

Terms and Conditions of Trade

For Supply of Benchtops



These terms were last updated on 3 October 2018.

The following general terms and conditions of trade ("Terms") are applicable to all orders of products by a Customer including but not limited to benchtops and/or services usually provided by Prima in relation to such products ("Product(s)") manufactured by Prima Solid Surfaces Limited ("Prima"). No other terms, conditions or deviations from these Terms shall be binding unless accepted in writing by an authorised representative of Prima.

1. Customer

1.1 The meaning of the word "Customer" includes an individual authorised to act on their own behalf or on behalf of a partnership, company, trust, incorporation and/or government agency. In all cases the Customer must provide evidence of the source of their authority to purchase any product from Prima. The Customer consents to Prima obtaining supporting information from third parties about that evidence.

2. Contract with Building Company

2.1 In the event that the Customer is a building company or tradesman in the building sector both the building company or tradesman in the building sector and the individual homeowner agree to be bound by, and shall execute a copy of these Terms to the intent that both the building company and the individual homeowner shall be deemed "Customers" for the purposes of these Terms.

3. Product(s) Design

3.1 Prima shall engage one of its product designers to work with the Customer to design a Product(s) that meets with the requirements of the Customer. The plans and specifications produced by the designer shall remain the property of Prima unless and until an order for the manufacture and/or installation of the Product(s) has been received by Prima and payment has been made in full and in accordance with clause 8.

4. Approval of Design and Order

4.1 In signing the order the Customer consents that the items in the quotation and design are of acceptable quality, are fit for purpose and comply with descriptions and samples viewed. In cases where it has been made clear to the Customer by Prima of the unsuitability of any Product(s) for any purpose, the Customer waives all rights of redress concerning any defects in the Product(s). Prima shall produce a formal quotation for the Customer for the design, manufacture and installation of the Product(s). The quotation shall be valid for a period of 30 days from the date specified on the quotation.

4.2 The Customer may accept the quotation by signing the "buyer's acceptance" section on the quotation and signing a copy of the plans and specifications attached to the quotation. Where the Product(s) relates to the replacement of an existing Product(s) the price excludes the removal of the existing Product(s) and any plumbing, electrical, plastering, painting and building alterations in relation to the removal of such existing Product(s).

5. Variations

5.1 Any variation as to the addition of any Product(s) to an existing signed order shall:
(a) be recorded in writing and signed by both parties by electronic or manual means;
(b) update any existing invoice to include the addition of these Product(s); and
(c) be binding from the date of signing.

5.2 No variation or alteration to the Product(s) design shall be binding on the parties unless recorded in writing and signed by both parties, including any adjustment to the price.

6. Cancellation

6.1 The Customer loses the right to reject any Product(s) from Prima as a result of 'a simple change in mind' on signing the order. At the time of signing the full price becomes payable as a lump sum or by way of payment schedule. In the event that the Customer wishes to cancel the order Prima shall return the deposit less all actual and reasonable costs and expenses incurred by Prima, including an administration fee of 5% of the contract price, provided that the Customer shall not be entitled to cancel the order where Prima has placed binding orders for the other components for the Product(s) or once the manufacturing has begun. In the event of cancellation Prima shall retain ownership of the design plans and specifications.

7. Price

7.1 The price of the Product(s) shall be the price stated in the quotation together with all extras/additions to the Product(s) selected by the Customer and subject to variation in accordance with clause 5.

7.2 Unless stated otherwise the price of the Product(s) is inclusive of GST and the price is payable in New Zealand dollars.

8. Payment

8.1 In signing the order the Customer has accepted the price of the Product(s) ordered.

8.2 In the case that the Customer is a building company or tradesman in the building sector full payment of any or all Product(s) ordered is due on the 20th of the following month after invoicing.

8.3 In all other cases, upon signing the quotation the Customer will receive an invoice for each of the following payments listed below:
(a) At the time of signing of the order, to pay a deposit of no less than 50% of the total cost; and
(b) Immediately following installation of the Product(s), to pay the final payment of up to 50% of the total cost.

8.4 The Customer is liable to pay the invoiced amount within the times specified in the invoice or the payment events listed above ("Due Date") unless the Customer provides Prima with a payment schedule within the times specified under the invoice issued by Prima to the Customer and it is consented to in writing by Prima subject to sections 22 and 24 of the Construction Contracts Act 2002.

8.5 In the event that the Product(s) supplied by Prima are in part or full fulfillment of a residential or commercial construction contract, then the adjudicating provisions of the Construction Contracts Act 2002 shall apply including the provisions relating to payment of scheduled payments and the collection of these payments.

9. Title, Risk and Delivery

9.1 The Product(s) supplied by Prima shall remain the sole and absolute

property of Prima as the legal and equitable owner until such time as the Customer makes payment in full to Prima of all amounts owing in respect of the Product(s). If the Customer fails to make full payment by the Due Date, Prima shall be entitled at any time thereafter to enter into the premises where the Product(s) is being held or has been installed and retake possession of the same and hold the Product(s) until full payment is made or to resell the Product(s) to cover any deficiency on the resale and/or liability if damage is caused when removing.

9.2 The Product(s) remains at Prima's risk until delivery is made to the Customer. Delivery and installation shall be completed within approximately 4-8 weeks from the date of the site measure being completed by Prima, subject to availability of materials. The Customer acknowledges that the time frames specified in this clause are approximate time frames only. Prima will use all reasonable endeavours to ensure delivery and installation within the time frame specified but shall not be liable for any delay or failure to deliver and install the Product(s) within that time frame. The Customer acknowledges that the timing of delivery of the solid benchtop is subject to colour and availability and is outside of the control of Prima. Prima shall not be liable for insurance of the Product(s) after delivery has been made. The burden of responsibility shall rest with the Customer.

10. Default Event

10.1 Prima reserves the right to charge interest on any amount owing after the Due Date at the rate of 15% per annum charged and compounded daily from the Due Date until the date when payment is actually made. Any expenses, disbursements and legal costs incurred by Prima in the enforcement of any rights contained in these Terms shall be paid by the Customer, including but not limited to, any solicitor's fees on a solicitor/client basis or debt collection agency fees.

10.2 Receipt by Prima of any form of payment other than cash shall not constitute payment until such form of payment has been honoured, cleared or recognised in full.

10.3 So as not to defeat the objectives of the foregoing provisions of this clause, the Customer agrees that should the Product(s) supplied be affixed or installed in a dwelling, ancillary building, commercial building or otherwise ("Property") such as to render it a fixture of that Property, the Customer agrees that in considerations of Prima allowing the Product(s) to be so affixed or installed, the Customer shall upon demand being made by Prima at any time but before payment in full is made to Prima, execute a mortgage over the Property in which the Product(s) has become a fixture in favour of Prima (to be prepared by Prima's solicitors at the Customer's cost), for the amount equivalent to the unpaid balance of the purchase price plus any interest owing thereon and any additional extras ordered by the Customer. The terms of such mortgage shall be collateral to the terms hereof and payment in full of the amounts owing to Prima hereunder shall operate as a full discharge of the mortgage. Prima agrees not to make demand on the Customer to execute such a mortgage unless any of the following occur:

(a) Failure to make payment on the Due Date; and/or
(b) Any composition with creditors, act of bankruptcy, winding up or receivership of the Customer.

10.4 The Customer hereby grants to Prima an irrevocable power of attorney in relation to the Property in which the Product(s) has been affixed or installed to enable Prima to execute the mortgage referred to in this clause on the latest Auckland District Law Society form approved by the Registrar General of Land, should the mortgage not be executed by the Customer for any reason. However, Prima will not execute a mortgage as attorney for the Customer unless Prima has requested in writing that the Customer execute the mortgage pursuant to these Terms and the Customer has failed to execute such a mortgage within five working days from the date of sending such request.

10.5 The Customer authorises Prima to lodge and maintain as caveat against the title to the Property in which the Product(s) has been affixed or installed for the protection of the agreement to mortgage described above should Prima in its absolute discretion consider it necessary to lodge such a caveat.

10.6 The Customer acknowledges that Prima reserves the right to use any legal means to secure and recover any unpaid amounts owing to it as a result of these Terms. These means may include registration of charges against land titles and/or mortgages and engagement of a debt collection agency.

11. Repair of Defects

11.1 Prima shall at its sole cost rectify any defects in the materials which are notified to Prima within 7 days of installation of the Product(s) and within a reasonable time of receiving notification of those defects in writing by email to info@primasolidsurfaces.co.nz. Prima shall not be liable under this clause to remedy:

(a) Defects covered by a manufacturer's guarantee that is available to and may be enforced by the Customer;
(b) Defects in or damage caused by work undertaken on the property after installation, or arising out of acts or omissions by the Customer or the Customer's agents, contractors or otherwise; or
(c) Fair wear and tear of the Product.

12. Personal Property Securities Act 1999 ("PPSA") and Liability

12.1 The Customer grants to Prima a security interest in the Product(s) until title passes as contemplated in clause 9. The Customer acknowledges that Prima may, at the cost of the Customer, register a financing statement in respect of any security interest created by these Terms and do all such other acts and things as may be reasonably required by Prima for the purposes of ensuring that at all times Prima holds a perfected security interest under the PPSA in respect of the Product(s) supplied to the Customer under these Terms. For the purposes of section 148 of the PPSA, the Customer agrees that Prima does not have to provide a verification statement to the Customer when Prima registers a financing statement in respect of any security interest created by these Terms.

12.2 The Customer shall pay Prima's costs of any discharge or amendment of any financing statement. The Customer shall supply Prima within two working days from the date of written request, copies of all documents granting security interests registered over the Customer's personal property. The Customer authorises Prima as an agent to

request any information from any secured party relating to any security interest which is held in any personal property which is or has been in the Customer's possession or control. The Customer agrees that nothing in sections 114(1) (a), 117(1) (c), 133 and 134 of the PPSA shall apply to these Terms. The Customer agrees that its rights as debtor in sections 116, 119, 120(2), 121, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these Terms.

12.3 The Customer gives irrevocable authority to Prima to enter any premises occupied by the Customer or on which the Product(s) is situated at any reasonable time after default by the Customer or before default if Prima believes a default event has occurred in accordance with clause 10, or is likely to occur. Prima shall not be liable in contract or in tort or otherwise in any way unless by statute such liability cannot be excluded. Prima may either re-sell any repossessed Product(s) then credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain the Product(s) and credit the Customer's account with the invoice value thereof less such sum as Prima reasonably determines on account of obsolescence, loss of profit and costs. Where the Product(s) are retained by Prima pursuant to this clause the Customer waives the right to receive notice under section 120 of the PPSA and to object under section 121 of the PPSA.

12.4 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, the Contract and Commercial Law Act 2017 and other statutes may imply warranties or conditions or impose obligations upon Prima which cannot by law (or which apply only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Prima, Prima's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

13. Indemnity

13.1 The Customer fully indemnifies Prima against all claims, liabilities, costs, damages, fees and expenses (including reasonable legal costs) suffered or incurred at any time by Prima arising as a direct or indirect result of any act, omission or default on the Customer's part or any breach or alleged breach of these Terms by the Customer or relating to an action or claim brought by a third party against Prima which relates directly or indirectly to the Customer's use of the Product(s).

14. Customer's Own Reliance

14.1 Any information generally relating to the Product(s) contained in the advertising, catalogue, price lists, illustrations or other similar matter submitted to the Customer whilst given in good faith shall be regarded only as approximate and intend to present to the Customer a general guide, the accuracy of which the Customer must test for itself. In particular the Customer acknowledges that colour samples for a number of the Product(s) may vary.

15. Substitution of Materials

15.1 In the event of any materials being unprocurable then Prima may substitute any permissible materials as are of a value and quality as near as practicable to the specified materials. Any difference in the cost of such substitute materials shall be treated as an extra or a deduction to the contract price.

16. Collection and Use of Information

16.1 The Customer authorises Prima to obtain, collect, retain and use any information about the Customer for the purpose of assessing the Customer's creditworthiness and/or enforcing any rights under these Terms. The Customer authorises Prima to disclose any information obtained to any person for the purposes set out in this clause. Where the Customer is a natural person, the authorities under this clause are authorities or consents for the purposes of the Privacy Act 1993.

16.2 If, at any time, the Customer would like a copy of the personal information about the Customer which Prima holds, or the Customer discovers that any such information is incorrect, the Customer may contact Prima to request a copy or correction of the information as the case may be.

17. Dispute

17.1 Prima and the Customer shall resolve any dispute first by good faith discussions between the Customer and Prima's management.

17.2 If the dispute is not resolved within 14 days of the commencement of discussions then the parties shall seek to settle the dispute by mediation.

18. Miscellaneous

18.1 Prima shall not be liable for any delay or failure to perform its obligations under these Terms if the cause of the delay or failure is an event or circumstance beyond its reasonable control.

18.2 Failure by Prima to enforce any of these Terms at any time shall not be deemed to be a waiver of any right or obligation Prima has under these Terms, nor shall it affect Prima's right to subsequently enforce that right or obligation.

18.3 If any provision of these Terms shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.4 Prima may assign or transfer any or all of its rights and obligations under these Terms in its sole discretion and may appoint subcontractors to perform any of its obligations under these Terms. The Customer may not assign, transfer or subcontract any rights or obligations under these Terms without the prior written consent of Prima.

18.5 The parties do not intend to create rights in or grant remedies to any third parties as a beneficiary of these Terms and all provisions contained in these Terms are for the sole and exclusive benefit of the parties.

18.6 These Terms and the terms of any order, delivery docket or invoice relating to the supply of the Product(s) by Prima to the Customer record the entire understanding and agreement between Prima and the Customer and supersede all previous understandings or agreements (whether written, oral or both). If there is any inconsistency between these Terms and the terms of any such order, delivery docket or invoice, these Terms will prevail.

19. Governing Law

19.1 The Terms shall be governed by and construed in accordance with the laws of New Zealand and the parties shall submit to the exclusive jurisdiction of the New Zealand courts.