

Carpentry Specialists Pty Ltd T/A Stairman - Terms & Conditions of Trade

1. Definitions	proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.	the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
1.1 "Contractor" means Carpentry Specialists Pty Ltd T/A Stairman its successors and assigns or any person acting on behalf of and with the authority of Carpentry Specialists Pty Ltd T/A Stairman.	(d) The Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.	Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.	(e) The Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods.	(a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
1.3 "Goods" means all Goods or Services supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).	(f) The Contractor may recover possession of any Goods in transit whether or not delivery has occurred.	(b) the Client 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;
1.4 "Equipment" means all Equipment including any accessories supplied on hire by the Contractor to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Client.	(g) The Client 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 the Contractor.	(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
1.5 "Price" means the Price payable for the Goods and/or Equipment hire as agreed between the Contractor and the Client in accordance with clause 4 below.	(h) The Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.	17. Cancellation
2. Acceptance	11. Client's Disclaimer	17.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Goods/Equipment. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.	11.1 The Client hereby disclaims any right to rescind, or cancel the contract, or to sue for damages, or to claim restitution arising out of any misrepresentation made to the Client by the Contractor, and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgement.	17.2 In the event that the Client cancels delivery of the Goods/Equipment the Client shall be liable, and the Contractor shall be entitled to set-off any deposit paid by the Client, for any costs incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits or applicable cancellation fees for ordered Goods).
2.2 These terms and conditions may only be amended with the Contractor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.	12. Personal Property Securities Act 2009 ("PPSA")	17.3 In the event the client is not gyrochecked and does not give adequate notice for re-scheduling installation the client will be charged 20% of the total contract price for a false booking fee. The false booking fee will cover the time lost travelling to and from site, the time spent making the "goods" and the storage required of the already made "goods" that could not be installed as the client was not ready for installation.
3. Change in Control	12.1 In all cases the Contractor requires a financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.	18. Privacy Act 1988
3.1 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.	12.2 Upon assenting to these terms and conditions in writing the Client 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/Equipment that has previously been supplied and that will be supplied in the future by the Contractor to the Client.	18.1 The Client agrees for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Contractor.
4. Price and Payment	12.3 (a) 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 the Contractor may reasonably require to;	18.2 The Client agrees that the Contractor may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
4.1 At the Contractor's sole discretion the Price shall be either:	(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;	(a) to assess an application by the Client; and/or
(a) as indicated on any invoice provided by the Contractor to the Client; or	(ii) register any other document required to be registered by the PPSA; or	(b) to notify other credit providers of a default by the Client; and/or
(b) the Contractor's sole discretion for a period of thirty (30) days.	(iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii).	(c) to provide information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
4.2 The Contractor reserves the right to change the Price if a variation to the Contractor's quotation is requested. The Contractor may by giving notice to the Client at any time up to seven (7) days before delivery increase the Price of the Goods to reflect any increase in the cost to the Contractor beyond the reasonable control of the Contractor, (including, without limitation, foreign exchange and duties, provisions of any Acts, By-Law, Order or Regulation of any parliament, municipality or local authority enacted after the date of contract between the Client and Contractor and the cost of labour, materials and other manufacturing costs).	(b) indemnify, and upon demand reimburse, the Contractor 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/Equipment charged thereby;	(d) to assess the creditworthiness of the Client.
4.3 At the Contractor's sole discretion a deposit may be required.	(c) immediately advise the Contractor of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales;	18.3 The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:	(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of the Contractor;	18.4 The Client agrees to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 184(1)(h) Privacy Act 1988).
(a) on delivery of the Goods/Equipment;	(e) immediately advise the Contractor of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales;	18.5 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other purposes as shall be agreed between the Client and Contractor or required by law from time to time):
(b) by way of instalments/progress payments in accordance with the Contractor's payment schedule;	12.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.	(a) the provision of Goods/Equipment; and/or
(c) the date specified on any invoice or other form as being the date for payment; or	12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.	(b) the marketing of Goods/Equipment by the Contractor, its agents or distributors; and/or
(d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Contractor.	12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.	(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
4.5 Payment may be made by cash, bank cheque, electronic on-line banking, or by any other method as agreed between the Client and the Contractor.	12.7 Unless otherwise agreed to in writing by the Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.	(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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.	12.8 The Client must unconditionally ratify any actions taken by the Contractor under clauses 12.3 to 12.5.	(e) enabling the daily operation of Client's account and/or the collection of amounts into the Client's account in relation to the Goods/Equipment.
5. Delivery of Goods/Equipment	13. Security and Charge	18.6 The Contractor may give information about the Client to a credit reporting agency for the following purposes:
5.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:	13.1 In consideration of the Contractor agreeing to supply the Goods/Equipment, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).	(a) to obtain a consumer credit report about the Client;
(a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at the Contractor's address; or	13.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.	(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
(b) the Contractor (or the Contractor's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.	13.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all acts necessary to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.	18.7 The Client agrees that the credit reporting agency may include:
5.2 At the Contractor's sole discretion the cost of delivery is either included in, or in addition to, the Price.	14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)	(a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
5.3 The Contractor may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	14.1 The Client must inspect the Goods/Equipment on delivery and within seven (7) days of delivery (subject to the filling or cutting of the Goods in any way) notify the Contractor in writing of any evident damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Goods/Equipment.	(b) details concerning the Client's application for credit or commercial credit and the amount requested;
5.4 Any time or date given by the Contractor to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and the Contractor will not be liable for any loss or damage incurred by the Client as a result of the delivery being late or not delivered at all.	14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).	(c) advice that the Contractor is a current credit provider to the Client;
5.5 The Contractor shall not be liable for any damage caused to the Client's property in gaining entry to the site, or by the removal of the Goods as per clause 10.3(e).	14.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.	(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies which are overdue by more than sixty (60) days, and for which debt collection action has been started;
6. Installation	14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.	(e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
6.1 It shall be the responsibility of the Client to ensure that the site is in a clean, accessible and safe state in order for the Contractor to install the Goods. Should installation be delayed by any circumstance beyond the control of the Contractor (including, but not limited to, impeded access, other tradespersons working in the designated area, incomplete or incorrect work by others, or any unconfirmed variation) the Contractor reserves the right to pass on all costs incurred, including unproductive time. These costs will be invoiced to the Client as per the Contractor's payment terms, and must be paid before installation can re-commence. The Client acknowledges any such delay may affect the delivery date as indicated on the Contractor's invoice.	14.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.	(f) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Contractor's credit obligations);
6.2 During the installation process there will be requirements for fixing points. Any screw, nail or fixing points may need to be patched, puttied or concealed at the Client's expense.	14.6 If the Contractor is required to replace the Goods under this clause or the CCA but is unable to do so, the Contractor may refund any money the Client has paid for the Goods.	(g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
7. Risk	14.7 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Goods is:	(h) that credit provided to the Client by the Contractor has been paid or otherwise discharged.
7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on and before Delivery.	(a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;	19. Building and Construction Industry Security of Payments Act 1999
7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.	(b) the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion; and	19.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Goods/Equipment then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
7.3 The Client accepts and acknowledges that the Seller shall not be responsible, no liable, for any damage caused by any other third party.	(c) otherwise negated absolutely.	19.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
8. Timber Clauses	14.8 Subject to this clause 14, returns will only be accepted provided that:	20. Equipment Hire
8.1 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, knot content, veining, and contain natural fissures, occlusions, and indentations, and/or have shakes (natural splits). Whilst the Contractor will make every effort to match shade samples to the finished Goods the Contractor accepts no liability whatsoever where such samples differ to the finished Goods supplied.	(a) the Client has complied with the provisions of clause 14.1; and	20.1 Equipment shall at all times remain the property of the Contractor and is returnable on demand by the Contractor. In the event that Equipment is not returned to the Contractor in the condition in which it was delivered the Contractor retains the right to charge the Client the full cost of repairing and re-equipping. In the event that Equipment is not returned at all the Contractor shall have right to charge the Client the full cost of replacing the Equipment.
8.2 The Client acknowledges that Goods supplied may:	(b) the Contractor has agreed that the Goods are defective; and	20.2 The Client shall:
(a) fade or change colour over time; and	(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is as possible).	(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;
(b) expand, contract or distort as a result of moisture exposure to heat, cold or weather "hydropscopic leather" check lines" (therefore it is important to seal/finish timber products once installed by painting, staining or varnishing); and	14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:	(b) alter or modify the Equipment in any way, or make any additions to the Equipment without limitation altering, make any additions to or replacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
(c) mark or stain if exposed to certain substances; and	(a) the Client failing to properly maintain or store any Goods/Equipment;	(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Contractor to the Client.
(d) be damaged or disfigured by impact or scratching.	(b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;	20.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to provide the Contractor's interest in the Equipment and agrees to indemnify the Contractor against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
8.3 Any Goods supplied by the Contractor as "moisture resistant" is not deemed waterproof and should not be left for any period of time exposed to large amounts of water. Any damage incurred by water exposure to any timber products will void any responsibility by the Contractor.	(c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;	21. General
9. Errors and Omissions	(d) the Client failing to follow any instructions or guidelines provided by the Contractor;	21.1 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor'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.
9.1 Occasionally documents produced or supplied by the Contractor contain errors or omissions. The Contractor shall make all effort to prevent such errors or omissions. However, should such an error or omission occur, then the Client shall not be entitled to rely on that error or omission and any such shall be corrected by the Contractor without any liability on the part of the Contractor.	(e) fire, war and tear, willful damage, negligence, abnormal working conditions, misuse, alteration or repair or any accident, or act of God.	21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of New South Wales which the Contractor has its principal place of business, and are subject to the jurisdiction of the Campbelltown court in that state.
9.2 Any photographs/drawings supplied during the quotation process are indicative only, and may not exactly match the Goods themselves.	14.10 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.	21.3 Subject to clause 14 the Contractor shall be under no liability whatsoever to the Client for any loss or damage or cost of business or loss of profit incurred by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
10. Title To Goods	15. Intellectual Property	21.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
10.1 The Contractor and the Client agree that ownership of the Goods shall not pass until:	15.1 Where the Contractor has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Contractor.	21.5 The Contractor may assign or sub-contract all or any part of its rights and obligations without the Client's consent.
(a) the Client has paid the Contractor all amounts owing to the Contractor; and	15.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.	21.6 The Client agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Contractor to provide Goods/Equipment to the Client.
(b) the Client has met all of its other obligations to the Contractor.	16. Default and Consequences of Default	21.7 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.
10.2 Receipt by the Contractor 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.	16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	21.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
10.3 It is further agreed that:	16.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).	
(a) until ownership of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to the Contractor on request.	16.3 Without prejudice to the Contractor's right to terminate the Contractor's supply of Goods/Equipment in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Goods/Equipment to	
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.		
(c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the		