

## TERMS AND CONDITIONS OF TRADE

### 1. Parties and interpretation

**"WILKHAHN"** means Wilkhahn Wilkening & Hahne Pty Ltd trading as Wilkhahn Asia Pacific (ABN 75085788978) at Unit 13 Riverwood Business Park, 92-100 Belmore Rd, Riverwood, NSW, 2210.

**"Consequential Loss or Damage"** means any loss of profits, revenue, use or opportunity, re-installation costs, removal costs and any remote, indirect or incidental form of loss and any exemplary or punitive damages. **"Customer"** means any person or entity purchasing or offering to purchase Goods and/or Services from WILKHAHN. **"Goods"** means the goods delivered or to be delivered by WILKHAHN to the Customer. **"GST"** means the Goods and Services Tax imposed by a New Tax System (Goods & Services Tax) Act 1999 and any related act and/or regulations. **"PPSA"** means the Personal Property Securities Act 2009 (Ch.). **"PPSR"** means the Personal Property Security Register created under the PPSA. **"Services"** means all design, installation, commissioning and one-site services provided by WILKHAHN to the Customer from time to time. **"Service Charges"** means the moneys charged by WILKHAHN for the provision of the Services. **"Terms"** means these Terms and Conditions of Trade.

### 2. Acceptance

These Terms constitute the sole and exclusive agreement between WILKHAHN and the Customer with respect to any transaction between WILKHAHN and the Customer. An order will not be effective until WILKHAHN has accepted it in writing. WILKHAHN's acceptance of the Customer's order will not constitute an acceptance of printed provisions on any form supplied by the Customer which are different from or additional to any term of these Terms, unless specifically accepted in writing by an authorized officer of WILKHAHN, and such different or additional provisions are hereby expressly rejected.

### 3. Orders

A contract will not be established except on WILKHAHN's written confirmation of an order. WILKHAHN will be entitled to assume (a) acceptance of these Terms (b) any additional terms and conditions stated in WILKHAHN's Acknowledgment of order and (c) should the Customer require amendments to be made to its order subsequent to WILKHAHN's confirmation of the same, no such amendment will be effective, unless WILKHAHN agrees to such amendment in writing; WILKHAHN may, at their discretion, refuse to accept all or part of any such request.

### 4. Property in Goods / Retention of Title

4.1. Legal and beneficial ownership of the Goods will not pass to the Customer until such time as the Goods so supplied have been paid for in full in cash or cleared funds. 4.2. Until the amount payable in respect of the Goods has been paid in full in cash or cleared funds: 4.2.1. the Customer will hold the Goods as bailee only for WILKHAHN; 4.2.2. any monies received or income generated by the Customer (up to the amount owing to WILKHAHN) through the use of such Goods will be deemed to be received on trust for WILKHAHN; and 4.2.3. the Goods must be stored in such manner that they are readily distinguishable from other goods owned by the Customer or other persons, so as to clearly show that they are the property of WILKHAHN.

### 5. Personal Property Security

The Customer acknowledges that if WILKHAHN has a security interest in the Goods for the purposes of the PPSA then WILKHAHN may register its security interest in the Goods on the PPSR. The Customer also undertakes, at its own expense, to promptly do anything (such as supplying information) which WILKHAHN requests and reasonably requires the Customer to do for the purposes of ensuring that the security interest is enforceable, perfected or otherwise effective.

### 6. Goods at Customer's Risk

6.1. The Goods are entirely at the risk of the Customer from the moment the Goods leave WILKHAHN's Premises even though property in and title to the Goods have not passed to the Customer. 6.2. The Customer must, at its own expense, maintain the Goods and insure them for the benefit of WILKHAHN for their full replacement value against theft, destruction, fire, water and other risks, as from the moment of collection by the Customer until property of and title to the Goods have passed to the Customer. 6.3. The Customer must take all reasonable measures to ensure that WILKHAHN's title to the Goods is in no way prejudiced. If any of the Goods are lost, destroyed or damaged, any insurance proceeds relating to the Goods in respect of such event that are received by the Customer, must be paid to WILKHAHN immediately on receipt.

### 7. Re-Sale of Goods Subject to a Retention of Title

7.1. The Customer has the right to sell the Goods subject to a retention of title in its own name only at full market value and on the ordinary course of business. 7.2. Any sale by the Customer of Goods subject to a retention of title, whether in their original condition or incorporated into other goods, will only be effected by the Customer as trustee for WILKHAHN and the proceeds of such sale and the rights of the Customer against its Customer arising from such sale will be held on trust for WILKHAHN. The said proceeds must be held in a separate account or otherwise clearly identified in the books and records of the Customer. 7.3. If the Customer resells any Goods then, unless the Goods are clearly identifiable by serial numbers or other distinguishing marks, the Customer is deemed to have disposed of the Goods in the chronological order of supply by WILKHAHN to the Customer (oldest to the most recent).

### 8. Default

8.1. If the Goods are not paid for in accordance with these Terms or any other applicable written agreement; or 8.2. WILKHAHN receives notice that, or reasonably believes that a third party may attempt to take possession of the Goods or attach the Goods pursuant to a writ of execution; or 8.3. any other event occurs which is likely to adversely affect the Customer's ability to pay for the Goods (including but not limited to the appointment of a receiver, administrator, liquidator or similar person [each an "Insolvency Representative"] to the Customer's undertaking), then WILKHAHN may at any time thereafter, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate any contract relating to the Goods and the bailment referred to in clause 4.2.1.

### 9. Right to Enter Premises

In any of the circumstances referred to in clause 8, the Customer: 9.1. authorises WILKHAHN by itself, its agents or representatives at all reasonable times, without notice, to enter onto and at all necessary time(s), to remain in and on any premises where the Goods are located in order to collect the Goods, without being guilty of any manner of trespass; and 9.2. assigns to WILKHAHN all the Customer's rights to enter onto and remain in and on such premises until all the Goods have been collected.

### 10. Administration, Receivership etc.

In any of the circumstances referred to in Clause 8: 10.1. neither the Customer nor its Insolvency Representative is entitled to sell, charge, remove, dispose of use or otherwise deal with the Goods in any way inconsistent with WILKHAHN's ownership of the Goods, without WILKHAHN's prior written approval; 10.2. the Customer and its Insolvency Representative are obliged to return the Goods to WILKHAHN immediately or immediately on his appointment at his expense; and 10.3. the Insolvency Representative will become personally liable to WILKHAHN on a full indemnity basis in respect of any dealings with or use of the Goods by the Customer or the Insolvency Representative occurring after the date of appointment of the Insolvency Representative and must account to WILKHAHN or reimburse WILKHAHN for all monies received as a result of such dealings or use of the Goods.

### 11. Delivery

Delivery and installation costs are not included in the cost of the quoted item unless otherwise specified. All costs for delivery and installation will be shown separately on the quote and prices quoted apply to deliveries carried out during normal business hours (Monday to Friday 7.00am to 4.30pm) unless otherwise agreed in writing. For deliveries outside these hours additional fees will be charged at WILKHAHN's discretion.

### 12. Time for Delivery

Any delivery dates furnished by WILKHAHN to the Customer are estimates only and do not bind WILKHAHN to ship or deliver the Goods and/or provide the Services on the dates indicated unless specifically so stated by WILKHAHN in writing to be binding. WILKHAHN reserves the right to make partial shipments and to submit separate invoices to the Customer for each such partial shipment. If the Customer defaults in its obligations in regard to any partial shipment, WILKHAHN may suspend any additional shipments unless and until the Customer cures such default and will have such other remedies set out in these Terms. Binding delivery dates are subject to change for any cause which interferes with WILKHAHN's production, supply, transportation or installation of the Goods and/or provision of the Services (whether or not caused or contributed to by WILKHAHN's negligence or fault), including, but not limited to, any event of force majeure. If WILKHAHN fails to comply with designated, binding or other delivery dates, makes partial shipments, or fails to perform its obligations in accordance with any time limits, WILKHAHN will not incur any liability whatsoever for any

Consequential Loss or Damage which may be incurred by the Customer or any other person or entity.

### 13. Storage

Should the Customer fail to accept Goods on delivery by WILKHAHN on the delivery date stated in the order acknowledgment or as otherwise agreed in writing, WILKHAHN will be entitled to make arrangements for the storage of the Goods and be entitled to charge the Customer for the Goods as well as storage costs plus a handling and administration charge of \$1,000. In this case, the Goods shall be regarded as having left WILKHAHN's premises and risk in the Goods shall pass to the Customer in accordance with clause 6 as if the Customer had arranged for its own storage, and the Customer shall be bound by its obligations as set out in clause 6.

### 14. Goods and Services tax

14.1. GST is not included in the quoted price. 14.2. Where GST is imposed on WILKHAHN in respect of the supply of Goods and/or the provision of the Services then the Customer must pay WILKHAHN the amount of such GST in addition to the quoted price. 14.3. WILKHAHN must give the Customer written notice of the amount of any GST payable under this clause and provide a tax invoice showing the amount of GST payable.

### 15. Specifications

The specifications contained in WILKHAHN's order confirmation will be authoritative in determining WILKHAHN's obligations regarding the quality of Goods and/or Services insofar as the order specifications make reference to specifications contained in brochures or other printed or other materials (e.g. on WILKHAHN's website); such specifications are deemed merely to be examples, and will not bind on WILKHAHN. In the case of natural material such as wood or leather, the Customer accepts that all specifications, representations or samples can only be understood to be exemplary depictions due to the natural variations of such materials.

### 16. Inspection

The Customer must diligently examine the delivered Goods and/or the Services and must notify WILKHAHN of any non-conformance with any of the specifications without delay at the latest within one (1) business day of Customer's receipt of the Goods and/or the Services.

### 17. Limited Warranty

17.1. WILKHAHN warrants that the Goods will substantially conform to the design specifications established by WILKHAHN in regard to the Goods under normal use and service, in line with generally accepted industry standards and the relevant state of the art, unless otherwise agreed by WILKHAHN and the Customer. 17.2. If any failure to conform substantially to any specification ("Non-Conforming Goods") is reported to WILKHAHN in writing within five (5) years after the date of receipt of the Goods by the Customer, WILKHAHN, on being satisfied of the existence of such non-conformity, will correct the same, at its sole election, either by repairing the Non-Conforming Goods or by delivering to the Customer replacement of such number or quantity of the Goods as have a non-conformity within a reasonable period of time (which may exceed sixty (60) days). 17.3. The Customer must separate the Non-Conforming Goods from the Goods, and the Customer will be deemed to have accepted such of the Goods as are not Non-Conforming Goods. 17.4. The Customer may not repair or have an unauthorized third-party repair any Non-Conforming Goods without WILKHAHN's prior written consent. If WILKHAHN is unable or unwilling to correct such Non-Conforming Goods by repairing or delivering replacement Goods, whether due to the nature of the non-conformity, the use made by the Customer of the Goods, or for any other reason, WILKHAHN may, at its sole election, reduce the purchase price accordingly or grant the Customer a credit against future purchases. 17.5. WILKHAHN will in no event be obliged to refund any part of the purchase price. 17.6. The warranty set out in this clause will apply not only to the Goods but also to any replacement Goods. 17.7. This warranty does not cover damage or defects caused by or resulting from (a) unauthorized repairs, alterations or modifications to the Goods, (b) negligence, accident, abuse, misuse, improper, unsuitable or abnormal usage or storage of the Goods, (c) failure to conform strictly to WILKHAHN's specifications and instructions in connection with the use, storage or repair of the Goods, (d) defects due to specifications supplied by the Customer, (e) exposure of the Goods to unreasonable temperatures or other environmental conditions, or (f) storage and usage past specified product life. 17.8. Ordinary wear and tear will not be considered a defect in workmanship or materials. The foregoing will be the Customer's sole and exclusive remedies, and the liability of WILKHAHN hereunder is expressly limited to repair or replacement of nonconforming Goods or the grant of a credit, as the case may be.

### 18. WILKHAHN's Liability Limited

18.1. WILKHAHN is not subject to, and the Customer releases WILKHAHN from any liability (including but not limited to Consequential Loss or Damage) arising from any delay in delivery or provision or fault or defect in the Goods and/or the Services. The Customer acknowledges that WILKHAHN is not responsible if the Goods do not comply with any applicable safety standard(s) or similar regulation(s), and that WILKHAHN is not liable for any claim, cost, damage or demand resulting from such non-compliance. 18.2. If, despite clause 18.1, the statutory provisions under the *Competition and Consumer Act 2010 (Ch)*, the *Sale of Goods Act 1923 (NSW)* or any other act or the general law impose on WILKHAHN a liability for a defect or fault in the Goods and/or Services then, to the extent to which WILKHAHN is entitled to do so, WILKHAHN's liability under the statutory provisions is limited, at WILKHAHN's option, to: 18.1.1. replacement or repair of the Goods; or 18.1.2. supply of equivalent Goods; or 18.1.3. providing the Services again; or 18.1.4. payment of the costs of having a third party provide the Services, and in any case, WILKHAHN will not be liable for any Consequential Loss or Damage or other direct or indirect loss or damage.

### 19. Delivery Delays

In the event of delivery delays for which WILKHAHN has agreed to be liable, WILKHAHN will not be liable in any event for more than any amount of liquidated damages expressly agreed by WILKHAHN in writing. Any claim by the Customer must be made in writing, must describe all relevant facts in sufficient detail (including all relevant documents) and must not be delivered by the Customer later than one (1) month (30) days after the relevant event resulting in the alleged damage. No Goods may be returned without WILKHAHN's prior written consent. Goods which WILKHAHN consents to have returned will be shipped by Customer at Customer's risk and expense, freight prepaid, to WILKHAHN's manufacturing plant or such other location as WILKHAHN may designate.

### 20. Further Limitation of Warranty

20.1. WILKHAHN's warranty obligation is limited solely to the Customer who originally acquired the Goods. 20.2. High wear parts such as fabrics and other covering materials, metal framed stacking chairs and wood veneers are not covered by any warranty. 20.3. WILKHAHN does not warrant matching of color, grain or texture of wood or leather because of natural color variations which cannot be controlled. 20.4. Damage in transit or occasioned by accident, negligence, abuse or alteration is not included in this warranty. 20.5. WILKHAHN does not warrant the appearance, behavior or durability of the Customer's own material or the Customer's own leather applied to WILKHAHN Goods. 20.6. Upholster's material are not warranted against fading or irregularity in register. 20.7. This warranty applies only to WILKHAHN Goods and does not apply to attachments to WILKHAHN Goods. 20.8. Any warranty expressed or implied is invalid when WILKHAHN components are used in conjunction with any components not manufactured or sold by WILKHAHN. 20.9. Goods not installed or used in accordance with WILKHAHN installation and/or application guidelines are not included in this warranty. 20.10. The warranty against defects only encompasses defects existing at the time of delivery and defects in Goods manufactured by WILKHAHN. 20.11. WILKHAHN expressly points out that the surfaces of the Goods are subject to wear and tear by reason of ordinary usage. 20.12. WILKHAHN will be entitled to charge the Customer for the costs incurred in examining the Goods in the event of an unjustified claim of defects.

### 21. Changes and Cancellation

The Customer has no right to cancel or change, in whole or part, any orders without prior written consent by WILKHAHN, which consent WILKHAHN may or may not grant at its sole discretion. Changes may effect delivery dates. WILKHAHN reserves its right to charge Customer for expenses incurred as a result of changes or any cancellation requested by the Customer.

### 22. Terms of Payment

22.1. Unless otherwise agreed by WILKHAHN in writing, the Customer must make a non-refundable deposit equal to fifty percent (50%) of the total purchase price for the Goods and/or the Services ordered by the Customer, plus all fees, charges and expenses payable by the Customer, including with respect to transportation and installation, by Credit Card, Cheque or by EFT to WILKHAHN's following bank account in immediately available funds (the "Deposits") as follows:

**Bank Name:** HSBC Bank Australia Ltd

**BSB:** 342-011

**Account No:** 081874001

**Account Name:** Wilkhahn Wilkening & Hahne Pty Ltd or Wilkhahn Asia Pacific.

22.2. WILKHAHN will not be required to commence any work or order any supplies with respect to any order until the full amount of the Deposit has been received by WILKHAHN. 22.3. The Customer acknowledges and agrees that the Products are specially manufactured for the Customer and that the Deposit will be non-refundable in all cases. 22.4. The remaining fifty percent (50%) of the purchase price and all remaining fees, charges and expenses relating to any order must be paid by Credit Card, Cheque or EFT in immediately available funds to WILKHAHN's bank account as herein above designated within 30 Days of receipt of Goods. 22.5. The Customer is not entitled to make any deductions or set-offs from payments due to WILKHAHN. 22.6. On default on the part of the Customer to pay on time, the Customer must pay to WILKHAHN, subject to any further damages WILKHAHN may incur, a late charge of \$1,000 and interest on all outstanding sums at the rate of 5% above the prime lending rate (or, if lower, the highest legal permissible rate). 22.7. All payments should be effected such that payment is credited on the date that payment shall be due. All banking and other charges in connection with any payment must be paid by the Customer. 22.8. Payment in full is required prior to manufacture for all orders under \$5,000 (AUD) excl GST. 22.9. All prices and rates are quoted in AUD unless otherwise specified.

### 23. Copyrights and Designs

23.1. WILKHAHN will retain the ownership and copyright of all documentation delivered or shared with the Customer, including but not limited to all illustrations, drawings, sketches and collections, which are to be promptly returned to WILKHAHN on request and all copies which cannot be returned must be destroyed and on request the Customer must certify such destruction. 23.2. WILKHAHN also has all rights relating to forms, prototypes and technical solutions relating to the Goods. The Customer will not be entitled to make or have made Goods by reverse engineering or otherwise using WILKHAHN's Goods, or parts thereof, as a prototype or model. This prohibition includes the manufacture of such reverse engineered goods, whether independently or with or through an agent or a third party, as WILKHAHN as the direct or indirect participation in the distribution of such reverse engineered goods. Any violation of any part of this section will be a willful violation of copyright laws which may entitle WILKHAHN to collect statutory and other damages as WILKHAHN expenses, including attorneys' fees, from the Customer.

### 24. Indemnity

The Customer indemnifies and keeps WILKHAHN indemnified from and against all losses, expenses, claims and demands (including but not limited to legal fees and disbursements on a solicitor-client basis), incurred, suffered or made against WILKHAHN in connection with: 24.1. any conduct by WILKHAHN or its employees or agents; or 24.2. any representation, description, undertaking, warranty or promise in relation of the Goods and/or the Services, whether express or implied, other than as contained in these Terms, unless the Customer has specifically notified WILKHAHN in writing before the date of any agreement of such conduct, representation, description, undertaking, warranty or promise and the Customer's reliance on it.

### 25. Confidentiality

25.1. The Customer agrees that all specifications, data and other technical, financial or other non-public information furnished by WILKHAHN to the Customer constitute the property of WILKHAHN, are furnished solely for the purpose of WILKHAHN's performance hereunder, must be held in strict confidence by the Customer and may not be copied, made accessible to third parties or used without WILKHAHN's prior written consent. 25.2. The Customer must promptly return all such information and all copies thereof (in whatever format, including electronic, digital, hard copy or other medium) to WILKHAHN on WILKHAHN's request or, if such delivery is impossible, destroy such information and certify such destruction to WILKHAHN in writing. Such request may be made at any time prior to or after delivery of any Goods and/or the Services. 25.3. The obligations of the Customer under this clause will survive cancellation or completion of any order.

### 26. Notices

Any notices must be given in writing and will be deemed given: (a) on delivery, if by hand; or (b) after one (1) business day, if sent between destinations within Australia, or two (2) business days, if sent between Australia and any other jurisdiction, if sent by air courier (e.g. UPS, DHL, Qantas, TNT or FedEx). All notices to WILKHAHN must be given to Wilkhahn Asia Pacific, Unit 13 Riverwood Business Park, 92-100 Belmore Rd, Riverwood, NSW, 2210 attn: Managing Director, and the sales representative of WILKHAHN responsible for the Customer's account, and all notices to the Customer must be given to such address as indicated in the relevant order acknowledgment, or at such other address (or to such other person's attention), as have been specified by the Customer.

### 27. Miscellaneous

27.1. The invalidity or unenforceability of any one or more of the terms and conditions of these Terms will not affect the validity or enforceability of the remaining provisions. 27.2. The failure or omission of WILKHAHN to insist on strict performance of any term or condition of or to exercise any right under these Terms will not be deemed to be a modification of any term or condition or a waiver or relinquishment of the future performance of any such term or condition, nor will such failure or omission constitute a waiver of the right of third party to insist on future performance by the other party of any such term or condition. 27.3. These Terms may be amended from time to time by WILKHAHN on notice to the Customer, which will be effective within thirty (30) days from delivery.

### 28. Dispute Resolution

These Terms are governed by the laws of the State of New South Wales, Australia and each party submits to the courts of New South Wales. Each of WILKHAHN and the Customer hereby irrevocably consents agrees: (i) that any action, suit or other legal proceeding arising out of or relating to any transaction hereunder may be brought in any competent court within New South Wales, Australia (i) consents to the jurisdiction of such courts in any such suit, action or proceeding and waives any objection which it may have to the laying of venue of such suit, action or legal proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum.

### 29. Force Majeure

29.1. In the event of delay due to war, riots, labor or industrial disputes, energy or other raw material shortages, transportation problems, accidents, administrative measures or disruptions in WILKHAHN's or one of its affiliates or direct or indirect supplier's businesses or some other cause beyond WILKHAHN's control, the time for any delivery will be extended accordingly and WILKHAHN will not incur any liability whatsoever for any Consequential Loss or Damage which may be incurred by the Customer or any other person or entity. 29.2. On the occurrence of a force majeure event, WILKHAHN may, at its sole discretion, elect, by a written notice to the Customer, to cancel the order and determine not to ship some or all of the Goods and/or not provide the Services.

### 30. Limitation of liability

Notwithstanding any other provision of these Terms to the contrary, to the maximum extent permitted by law, WILKHAHN's total aggregate liability to the Customer or otherwise whether arising out of or in connection with these Terms (including the performance and non-performance of the supply and/or services), under statute, in tort (for negligence or otherwise) or any other basis in law or equity is limited to an amount equal to the value of the order placed by the Customer pursuant to this Terms.

Last revised: 7 September 2018