

Terms and Conditions

1. Definitions

1.1. In these Conditions:

“**Agreement**” means this trading term agreement

“**Authorised Officer**” means Carl Dolan or Elissa Dolan

“**Goods**” means goods described overleaf;

“**Order**” means a written or verbal order from you to us;

“**Price**” means the amount described overleaf;

“**Quotation**” means a written quotation provided by us to you;

“**Related Bodies Corporate**” has the same meaning as in the Corporations Act 2001

“**Services**” means installation, repair or maintenance services (if any) in connection with the Goods;

“**Terms**” means the terms and conditions contained in this document;

“**we**”, “**us**” means Dolan Metal Spinning Pty Ltd ABN 16 167 891 966 and Contempo Furniture Pty Ltd, ATF C&E Dolan Family Trust, ABN 16 167 891 966; and

“**you**” means any person or Company (including its Related Bodies Corporate, administrators, successors and/or permitted assignees) named as the buyer overleaf.

2. Incorporation

2.1. These Terms apply to all Orders placed by you with us and Goods supplied pursuant to those Orders unless otherwise agreed in writing by our duly authorised officer. These Terms constitute the entire contract between you and us in connection with the sale of Goods and/or supply of Services agreed between us and you. All other terms and conditions, express or implied are excluded to the fullest extent permitted by law including, without limitation, any terms and conditions sought to be included by you.

2.2. No modification or variation of these Terms shall bind us unless expressly agreed to in writing by our duly Authorised Officer.

2.3. These Terms supersede any terms and conditions which have previously governed a contract for sale of goods and/or supply of services between you and us.

2.4. These Terms will prevail to the extent of any inconsistency with a Quotation or Order.

3. Quotations and Orders

3.1 Unless previously withdrawn a Quotation is valid for thirty (30) days from the date of its issue, or such other period as is stated therein, and is subject to withdrawal or change at any time. Any Quotation provided by us is a mere invitation to treat and does not constitute a contractual offer.

3.2 By placing an Order or accepting a Quotation, you are deemed to accept these Terms in full. Any order made by you is not binding on us until we accept your order in writing.

3.3 Any Order must be in writing. We are not bound to accept any order or part thereof. No Order, once accepted, may be modified or altered by you without our written consent.

3.4 Any Order not accepted will be deemed cancelled. No terms stated by you in making an Order will be binding on us unless accepted in writing by our duly Authorised Officer.

4. Price

4.1. In addition to the Price, you agree to pay, if requested by us:

(a) any increases in taxes and duties which we may be required to collect or pay after the date set out overleaf;

(b) all goods and services tax payable not otherwise specifically included in the Price;

(c) customs clearance charges, temporary import surcharges, freight from the delivery point, special handling, special packaging or special documentation required by you;

(d) the cost of holding, storing and insuring the Goods if delivery is delayed by or at your request;

(e) the cost of installation of Goods and associated accessories;

(f) any increase in the Price between the date of the Order and the act of payment proportionate to any decrease in the rate of exchange of Australian currency with the currency of the United States of America;

- (g) interest accrues daily on the unpaid balance of the Price and any other amount payable from its due date until the date of payment at the rate of ten percent (10%) per annum; and
- (h) extra or additional costs or expenses incurred by us by reason of incorrect or inadequate instructions or information provided by you or by reason of any variations or amendments to the specifications or your requirements for the Goods and/or Services or the type of goods being produced by Contempo. Any such extra or additional cost will be accepted by you and added to the price and will be paid by you in accordance with these Terms.

5. Payment

- 5.1. Unless expressly stated, the Price does not include the costs of delivery. All costs, charges or expenses incurred by us in relation to delivery, including storage costs due to our inability to deliver, are payable by you.
- 5.2. Unless otherwise indicated, all payments shall be made in Australian currency.

Non-account holders

- 5.3. A deposit of 50% of the value of the Order, in cleared funds, is required before commencement of production or acquisition of the Goods or their components.
- 5.4. Payment of the Price is due prior to the goods being dispatched. We reserve the right to withhold delivery if payment is not made at or before the time of delivery.
- 5.5. Where the Goods the subject of an Order need to be installed, payment is due on completion of installation.

Account holders

- 5.6. For any orders to the value of \$10,000 or more, or, where multiple orders are placed by the same account holder in 24 hours that total to the value of \$10,000 or more, a 30% deposit is required. Until we receive this deposit in cleared funds, the Order will not be processed.
- 5.7. You agree to pay the Price after any discount of the deposit when paid, within thirty (30) days of the end of the month in which the

invoice was raised (regardless of the date the invoice is received by you).

- 5.8. Where payment is overdue we may, at our option either cancel the Order or suspend delivery of outstanding Goods.

6. Time

Time of payment is of the essence to the contract. You agree to indemnify us on demand for all costs, charges, expenses and legal costs (on a solicitor and own client basis) incurred by us in recovering sums owed by you.

7. Delivery and Risk

Risk

- 7.1. Risk in the Goods will pass to you at our warehouse upon the Goods being packed upon the vessel or vehicle which is to deliver the Goods to you.

Title

- 7.2. Title in the Goods remains with us until we receive full payment for the Goods and, if applicable, their installation.

Delay of delivery

- 7.3. Delivery dates are provided in good faith, but no guarantee of delivery on those dates is provided. We shall not be liable to you for any loss or damage whatsoever should we be delayed or prevented from delivering Goods or otherwise performing any of our contractual obligations due to any cause or circumstance of any kind whatsoever beyond our control. In the event of any such delay in delivery or supply, the due date for delivery shall be deferred for a period equal to the time lost by reason of the intervening cause or circumstance. Delay in delivery or any other default in respect of a delivery shall not relieve you of any obligation in respect of any other delivery.

Delivery by instalments

- 7.4. We reserve the right to make deliveries pursuant to these Terms in instalments and the contract shall be severable as to such instalments. All such instalments, when separately invoiced, shall be paid for by you irrespective of delivery of subsequent instalments.

Delivery cancellation fee

- 7.5. You will be liable to pay any delivery cancellation fee resulting from you altering

the time or date of delivery after we have confirmed the delivery time.

8. Personal Property Security Register (PPSR)

- 8.1. You acknowledge and agree that we have a registrable security interest in the Goods supplied.
- 8.2. You consent to us registering our interest in the Goods supplied to you on the PPSR.
- 8.3. You undertake to sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) which we may reasonably require to enable registration of a financing statement or financing charge statement on the PPSR.
- 8.4. You agree to pay any legal fees incurred by us with respect to enforcing this security interest.

9. Warranty

- 9.1. Subject to the following and any condition, warranty or right implied by the Australian Consumer Law (ACL) or any other law which cannot by law be excluded by agreement, or any express provision in these Terms, we give no warranty regarding any Goods supplied and all other implied conditions, warranties and rights are excluded.
- 9.2. Goods are supplied with guarantees that cannot be excluded under the ACL. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods are not of acceptable quality and the failure does not amount to a major failure.
- 9.3. Goods supplied shall be subject to a structural warranty for 12 months following delivery for defective materials, manufacture or workmanship.
- 9.4. This warranty applies only for the benefit of you and is void if use of the Goods is not in accordance with the manufacturer's instructions and recommendations.
- 9.5. We deny liability and responsibility for Goods or subsequent damage occasioned to them by, or from the following events:
 - a) damage caused by water, fire, lightning, act of god, riot or war;

- b) damage sustained as a result of your gross negligence;
- c) degradation of Goods due to wear and tear in normal use;
- d) we do not warrant fabrics, leathers and finishes of the Goods provided; and/or
- e) your change of mind.

- 9.6. Should services be sought from us to remedy or replace any Goods due to the above events, then such services will be charged at our prevailing casual consulting rates at the time.
- 9.7. Subject to the warranties permitted by law, Goods will not be accepted for return because you have changed your mind, made an incorrect choice, mistake or provided incorrect instructions.
- 9.8. Where you have provided us with an image, which we have approved before production of the Goods has commenced, we will take reasonable steps to assist you where Goods supplied are not similar to the image provided.
- 9.9. We will not be responsible for replacement of Goods where the Goods do not match the exact description in terms of colour or finishes requested by you but are in essence materially the same.

10. Claims

- 10.1. Claims are to be made to
Contempo Furniture Pty Ltd
eight Lincoln Street, Minto, NSW
Tel (02) 9820 6111
email info@contempofurniture.com.au
- 10.2. We will not be liable for any claim for breach of any warranty given under clause 9 unless you satisfy us that you have strictly complied with any of our instructions relating to the relevant Goods and/or Services.
- 10.3. You must:
 - a) notify us in writing if Goods or Services fail to comply with the relevant warranties within seven (7) days of delivery of the relevant Goods or performances of the relevant Services or within seven (7) days of you becoming aware of the structural defect; and
 - b) provide photos of the alleged fault - to facilitate the claim process; and

- c) preserve as far as possible for our inspection, Goods that are alleged not to comply with the relevant warranties.

10.4. We will:

- a) confirm receipt of your notice within 3 business days;
- b) investigate the alleged fault. This investigation may include inspecting the photos provided, contacting you for further details and inspecting the item in question.
- c) notify you in writing whether we accept or reject your claim within 21 business days.

- 10.5. If we find a claim to be valid we will at our option repair, replace or reimburse the costs of the Goods

11. Limitation of Liability

11.1. To the fullest extent permitted by law;

- (a) We will not be liable for any breach of statutory obligation or implied condition or warranty in respect of Goods and/or Services (or materials used in connection with Services) supplied to you;
- (b) We shall under no circumstance be liable in any way whatsoever to you for any form of loss, damage or expense sustained or incurred by you or any other party in consequence of or resulting directly or indirectly out of the supply of Goods and/or Services by us, the use or performance thereof, any breach by us of any contract incorporating these Terms, or the negligence of us. Without limiting the generality of the foregoing, we are not liable in any circumstance whatsoever for any indirect or consequential losses, loss of profits or use, any rectification costs or any third party claims in connection with Goods, Services or the contract;
- (c) Without limiting the generality of clause 11.1, we shall under no circumstances be liable in any way whatsoever for any form of loss, damage to property or expense, including without limitation any indirect or consequential losses, loss of profits or use, any rectification costs or any third party claim in connection with

Goods, Services or this agreement caused by or in any way relating to, without limitation, injuries sustained from or in connection with the use of Goods supplied; and

- (d) Should any law render a provision herein void or ineffective, you agree that our liability is limited to:
 - i. The repair or replacement of those Goods supplied, the supply of goods equivalent to those supplied, or the payment of the cost of replacing or repairing the Goods at our option; or
 - ii. The supply again of those Services supplied (or those materials used in connection with Services supplied) or the payment of the cost of having the Services supplied again, which gave rise to the breach, loss or damage, at our option.

12. Termination of an Order

- 12.1. You may terminate in whole or in part any agreement for the supply of Goods and/or Services before the supply has been made provided the following conditions are satisfied:

- a) our written approval has been obtained; and
- b) you agree to pay our reasonable losses incurred by reason of the termination.

- 12.2. We reserve the right to immediately terminate or suspend our performance of the whole or any Order for the supply of Goods and/or Services without incurring any liability to you in any of the following circumstances:

- a) you fail to take delivery of or pay for Goods and/or Services by the due date or breach any other term of the contract;
- b) you otherwise default in any of your obligations under these Terms;
- c) you enter into bankruptcy, liquidation or a composition with its creditors, have a receiver or manager appointed over all or any part of your assets, enter into administration or become insolvent;
- d) we notify you that we have reasonable grounds for suspecting that an event in clause 12.2(c) has occurred or will occur, or that you will not pay for Goods and/or Services on the due date;

- e) there has been a substantial increase in our costs of manufacture and supply of Goods and/or Services between the date the Order is accepted and the date of delivery or despatch arising from circumstances beyond our control where the contract is for a fixed price and you and we have failed to reach agreement on a reasonable adjustment in the price for remaining deliveries to recognise such increase within thirty (30) days of us notifying you of such increase; or
- f) contractual performance by either you or us is delayed or prevented due to any cause or circumstance.

12.3. Termination by us under clause 12.2 shall be without prejudice to our other remedies and our right to recover payment from you for any Goods and/or Services provided by us including those previously provided by us.

13. Intellectual Property

13.1. All intellectual property rights in the Goods or Services arising out of our agreement to supply the Goods, including any drawings and sketches supplied by us, are and shall remain our property. We reserve our rights in relation to the unauthorised use or reproduction of any intellectual property owned by us.

13.2. You warrant that any design or drawing provided by you does not infringe any intellectual property rights of any other party and agree to fully indemnify us in respect of any claims made arising from the designs and drawing you have provided.

14. Force Majeure

We shall not be liable for failure to deliver the Goods and/or supply the Services for any reason whatsoever outside our reasonable control including, without limitation to the generality of the forgoing, industrial action, war, governmental action or regulation, act of God, riots, or non-availability of stock or materials. Any such failure shall not affect the obligation of you to pay for Goods already delivered.

15. Miscellaneous

If any provision of these Terms is or becomes invalid or unenforceable, the provision shall

be read down to the extent required to ensure its enforceability and validity or, if it cannot be so read down, it shall be divisible from these Terms and deemed deleted from them. All other provisions which are self-sustaining or capable of separate enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with these terms.

15.1. These Terms override any terms and conditions printed on any Purchase Orders or invoices in relation to the subject-matter of this agreement. These Terms may only be modified by a written document signed by duly authorised representatives of both parties.

15.2. You acknowledge that, in entering into this Agreement with us, you do not do so on the basis of, nor rely on, any representation, warranty or other provision except as expressly set out in this agreement.

15.3. A waiver of any term, provision or condition shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which it is given.

15.4. No failure, delay or omission to exercise any right, power or privilege under these Terms shall operate as a waiver of it, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of it or the exercise of any other right, power or privilege.

15.5. No breach of any provision of this agreement shall be waived or discharged except with the express written consent of both parties.