give us prior written notice of a proposed change of your name or address.
- 9. Warranties**
- 9.1 The Consumer Guarantees Act 1993 (CGA), the Fair Trading Act 1986 (FTA) and other statutes may impose warranties, conditions or obligations on us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed

warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.

- 9.2 Where you acquire goods and/or services from us for the purposes of a business:
- (a) the parties acknowledge and agree that:
- (i) you are acquiring the goods and/or services covered by these Terms of Trade for the purposes of a business in terms of sections 2 and 43(2) of the CGA;
- (ii) the goods and/or services are both supplied and acquired in trade for the purposes of the FTA, and the parties agree to contract out of sections 9, 12A and 13 of the FTA, and
- (b) you agree that all warranties, conditions, and other terms implied by the CGA, or sections 9, 12A, and 13 of the FTA are excluded from these Terms of Trade to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.
- 10. Limitation of Liability**
- 10.1 The guarantees contained in the CGA are excluded where you acquire Work and/or Goods from us for the purposes of a business in terms of sections 2 and 43 of that Act.
- 10.2 Except to the extent that the law prevents us from excluding liability and as expressly provided for in clause 10.4, we will not be liable for any loss or damage or liability of any kind whatsoever (including consequential or indirect loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Work or Goods provided by us to you.
- 10.3 You will indemnify us against all claims and loss of any kind whatsoever however caused or arising which is brought by any person in connection with any matter, act, omission, or error by us, our agents, or employees in connection with the Work.
- 10.4 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms of Trade or for any other reason, our liability is limited to the amount of the Actual Cost.
- 10.5 If Goods are returned by you, or if you make a claim in writing to us in relation to the Goods or Work, we may, in our discretion, repair or replace the Goods or re-perform the Work, or refund the amount of those Goods or Work to you, provided that:

- (a) the Goods must be returned or the claim must be made in writing to us within 14 days of the Goods being provided;
- (b) you must supply the date and number of any invoice relating to the Work; and
- (c) we must have a reasonable opportunity to inspect the Work.

11. Default

11.1 The security interests created by these Terms of Trade become enforceable if any of the following events occur:

- (a) you fail to pay any money owing on the Due Date;
- (b) you sell, part with possession, or dispose of any Goods or do anything inconsistent with our ownership of the Goods prior to making payment in full to us;
- (c) we believe you have committed or will commit an act of bankruptcy, have had or are about to have a receiver or liquidator appointed, or are declared insolvent;
- (d) the Goods are at risk, as that term is defined in the PPSA;
- (e) (if you are a business) you neglect or fail to carry on your business to our reasonable satisfaction, or if there is a significant deterioration in your trading or asset position; or
- (f) you are otherwise in breach of your obligations under these Terms of Trade.

11.2 If any of the events described in clause 11.1 occur, in addition to any remedies we may have at law, we may do one or more of the following:

- (a) suspend the Work in accordance with clause 5.4;
- (b) charge default interest in accordance with clause 5.3;
- (c) enter on to your premises and properties and repossess any Goods which have not been paid for in full;
- (d) immediately terminate these Terms of Trade by notice in writing to you.

12. Intellectual Property

12.1 In respect of Intellectual Property used in or arising from the production of the Goods or the performance of the Work:

- (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms of Trade (whether you or us); and
- (b) any new Intellectual Property will be dealt with in accordance with clause 13.

12.2 If any Work is to be undertaken based on your designs, you warrant that the undertaking of the Work by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs, and expenses in the event of

any claim being made that the Work infringes Intellectual Property rights of any other person.

13. Intellectual Property Ownership

13.1 Subject to clauses 12.1(a) and 13.4 we are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests (including copyright and all other statutory and common law rights and interests) in the Work, and any other work performed by us for you, as first owner of those Intellectual Property rights and interests.

13.2 We will retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills, and know-how.

13.3 You must not attribute the Work to anyone other than us or remove any of our trademarks, signatures, logos or similar from our Work.

13.4 On payment of all amounts owing to us in accordance with these Terms of Trade, we assign to you the copyright in the final form of any Work which we have specifically created for you.

13.5 You grant us an irrevocable, perpetual, royalty free worldwide sub-licensable licence to use (and exploit) images, videos, and any other pictorial or recorded works from your ongoing and completed projects, for our own marketing and internal uses, in any media.

14. Privacy of Information

14.1 You authorise us:

- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
- (b) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us; and
 - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies, and powers under these Terms of Trade.

14.2 We will handle your personal information in accordance with the Privacy Act 2020, and our Privacy Policy which can be found on our website at:

<https://www.charlottesminty.co.nz/information-and-privacy-policy>

15. Notices

15.1 Any notice may be given by phone, in person, posted, or sent by email to you (or where you are a company, to any of your directors).

16. Variation

- 16.1 We will be entitled at any time by notice in writing to you to vary any provision of these Terms of Trade and you will be bound by such variation.

17. Confidentiality

- 17.1 You will at all times treat as confidential all non-public information and material received from us and must not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

18. Costs

- 18.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies, and powers under these Terms of Trade.

19. Credit Information

- 19.1 You consent to us and any financier or credit-rating agency making enquiries of and obtaining any information about your financial standing and creditworthiness.

20. Termination

- 20.1 Either party may terminate these Terms of Trade by giving one month's written notice to the other party.
- 20.2 Termination by either party pursuant to clause 20.1 does not relieve you from payment of any amounts owing up to the date on which the Terms of Trade are terminated.

21. Jurisdiction

- 21.1 These Terms of Trade are governed by and construed according to the laws of New Zealand and the parties, subject to clause 23, submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these Terms of Trade.

22. Assignment

- 22.1 You must not subcontract or assign any of your rights, powers, or obligations under these Terms of Trade.
- 22.2 We may subcontract or assign our rights, powers, or obligations under these Terms of Trade at any time.

23. Disputes

- 23.1 Any claim or dispute arising under these Terms of Trade will be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

24. Force Majeure

- 24.1 We will not be liable for any failure or delay to perform the Work if the failure or delay

arises directly or indirectly from a cause reasonably beyond our control.

25. Survival

- 25.1 This clause 25 and clauses 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 21, 23, and 26 and any other provision which by its nature is intended to survive the termination or expiration of these Terms of Trade will survive the termination or expiration of these Terms of Trade or completion of the Work.

26. Definitions

- 26.1 In these Terms of Trade unless the context otherwise requires:

Goods has the meaning given to it in the PPSA.

Intellectual Property includes all intellectual property rights (including without limitation trademark, copyright, patent and design rights, drawings, documents, data, ideas, procedures, and calculations).

Work means our performance of services for you, and the production, procurement and/or supply of any Goods by us as part of or related to such services, as outlined to you in our terms of engagement.

- 26.2 The rule of construction known as the contra proferentem rule does not apply to these Terms of Trade.
- 26.3 References to us include our employees, contractors, and agents.
- 26.4 Words referring to the singular include the plural and vice versa.
- 26.5 Any reference to a party includes:
- (a) that party's executors, administrators, or permitted assigns; or
 - (b) if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.
- 26.6 Clause headings are for reference only.
- 26.7 References to clauses are references to clauses of these Terms.
- 26.8 References to money will be New Zealand currency, unless specified otherwise.
- 26.9 Expressions referring to writing will be construed as including references to words printed, typewritten, or otherwise visibly represented, copied, or reproduced (including by fax or email).
- 26.10 References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

27. Contractual Privity

- 27.1 These Terms of Trade do not, and are not intended to, create any obligation, or benefit enforceable by a party that is not a party to these Terms of Trade.