

Table & Chair Express – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "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.</p> <p>1.2 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.</p> <p>1.3 "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 using Table & Chair Express' 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 making enquiries via the website.</p> <p>1.4 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Table & Chair Express to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and: (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and (c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and (d) includes the Customer's executors, administrators, successors, and permitted assigns.</p> <p>1.5 "Goods" means all Goods or Services supplied by Table & Chair Express 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).</p> <p>1.6 "GST" means Goods and Services Tax as defined within the 'A New Tax System (Goods and Services Tax) Act 1999' (Cth).</p> <p>1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Table & Chair Express and the Customer in accordance with clause 9 below.</p> <p>1.8 "Table & Chair Express" means Trendline Pty Ltd ATF The Trust For R & S Rowland Family Trust T/A Table & Chair Express, its successors and assigns or any person acting on behalf of and with the authority of Trendline Pty Ltd ATF The Trust For R & S Rowland Family Trust T/A Table & Chair Express.</p> <p>2. Acceptance</p> <p>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 or accepts delivery of the Goods.</p> <p>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.</p> <p>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.</p> <p>2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Table & Chair Express and it has been approved with a credit limit established for the account.</p> <p>2.5 In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, Table & Chair Express reserves the right to refuse delivery and/or request an alternative payment method.</p> <p>2.6 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 (NSW), Section 9 of the Electronic Communications Act 2000 (SA), Section 9 of the Electronic Transactions Act 2001 (ACT), Section 9 of the Electronic Transactions (Victoria) Act 2000, Section 9 of the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>2.7</p> <p>3. Authorised Representatives</p> <p>3.1 The Customer acknowledges that Table & Chair Express (for the duration of the Services) liaises directly with one (1) or more authorised representatives, and that once introduced as such to Table & Chair Express, that person or persons shall have the full authority of the Customer to order any Goods and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to Table & Chair Express for all additional costs incurred by Table & Chair Express (including Table & Chair Express' profit margin) in providing any Goods, Services or variations requested thereto by the Customer's duly authorised representative.</p> <p>3.2 In the event that the Customer's duly authorised representatives as per clause 3.1 are to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise Table & Chair Express in writing of the parameters of the limited authority granted to their representatives.</p> <p>3.3</p> <p>4. Distribution of Goods via an Approved Distributor</p> <p>4.1 The Customer agrees that until they are authorised as a distributor by Table & Chair Express, (and hereinafter the Customer shall be referred to as "Distributor" for the purposes of this clause) the Distributor shall not be able to sell the Goods on as a Distributor for Table & Chair Express or represent to any third parties that the Distributor is in any way acting for Table & Chair Express. Table & Chair Express shall not accept responsibility or agree to be bound in any way by any contracts with third parties to whom the Distributor is a party.</p> <p>4.2 At Table & Chair Express' sole discretion the Distributor acknowledges that only approved Distributors shall have the authority to accept internet orders via their respective website and/or any alternative online auction sites.</p> <p>4.3 Table & Chair Express shall not be liable for any losses incurred (whether direct or indirect including, but not limited to, any loss of profits) by the Distributor as a direct result of the Distributor having out of date details on their website including warranties.</p> <p>4.4 Orders from a Distributor are accepted on the basis that: (a) unless otherwise agreed by prior approval between Table & Chair Express and the Distributor, Goods, may only be sold to consumers at retail level and may not be sold at wholesale level or to any other trader that is known or is suspected to be purchasing for resale, (b) Goods are to be sold for retail or displayed for sale at only the approved locations advised by the Distributor to Table & Chair Express,</p>	<p>(c) sale of Goods by mail order, internet, social media, or any other method outside of the traditional display and sell at the approved location is prohibited without prior written consent of Table & Chair Express, and (d) Goods are to be displayed, presented, and marketed in the manner that is in the best interest of the brand name.</p> <p>Any default of clauses 4.1-4.4 may at Table & Chair Express' sole discretion be subject to immediate and permanent closure of account facilities, with any account balances payable immediately on demand.</p> <p>Table & Chair Express has sole discretion on which brands or Goods are made available to any approved Distributor and Table & Chair Express does not guarantee continuing supply of any specific brand or Goods.</p> <p>Errors and Omissions</p> <p>The Customer acknowledges and accepts that Table & Chair Express shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s): (a) resulting from an inadvertent mistake made by Table & Chair Express in the formation and/or administration of this Contract; and/or (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Table & Chair Express in respect of the Services.</p> <p>In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or willful misconduct of Table & Chair Express; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.</p> <p>In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("Customer Error"). The Customer must pay for all Goods it orders from Table & Chair Express notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Goods. Table & Chair Express is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.</p> <p>Change in Control</p> <p>The Customer shall give Table & Chair Express 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, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Table & Chair Express as a result of the Customer's failure to comply with this clause.</p> <p>On-Line Ordering</p> <p>The Customer acknowledges and agrees that: (a) Table & Chair Express does not guarantee the website's performance; (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Table & Chair Express; (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; (d) there are inherent hazards in electronic distribution, and as such Table & Chair Express cannot warrant against delays or errors in transmitting data between the Customer and Table & Chair Express including orders, and the Customer agrees that to the maximum extent permitted by law, Table & Chair Express will not be liable for any losses which the Customer suffers as a result of online ordering not being available or for delays or errors in transmitting orders; (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by Table & Chair Express and/or displayed on the website. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, Table & Chair Express shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.</p> <p>Table & Chair Express reserves the right to terminate the Customer's order if it learns that the Customer has provided false or misleading information, interfered with other users or the administration of Table & Chair Express' business, or violated these terms and conditions.</p> <p>Credit Card Information</p> <p>Table & Chair Express will: (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by Table & Chair Express; (b) not disclose the Customer's credit card details to any third party; (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 24) or where required by law.</p> <p>The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, Table & Chair Express is entitled to immediately charge the Customer's nominated credit card for these amounts and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.</p> <p>Price and Payment</p> <p>At Table & Chair Express' sole discretion, the Price shall be either: (a) as indicated on any invoice provided by Table & Chair Express to the Customer; or (b) Table & Chair Express' quoted Price (subject to clause 9.2) which will be valid for the period stated in the quotation or otherwise for a period of seven (7) days.</p> <p>Table & Chair Express reserves the right to change the Price: (a) if a variation to the Services originally scheduled (including any applicable specifications) is requested; or (b) if a variation to Table & Chair Express' quotation is requested or required (including as to the nature or quantity of the Goods (including size and weight), nature and location of the collection and/or delivery address, distance from the collection address to the delivery address, facilities available for loading or unloading, weather conditions or delays beyond the control of Table & Chair Express, delivery times or dates, or otherwise, etc.); or (c) if during the course of the Services, the materials cease to be available from Table & Chair Express' third party suppliers, then Table & Chair Express reserves the right to provide</p>	<p>alternative Goods, subject to prior confirmation and agreement of both parties; or (d) in the event of increases to Table & Chair Express in the cost of labour or materials (including, but not limited to, overseas transactions that may increase, as a consequence of variations in foreign currency rates of exchange and/or freight and insurance charges) which are beyond Table & Chair Express' control.</p> <p>Variations will be charged for on the basis of Table & Chair Express' quotation, and will be detailed in writing, and shown as variations on Table & Chair Express' invoice. The Customer shall be required to respond to any variation submitted by Table & Chair Express within ten (10) working days. Failure to do so will entitle Table & Chair Express 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.</p> <p>At Table & Chair Express' sole discretion, a fifty percent (50%) non-refundable deposit may be required for custom manufactured Goods.</p> <p>Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice and/or statement.</p> <p>Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Table & Chair Express, which may be: (a) before despatch or delivery of the Goods; (b) for certain approved Customers, either: (i) thirty (30) days or fourteen (14) days following the end of the month in which a statement is delivered to the Customer's address or address for notices; or (ii) thirty (30) days or fourteen (14) days net following the date of any invoice given to the Customer by Table & Chair Express; or (c) the date specified on any invoice or other form as being the date for payment; or (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Table & Chair Express.</p> <p>Payment may be made by cash, 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 Table & Chair Express.</p> <p>Table & Chair Express may in its discretion allocate any payment received from the Customer towards any invoice that Table & Chair Express determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Table & Chair Express may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Table & Chair Express, payment will be deemed to be allocated in such manner as preserves the maximum value of Table & Chair Express' Purchase Money Security Interest (as defined in the PPSA) in the Goods.</p> <p>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 Table & Chair Express nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify Table & Chair Express in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as Table & Chair Express investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in Table & Chair Express placing the Customer's account into default and subject to default interest in accordance with clause 22.1.</p> <p>Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Table & Chair Express an amount equal to any GST Table & Chair Express must pay for any supply by Table & Chair Express under this or any other agreement 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.</p> <p>Recipient-Created Tax Invoices ("RCTI")</p> <p>Where both parties agree, the recipient (whom may or may not be the Customer as defined above) may issue a tax invoice in respect of Goods supplied. In this instance, Table & Chair Express will not issue a tax invoice in respect of those supplied Goods. The recipient acknowledges that it is registered for GST and that it will notify Table & Chair Express if it ceases to be registered. Acceptance of this RCTI constitutes acceptance of the terms of this Contract. Both parties to this contract acknowledge that they are parties to an RCTI agreement (where applicable) as outlined in GSTR 2000/10. Table & Chair Express agrees to notify the recipient if Table & Chair Express does not wish to accept the proposed arrangement.</p> <p>Rewards Program</p> <p>The Customer acknowledges and accepts that in order to benefit from Table & Chair Express' rewards program, that: (a) specific terms and conditions apply as outlined on Table & Chair Express' website; (b) non or late payment will affect the number of reward points being applied to the Customer's rewards account; and (c) reward points may not be used for payment of accounts but only for purchases from the rewards gallery.</p> <p>Delivery of Goods</p> <p>Delivery ("Delivery") of the Goods is taken to occur at the time that: (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Table & Chair Express' address; or (b) Table & Chair Express (or Table & Chair Express' nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.</p> <p>At Table & Chair Express' sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.</p> <p>Table & Chair Express 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.</p> <p>The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.</p> <p>Any time specified by Table & Chair Express for Delivery of the Goods is an estimate only and Table & Chair Express will not be liable for any loss or damage incurred by the Customer because 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. If Table & Chair Express is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Table & Chair Express shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>Lead times may be subject to a delay of approximately thirty (30) weeks for Goods selected or longer where delays occur due to exact quantities, colours and finishes required not being given to Table & Chair Express in a timely manner or delays in the arrival</p>	<p>of Goods on indent or back order. Estimated lead times will commence from confirmation of a written order.</p> <p>The Customer acknowledges and accepts that a minimum invoice value of four hundred dollars (\$400) plus GST applies to all orders, otherwise a current handling fee "Small Order Surcharge" of forty dollars (\$40) plus GST shall apply.</p> <p>Risk</p> <p>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.</p> <p>If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Table & Chair Express is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Table & Chair Express is sufficient evidence of Table & Chair Express' rights to receive the insurance proceeds without the need for any person dealing with Table & Chair Express to make further enquiries.</p> <p>If the Customer requests Table & Chair Express to leave Goods outside Table & Chair Express' premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.</p> <p>The Customer acknowledges and accepts that: (a) whilst fabric manufacturers make every effort to match dye lots, colours or shade may vary between batches of product and/or between sales samples and actual product supplied; (b) fabric manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when installed; and (c) the sewing process for fabric may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product.</p> <p>The Customer acknowledges that Goods supplied may: (a) exhibit variations in shade, tone, colour, texture, surface, and finish from sales samples or previous batches; (b) fade or change colour over time; (c) expand, contract, or distort as a result of exposure to heat, cold, weather; (d) mark or stain if exposed to certain substances; (e) rust or deteriorate if exposed to salinity or weather; and (f) be damaged or disfigured by impact or scratching.</p> <p>Product Specifications</p> <p>The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings, and weights stated in Table & Chair Express' or 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 Table & Chair Express.</p> <p>Compliance with Laws</p> <p>The Customer and Table & Chair Express 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.</p> <p>Modern Slavery</p> <p>For the purposes of clauses 15.2 to 15.7: (a) "Act" means the <i>Modern Slavery Act 2018 (Cth)</i> (b) "Modern Slavery", "Modern Slavery Statement" and "Reporting Entity" have the meanings given by the Act.</p> <p>If the Customer is a Reporting Entity, it shall comply with all of its obligations under the Act.</p> <p>Whether the Customer is a Reporting Entity or not, the Customer shall: (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains; (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery; (c) use its reasonable endeavours to ensure that if at any time the Customer becomes aware of Modern Slavery practices in its operations and supply chains, the Customer must as soon as reasonably practicable take all reasonable steps to address or remove these practices; (d) provide to Table & Chair Express a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and (e) within seven (7) days of Table & Chair Express' request (or such longer period as Table & Chair Express agrees), provide to Table & Chair Express any information or assistance reasonably requested by Table & Chair Express; (i) concerning the Customer's compliance with the Act; (ii) concerning the Customer's operations and supply chains; (iii) to enable Table & Chair Express to prepare a Modern Slavery Statement or otherwise comply with the Act; or (iv) to enable Table & Chair Express to assess and address risks of Modern Slavery practices in its operations and supply chains.</p> <p>The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and Table & Chair Express will be able to terminate the Contract for any breach by the Customer.</p> <p>The Customer warrants that any information supplied to Table & Chair Express is true and accurate and may be relied upon for the purposes of the Act.</p> <p>The Customer shall indemnify Table & Chair Express against any loss or liability suffered by Table & Chair Express as a result of the Customer's breach of this clause 15.</p> <p>Title</p> <p>Table & Chair Express and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid Table & Chair Express all amounts owing to Table & Chair Express; and (b) the Customer has met all of its other obligations to Table & Chair Express.</p> <p>Receipt by Table & Chair Express 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.</p> <p>It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 16.1: (a) the Customer is only a bailee of the Goods and must return the Goods to Table & Chair Express on request; (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Table & Chair Express and must pay to Table & Chair Express the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; (c) the Customer must 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,</p>
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<p>disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Table & Chair Express and must pay or deliver the proceeds to Table & Chair Express on demand;</p> <p>(d) 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 Table & Chair Express and must, dispose of or return the resulting product to Table & Chair Express as if so directed;</p> <p>(e) the Customer irrevocably authorises Table & Chair Express to enter any premises where Table & Chair Express believes the Goods are kept and recover possession of the Goods;</p> <p>(f) Table & Chair Express may recover possession of any Goods in transit whether or not Delivery has occurred;</p> <p>(g) 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 Table & Chair Express;</p> <p>(h) Table & Chair Express may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.</p> <p>17. Personal Property Securities Act 2009 ("PPSA")</p> <p>17.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>17.2 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 that have previously been supplied and that will be supplied in the future by Table & Chair Express to the Customer, and the proceeds from such Goods.</p> <p>17.3 The Customer undertakes to:</p> <p>(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 Table & Chair Express may reasonably require to;</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 17.3(a)(i) or 17.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, Table & Chair Express 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;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of Table & Chair Express;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Table & Chair Express;</p> <p>(e) immediately advise Table & Chair Express of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.</p> <p>17.4 Table & Chair Express 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.</p> <p>17.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>17.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>17.7 Unless otherwise agreed to in writing by Table & Chair Express, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>17.8 The Customer must unconditionally ratify any actions taken by Table & Chair Express under clauses 17.3 to 17.5.</p> <p>17.9 Subject to any express provisions to the contrary (including those contained in this clause 17), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>18. Security and Charge</p> <p>18.1 In consideration of Table & Chair Express 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, and the Customer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering Table & Chair Express' security interest over the Customer on the PPSA, 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).</p> <p>18.2 The Customer indemnifies Table & Chair Express from and against all Table & Chair Express' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Table & Chair Express' rights under this clause.</p> <p>18.3 The Customer irrevocably appoints Table & Chair Express and each director of Table & Chair Express as the Customer's true and lawful attorney(s) to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Customer's behalf.</p> <p>19. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>19.1 The Customer must inspect the Goods on Delivery and must within three (3) days of Delivery notify Table & Chair Express 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 Table & Chair Express to inspect the Goods. Any claims must be accompanied with photographic evidence.</p> <p>19.2 Notwithstanding clause 19.1, the conditions applicable to the warranty given on Goods manufactured by Table & Chair Express are contained on the "Warranty Document" that will be supplied with the Goods.</p> <p>19.3 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).</p> <p>19.4 Table & Chair Express acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>19.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Table & Chair Express makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Table & Chair Express' liability in respect of these warranties is limited to the fullest extent permitted by law.</p>	<p>19.6 If the Customer is a consumer within the meaning of the CCA, Table & Chair Express' liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>19.7 If Table & Chair Express is required to replace the Goods under this clause or the CCA, but is unable to do so, Table & Chair Express may refund any money the Customer has paid for the Goods.</p> <p>19.8 If the Customer is not a consumer within the meaning of the CCA, Table & Chair Express' liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Customer by Table & Chair Express at Table & Chair Express' sole discretion;</p> <p>(b) limited to any warranty to which Table & Chair Express is entitled, if Table & Chair Express did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>20. Subject to this clause 19, returns will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 19.1; and</p> <p>(b) Table & Chair Express has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>20.1 Table & Chair Express shall not accept returns for change of mind, the buying sight unseen and the Customer is not satisfied even should the Goods be Delivered as described, or if the Customer makes a wrong decision unless due to Table & Chair Express' negligence or incorrect information supplied by Table & Chair Express.</p> <p>20.2 Notwithstanding clauses 19.1 to 19.9 but subject to the CCA, Table & Chair Express shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Customer failing to properly maintain or store any Goods;</p> <p>(b) the Customer using the Goods for any purpose other than that for which they were designed;</p> <p>(c) 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;</p> <p>(d) the Customer failing to follow any instructions or guidelines provided by Table & Chair Express;</p> <p>(e) cleaning or outdoors application;</p> <p>(f) fair wear and tear, any accident, or act of God.</p> <p>20.3 Table & Chair Express may in its absolute discretion accept non-defective Goods for return in which case Table & Chair Express 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.</p> <p>20.4 Notwithstanding anything contained in this clause if Table & Chair Express is required by a law to accept a return, then Table & Chair Express will only accept a return on the conditions imposed by that law.</p> <p>Intellectual Property</p> <p>20.1 Where Table & Chair Express has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Table & Chair Express. Under no circumstances may such designs, drawings and documents be used without the express written approval of Table & Chair Express.</p> <p>20.2 The Customer warrants that all designs, specifications, or instructions given to Table & Chair Express will not cause Table & Chair Express to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Table & Chair Express against any action taken by a third party against Table & Chair Express in respect of any such infringement.</p> <p>20.3 The Customer agrees that Table & Chair Express may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Table & Chair Express has created for the Customer.</p> <p>Protection of Reputation</p> <p>21. Any misuse, misrepresentation or any other action that negatively impacts Table & Chair Express' brand (including, but not limited to, infringement on Table & Chair Express' intellectual property, online sales and/or marketing campaigns) which is deemed to damage and/or tarnish the reputation of the Table & Chair Express' brand, may result in Table & Chair Express mitigating that damage by refusing the Customer the right to continue to represent Table & Chair Express.</p> <p>Default and Consequences of Default</p> <p>22. 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 Table & Chair Express' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>22.1 If the Customer owes Table & Chair Express any money, the Customer shall indemnify Table & Chair Express from and against all costs and disbursements:</p> <p>(a) incurred; and/or</p> <p>(b) which would be incurred and/or</p> <p>(c) for which by the Customer would be liable; in regard to legal costs on a solicitor and own client basis, internal administration fees, Table & Chair Express' Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.</p> <p>22.2 Further to any other rights or remedies Table & Chair Express may have under this Contract, if a Customer has made payment to Table & Chair Express, 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 Table & Chair Express under this clause 22 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.</p> <p>22.4 Without prejudice to Table & Chair Express' other remedies at law Table & Chair Express shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Table & Chair Express shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to Table & Chair Express becomes overdue, or in Table & Chair Express' opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit provided by Table & Chair Express;</p> <p>(c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p>	<p>Cancellation</p> <p>24.9 Without prejudice to any other remedies Table & Chair Express may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Table & Chair Express may suspend or terminate the supply of Goods to the Customer. Table & Chair Express will not be liable to the Customer for any loss or damage the Customer suffers because Table & Chair Express has exercised its rights under this clause.</p> <p>24.10 Table & Chair Express 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 Table & Chair Express shall repay to the Customer any money paid by the Customer for the Goods. Table & Chair Express shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>25. The Customer shall be liable for all losses incurred (whether direct or indirect) by Table & Chair Express as a direct result of the cancellation (including, but not limited to, any loss of profits). Notwithstanding that at Table & Chair Express' sole discretion, if the Customer cancels Delivery of Goods or cancels orders after Table & Chair Express has packed the order, a cancellation fee may be applicable.</p> <p>25.1 Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will not be accepted once production has commenced, or an order has been placed.</p> <p>Privacy Policy</p> <p>26. All emails, documents, images, or other recorded information held or used by Table & Chair Express is Personal Information, as defined and referred to in clause 24.3, and therefore considered Confidential Information. Table & Chair Express 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 IIC 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"). Table & Chair Express acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Table & Chair Express that may result in serious harm to the Customer, Table & Chair Express 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.</p> <p>26.1 Notwithstanding clause 24.1, privacy limitations will extend to Table & Chair Express in respect of Cookies where the Customer utilises Table & Chair Express' website to make enquiries. Table & Chair Express 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:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to Table & Chair Express when Table & Chair Express sends an email to the Customer, so Table & Chair Express may collect and review that information ("collectively Personal Information").</p> <p>26.2 If the Customer consents to Table & Chair Express' use of Cookies on Table & Chair Express' website and later wishes to withdraw that consent, the Customer may manage and control Table & Chair Express' privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.</p> <p>26.3 The Customer agrees that Table & Chair Express may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Customer, and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) 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</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.</p> <p>26.4 The Customer consents to Table & Chair Express being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.</p> <p>26.5 The Customer agrees that personal credit information provided may be used and retained by Table & Chair Express for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Goods; and/or</p> <p>(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Goods.</p> <p>26.6 Table & Chair Express may give information about the Customer to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Customer including credit history.</p> <p>26.7 The information given to the CRB may include:</p> <p>(a) Personal Information as outlined in 24.3 above;</p> <p>(b) name of the credit provider and that Table & Chair Express is a current credit provider to the Customer;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) 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);</p> <p>(f) advice of consumer credit defaults (provided Table & Chair Express is a member of an approved OAC External Disputes Resolution Scheme), 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 Table & Chair Express has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of Table & Chair Express, the Customer has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>26.8 The Customer shall have the right to request (by e-mail) from Table & Chair Express:</p> <p>(a) a copy of the Personal Information about the Customer retained by Table & Chair Express and the right to request that Table & Chair Express correct any incorrect Personal Information; and</p> <p>(b) that Table & Chair Express does not disclose any Personal Information about the Customer for the purpose of direct marketing.</p>	<p>24.9 Table & Chair Express will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required to fulfill the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>24.10 The Customer can make a privacy complaint by contacting Table & Chair Express via e-mail. Table & Chair Express will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>Service of Notices</p> <p>25.1 Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(d) 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;</p> <p>(e) if sent by email to the other party's last known email address. 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.</p> <p>Trusts</p> <p>26.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Table & Chair Express may have notice of the Trust, the Customer covenants with Table & Chair Express as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;</p> <p>(b) 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;</p> <p>(c) the Customer will not without consent in writing of Table & Chair Express (Table & Chair Express will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Customer as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>General</p> <p>27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.</p> <p>27.2 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.</p> <p>27.3 These terms and conditions and any contract to which they apply shall be governed by the laws of the state or territory, whichever applicable as being the state or territory in which the Goods and/or Services were provided by Table & Chair Express to the Customer however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrate's or higher Court then jurisdiction will be subject to Bundaberg Courts in Queensland being the state in which Table & Chair Express has its principal place of business. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).</p> <p>27.4 Subject to clause 19, Table & Chair Express 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 Table & Chair Express of these terms and conditions (alternatively Table & Chair Express' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>27.5 Table & Chair Express may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.</p> <p>27.6 The Customer cannot licence or assign without the written approval of Table & Chair Express.</p> <p>27.7 Table & Chair Express 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 Table & Chair Express' sub-contractors without the authority of Table & Chair Express.</p> <p>27.8 The Customer agrees that Table & Chair Express 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 Table & Chair Express to provide Goods to the Customer.</p> <p>27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to Table & Chair Express.</p> <p>27.10 Both parties warrant that they have the power to enter 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.</p> <p>27.11 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.</p>
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