

**LIVING KITCHENS (PTY) LIMITED**  
**TRADING TERMS AND CONDITIONS OF SALE**

**1. DEFINITIONS**

- 1.1 "Contract of Sale" shall mean the written quotation together with the Trading Terms and Conditions of Sale, issued by the Seller and signed by both Parties.
- 1.2 "Appliances" means kitchen or other appliances manufactured by Bulthaup GmbH & Co KG, or such other party as supplied by the Seller.
- 1.3 "business days" means week days, excluding weekends and South African public holidays.
- 1.4 "Bulthaup" means Bulthaup GmbH & Co KG
- 1.5 "CPA" means Consumer Protection Act, No. 68 of 2008.
- 1.6 "Deposit" means 50% of the total price reflected on the quotation, or any other percentage of the total price as determined by the Seller from time to time. The Seller shall be entitled to make payment of any fee, instalment or disbursement, comprising part the total price, from the Deposit when it becomes due and payable.
- 1.7 "Dry Fitting" means in relation to any item the fitting and installation thereof but excluding any plumbing, electrical or building works required to place any such items in working order.
- 1.8 "SARS" means the South African Revenue Service.
- 1.9 "SARB" means the South African Reserve Bank.
- 1.10 "Service Drawings" means the services layouts prepared by the Seller, and shall include any and all attendances, on-site inspections, and necessary consultations required with the Buyer.
- 1.11 "Service Drawing fee" means the fee payable in advance by the Buyer for the preparation of the Service Drawings equal to 10% of the quotation. In the event that a quotation is amended, replaced or substituted after payment of the fee, the final quotation shall be applied to the calculation of the Service Drawing fee and the Seller shall be entitled, but not obligated, to call on the balance to be settled by the Buyer.
- 1.12 "the Seller" means Living Kitchens (Proprietary) Limited.
- 1.13 "the Buyer" means the Buyer of the Goods under the Contract of Sale and shall include the duly appointed Representative of the Buyer who warrants his authority by his or her signature on behalf of the Buyer.
- 1.14 "the Goods" means the goods and services sold and supplied by the Seller in terms of the Contract of Sale.
- 1.15 "the Contract" means any contract between the Seller and the Buyer entered into in accordance with these Trading Terms and Conditions of Sale.
- 1.16 "the total price" means the price of the Goods, which shall include shipping, storage fees (subject to 3.3 below), delivery to the Buyer's address as stated in the Contract of Sale, Dry Fitting and any other disbursement required by the Seller in writing under the Contract of Sale and which shall include VAT and customs and excise duties where applicable.
- 1.17 "the Seller's premises" means any premises designated by the Seller for the storage of the Goods, whether such premises are owned by the Seller or by a third party.
- 1.18 "VAT" means Value Added Tax.
- 1.19 "working order" means the Goods being in full operational use.

**2. QUOTATION**

- 2.1 The Seller shall issue a quotation for the sale of Goods, which quotation shall constitute an "Offer to Contract", and shall be open for acceptance by the Buyer.
- 2.2 Quotations are subject to withdrawal by the Seller at any time before a Deposit is paid and cleared into the bank account of the Seller, and failing the payment of the Deposit, shall be deemed to have been withdrawn on the expiry of 10 (ten) business days from the date of issue.
- 2.3 Design Fee
  - 2.3.1 Prior to the issuance of a quotation, the Seller shall prepare and present a design of the kitchen, the installation and prospective layout of the kitchen ("the design"), subject to the Buyer's special instance and request, and prepare the quotation accordingly.
  - 2.3.2 The design contemplated in 2.3.1 above shall attract a "design fee" equal to the attendances of the duly appointed designer, who shall be appointed solely by the Seller, at the applicable hourly rate charged by the designer from time to time.
  - 2.3.3 The design fee shall be payable by the Seller, unless the Buyer requests to be provided a copy or copies of the design prior to, or without, concluding a Contract of Sale, or after a quotation is withdrawn as contemplated in 2.2 above. In such circumstances, the Buyer shall settle the invoice of the designer before the Seller shall release a copy or copies of the design to the Buyer, it being an express term of the transaction, herein referred to, that at all times the intellectual property rights remain the property of the Seller.
  - 2.3.4 Where the Buyer has paid the design fee and subsequently enters into a Contract of Sale, such design fee will be refunded by the Seller to the Buyer by way of set-off against the full and final payment of the Goods.

**3. DEPOSIT**

- 3.1 Notwithstanding acceptance of the quotation in 2.1 above, no Contract of Sale of the Goods shall be concluded until the Buyer has paid the Deposit and the payment has cleared into the bank account of the Seller.
- 3.2 The payment of the Deposit shall secure the purchase price of Bulthaup manufactured products and appliances, as provided for in the quotation, for a period of 12 (twelve) months, following which the quotation shall expire and the Seller shall be entitled to re-quote. The purchase price of other appliances (other than those of Bulthaup) is subject to their availability, including at the quoted price, on the date

  
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upon which the parties enter into the Contract of Sale. Should the appliances have been discontinued, or the model is unavailable, or the applicable pricing has been increased, the Seller shall be entitled re-quote in respect of those appliances.

### 3.3 Service Drawing Fee

3.3.1 Prior to the conclusion of a Contract of Sale, it shall be necessary for the Seller to attend on the preparation of the Service Drawings and be entitled to receive payment of a Service Drawing fee (which fee is included in the quoted total price and does not constitute an additional cost to the Buyer), where after the Seller shall release the Service Drawings to the Buyer.

3.3.2 The Seller shall deduct the Service Drawing fee from the Deposit, and where the Deposit is insufficient to cover the aforementioned fee, or where no Deposit has been paid, then in such circumstances the Seller shall be entitled to demand payment within 10 (ten) business days prior to the commencement of the preparation of the Service Drawings.

3.3.3 In the event of the Contract of Sale not being concluded or being terminated, for whatsoever reason except as contemplated in 4.3 below, the Buyer shall not be entitled to recover or be reimbursed the Service Drawing fee.

## 4. CONTRACT OF SALE

4.1 On or after receipt of the Deposit and completion of the Service Drawings, the Parties shall conclude a written Contract of Sale reflecting the total price of the Goods, and estimated date of Delivery.

4.2 On signature of the Contract of Sale by both Parties, the Seller shall attend on the placement of the order for the manufacture and supply of the appliances.

4.3 Once the Contract of Sale has been concluded, neither party shall be entitled to withdraw from the Contract of Sale without the written consent of the other Party. For sake of clarity, the payment of the Deposit shall secure the total price, subject to 3.2 above, however the Seller shall only attend on the placement of the order on conclusion of the Contract of Sale, failing which the Seller shall be entitled to withhold the order contemplated in 4.2 above.

## 5. PRICES AND TERMS OF PAYMENT

5.1 The price charged will be the total price as shown on the Contract of Sale issued by the Seller for the Goods, inclusive of VAT, unless the appropriate exemptions for zero rating are proved to the Seller in such detail as will satisfy SARS. Any such VAT will be calculated on the balance due under the Contract of Sale at the rate ruling on the day of delivery or settlement of the order in full, whichever is the earlier (for sake of clarity, this provision applies only to changes to the VAT rate, which is currently 14%).

5.2 The Seller shall notify the Buyer when the Goods have arrived at the Seller's premises and are ready for delivery to, or collection by, the Buyer for the purpose of installation, and within 10 (ten) business days prior to the agreed delivery date, or within 1 (one) month of the notification of the Goods having arrived in the Seller's premises (whichever is the earlier) the Buyer shall pay the Seller the full balance due of the total price.

5.3 The Buyer shall be liable for the "storage fee" applicable for Goods not delivered or collected from the Seller's premises after the expiry of the 1 (one) month period contemplated in 5.2 above, unless agreed otherwise between the parties in advance, and shall apply from the date of expiry aforementioned period until such time as the Goods are delivered or collected, both dates inclusive. The storage fee shall be determined by the Seller.

5.4 Unless otherwise marked on the Contract of Sale, the total price shall include the Dry Fitting of cabinets and Appliances only. In the event that an authorised representative of the Seller agrees to carry out any further fitting and installation work in relation to the Goods ("additional services"), then these additional services shall be provided, subject to the Seller not being liable for any loss, damage or injury that may result, or arising, from the provision of the aforementioned additional services.

5.5 The Seller shall not be liable to ensure the additional services are in working order, and such responsibility remains with the Buyer.

## 6. LATE PAYMENT AND CANCELLATION

6.1 Failure by the Buyer to comply with 5.2 above shall entitle the Seller to cancel the Contract of Sale and (without prejudice to any other right or remedy available to him) to forfeit the Deposit paid by the Buyer and to recover from the Buyer all losses and/or expenses suffered or incurred by Seller due to the default of the Buyer.

6.2 Subject to the Seller's rights in 5.3 above and 6.5 below, the Seller may, without thereby incurring any liability whatsoever to the Buyer suspend and/or cancel all further deliveries under the Contract of Sale if the Buyer:

6.2.1 defaults in making any payment due hereunder or under any other contract between the Seller and the Buyer; or

6.2.2 dies (being an individual); or

6.2.3 being an individual or corporate entity becomes insolvent, sequestrated, goes into liquidation (provisional of final), passes a resolution to initiate business rescue as contemplated in the Companies Act No 71 of 2008, makes or purports to make a general assignment for the benefit of creditors, or is unable to pay his debts as they fall due for the purposes of the Insolvency Act No 24 of 1936, or admits in writing his inability to pay his debts as they mature, or a secured creditor takes possession of or trustee for creditors or similar office is appointed to all or any part of the undertaking, property or assets of the Buyer; or

6.2.4 being a body corporate is subject to an order being made or an effective resolution being passed or a petition being presented for the winding up of or the making of an administrative order in relation to the Buyer.

6.3 The Seller shall not be bound to give up possession of the Goods until it has received payment in full of all amounts due in terms of the Contract of Sale. If the Seller allows provisional credit in respect of any part of the Goods, it shall be without prejudice to its right to retain or retake possession of any other part of the Goods against payment.

  
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- 6.4 Interest on overdue amounts shall levied at the rate of 4% above the repo rate of SARB from time to time ("late payment penalty"), compounded monthly in advance, which interest shall accrue until the full outstanding balance (including capital, interest and legal costs) is settled in full.
- 6.5 Any payments received that are subject to a late payment penalty shall first be applied to costs, interest and thereafter capital of the outstanding balance.
- 6.6 The Buyer acknowledges that the sale of the Goods under this Contract of Sale constitutes "special order goods" in terms of the CPA, and therefore the Buyer is not entitled, in terms of section 17 of the CPA, to cancel the order without the written consent of the Seller.
- 6.7 Notwithstanding 6.6 above, should the Buyer cancel the order without the consent of the Seller, the Buyer shall be liable for the payment of a reasonable "cancellation fee" (equal to 10% of the total price reflected in the Contract of Sale) and forfeiture of the Service Drawing fee and/or the Deposit paid by the Buyer to the Seller (if any).
- 6.8 No cancellation fee shall be imposed on cancellation where such cancellation is owing to the death or hospitalisation or death of the Buyer, in accordance with section 19(5) of the CPA.
- 6.9 Should the Contract of Sale be cancelled in the circumstances set out in condition 6.8 above, the Seller shall refund the Deposit and/or any payment which the Buyer has already made on account under the Contract of Sale, excluding the Design fee and the Service Drawing fee, in respect of any such item not delivered to it.
- 6.10 The Buyer shall have no right of set off, statutory or otherwise.

## 7. DELIVERY

- 7.1 Subject to payment of all amounts due under the Contract of Sale, delivery shall be deemed to take place when the Goods are delivered to the Buyer's premises or collected from the Seller's premises by the Buyer or the Buyer's representative.
- 7.2 Delivery dates are given in good faith by the Seller as an indication of the estimated delivery time, and are not binding on the Seller, and the Seller shall not be liable for any loss whatsoever or howsoever arising caused by delay in delivery, non-delivery or by the failure to make the Goods ready for collection on the due date.
- 7.3 If delivery of any item comprised in the Goods has not been made within 6 (six) months of the estimated delivery date, either party shall be entitled to cancel any Contract of Sale concluded in respect of that item but the Seller shall in no circumstances where the Buyer cancels the Contract of Sale or the Seller cancels the Contract of Sale due to causes beyond its control be liable to compensate the Buyer in damages or otherwise for late delivery or non-delivery of the Goods or any of them for whatever reasons or for any loss consequential or otherwise arising there from.
- 7.4 If the Contract of Sale is cancelled in the circumstances set out in condition 7.3, the Seller shall refund the Deposit and/or any payment which the Buyer has already made on account under the Contract of Sale, excluding the Design fee and the Service Drawing fee, in respect of any such item not delivered to him.
- 7.5 The Buyer or the Buyer's representative is advised to examine the Goods properly on collection from the Seller's premises or on arrival at the Buyer's premises and any Goods incomplete or damaged or not in accordance with the Contract of Sale must be referred to the Seller or if dispatched to the Buyer's premises returned with the driver. The Seller's drivers are instructed not to accept delivery notes marked "unexamined" or "unopened" or any words that explicitly or implicitly indicate that the Buyer has not examined and accepted the Goods.
- 7.6 The Buyer shall be deemed to have accepted the Goods if a written complaint is not delivered to the Seller by the Buyer within 5 (five) business days of delivery detailing the alleged defect or shortage.
- 7.7 In the event that the Buyer establishes to the Seller's reasonable satisfaction that the Goods are defective or that there is a shortage thereof, the Seller shall use its best endeavours to rectify the defect or shortage, and failing which, may at the Seller's sole discretion elect to replace any Goods, or refund the purchase price against the return of the Goods as soon as it is reasonably able to do so.
- 7.8 Any goods returned for the reasons contemplated in 7.7 above, shall be returned to the Seller, at the Seller's risk and expense, within 10 (ten) business days of date of delivery to the Buyer.
- 7.9 The Seller shall be entitled to deliver the Goods in one or more consignments.
- 7.10 If the Buyer has not accepted delivery of the Goods within 1 (one) month of notification by the Seller that the Goods have arrived in the Seller's premises, the Seller may, as agent for the Buyer (and in circumstances where monies are also still outstanding under the Contract of Sale without surrendering its lien as an unpaid seller) arrange for the Goods to be stored at the Seller's premises or elsewhere, subject to a storage fee, and the Buyer will pay the storage fee, insurance, demurrage or other costs, expenses and charges arising from the Buyer's failure or neglect, and shall indemnify the Seller against the aforementioned fees, charges and expenses.
- 7.11 In the event that the Buyer cancels or delays any agreed start date for the fitting or installation of any items comprised in the Goods for any reason without first giving notice of at least 10 (ten) business days of such cancellation and delay the Seller reserves the right at its sole discretion to determine and apply a rescheduling charge or cover any losses or expenses the Seller may thereby incur.
- 7.12 The Seller shall be entitled to cancel or delay any agreed start date for fitting or installation of any items which comprise the Goods, should it be determined by the Seller, at its sole discretion, that the installation area has not been properly prepared for the fitting, or is not compliant with the relevant Health & Safety regulations, by-laws or standards. The Buyer is obligated to be informed as to what is required to prepare the installation area for fitment purposes, and to comply with Health & Safety regulations, by-laws and standards, and the Seller will assist with such advices (with the onus on the Buyer to be informed as to the applicable Health & Safety regulations, by-laws and standards). The Buyer shall be liable for any costs incurred by the Seller due to the failure of the Buyer to provide a properly prepared installation area for fitment as aforementioned, such costs to be payable before the new start date.

## 8. PASSING OF RISK AND PROPERTY

- 8.1 Risk of loss of or damage to the Goods shall pass to the Buyer at the time of delivery to the Buyer.
- 8.2 Notwithstanding delivery of the Goods or any part thereof the property in the Goods or in any part thereof shall not pass to the Buyer until the Buyer has paid the total price and all other (if any) payments due to the Seller under the Contract of Sale or under any other contract with the Buyer in full and further until payment the Buyer shall hold the Goods as trustee and shall store or retain the Goods in such a way that they are clearly identifiable as the Goods of the Seller.
- 8.3 Notwithstanding that property in the Goods or in any part thereof shall not pass to the Buyer until the conditions contained in 7.2 have been fulfilled the Seller shall at all times be entitled to pursue an action for the price of the Goods or any part thereof or for any further sum due under the Contract of Sale or under any other contract where payment has not been made in full by the Buyer in accordance with these Trading Terms and Conditions of Sale.
- 8.4 If any Goods are sold by the Buyer before property has passed to the Buyer, the Buyer shall hold such part of the proceeds of sale as are equivalent to the price at which the Goods were invoiced by the Seller to the Buyer, and all rights which he it may have against purchases thereof on trust for the Seller. Any monies so received by the Buyer shall not be mingled with any other monies and shall be placed in a separate account so as at all times to be readily identifiable as being for the beneficial ownership of the Seller.
- 8.5 Where the Seller agrees to deliver and the Goods are delivered to the Buyer before payment has been made for them in full under the Contract of Sale then, if the Buyer defaults in the punctual payment of any amount owing to the Seller in accordance with any payment period agreed between the parties, the Seller shall be entitled to the immediate return of all the Goods sold by the Seller to the Buyer in which the property has not passed to the Buyer whether under the Contract of Sale or any other contract concluded between the Buyer and Seller and the Buyer hereby authorises the Seller to recover the Goods and to enter any premises of the Buyer for that purpose. Demand for or recovery of the Goods by the Seller shall not, of itself, discharge either the Buyer's liability to pay the whole of the consideration due under the Contract of Sale and to take delivery of the Goods or the Seller's right to sue for the whole of the consideration due under the Contract of Sale.

## 9. GUARANTEE/WARRANTIES

- 9.1 In respect of Goods not of the Seller's manufacture, the Seller's responsibility shall be limited to any benefits it may receive under any guarantee given by its suppliers of such Goods.
- 9.2 The Seller shall use its reasonable endeavours to procure for the Buyer the benefits of such warranties and other rights as are conferred on the Seller in relation to defects in the Goods under the terms of any agreement the Seller may have with the suppliers or manufacturers of the Goods.
- 9.3 In consideration for receiving the benefit of this Condition, the Buyer agrees that, apart from these terms and conditions, no other terms, whether conditions, warranties or representations, express or implied, statutory or otherwise in respect of the quality or the fitness for any particular purpose of the Goods or otherwise shall form part of the Contract of Sale except where the Buyer deals as a consumer contemplated in the CPA.
- 9.4 The Seller shall not be liable for any consequential or indirect loss suffered by the Buyer whether such loss arises from breach of a duty or obligation in contract or delict or in any other way including but not limited to loss arising from the Seller's negligence.

## 10. PROPER LAW

The Contract of Sale shall be construed in accordance with South African law and the Buyer submits to the exclusive jurisdiction of the Western Cape High Court, Cape Town, notwithstanding that the Seller may at its sole discretion pursue any claim arising under this Contract of Sale in any Magistrate Court having competent jurisdiction, or by way of Arbitration, the Buyer being duly bound by such election.

## 11. GENERAL

- 11.1 The Buyer acknowledges that these Trading Terms and Conditions of Sale constitute the entire Contract between the parties for the sale of the Goods and supply of services, and that there have been no representations or warranties, outside these terms which have induced him to enter into the Contract of Sale. This Contract of Sale cannot be amended, modified or changed, save where such amendment, modification or change is reduced to writing and signed by both the Seller and the Buyer.
- 11.2 In the event of a duly appointed Agent or Representative, including an architect, project manager or interior designer (hereinafter "the Representative"), entering into the Contract of Sale on behalf of the Buyer, the Representative shall be bound as surety and co-principal with the Buyer for the due performance of the obligations arising from these Trading Terms and Conditions of Sale, including but not limited to the payment of any amount when it becomes due.
- 11.3 All quotations are given and all orders are accepted on these terms and conditions, which shall prevail over any other terms appearing in the Seller's catalogues, website or elsewhere, or stipulated by the Buyer, unless the Seller expressly agrees in writing to the contrary. The signing on behalf of the Seller of any of the Buyer's documentation shall not imply any modifications of these terms and conditions.
- 11.4 In the event that the Buyer breaches the terms of this Contract and arbitration or litigation is required to enforce the rights under this Contract of Sale, the Buyer will be liable to pay the legal costs incurred by the Seller on a scale as between attorney and own client.

  
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