

Divine Kitchen Diva PTY LTD

ABN 53-153-470-261

Terms and Condition of Sale

Definitions

1. In these terms and conditions agreement means any agreement or contract entered into for the provision of goods and/or services by Divine Kitchen Diva to the customer.
2. Divine Kitchen Diva means Divine Kitchen Diva Pty Ltd of Shop 4/450 The Esplanade, Warners Bay NSW 2282. The customer means any person, firm or corporation requiring goods or services from Divine Kitchen Diva. Goods means goods supplied from Divine Kitchen Diva to the customer or purchaser. GST means the goods and services tax as defined in a New Tax System (Goods & Services Tax) Act 1999 as amended. Terms means these terms and condition of sale.

Basis of agreement

3. No amendment, alteration, waiver or cancelation of any of these terms is binding on Divine Kitchen Diva unless confirmed by Divine Kitchen Diva in writing. The customer acknowledges that no employee or agent of Divine Kitchen Diva is authorised to make any representation, warranty or promise in relation to the goods sold pursuant to this agreement or these terms of sale, other than as contained in these terms or as confirmed in writing by Divine Kitchen Diva.
4. Any written quotation provided by Divine Kitchen Diva to any of its customers concerning the supply of goods and services is:
 - i) Valid for thirty (30) days
 - ii) An invitation to treat only
 - iii) Subject to the customer offering to enter into an agreement in accordance with these terms.
5. Divine kitchen diva has no obligation to accept any offer from any customer and may by notice in writing vary or amend these terms at any time, provided that such variation or amendment would only apply to offers accepted by the customer after the date of such notice of variation.
6. All prices quoted in the written quotation or verbally to the customer for the supply of goods include GST and other taxes and duties payable in respect of the goods unless stated otherwise.

Payment.

7. Unless Divine Kitchen Diva shall otherwise agree, payment for goods and services must be made in full prior to delivery of the goods or provision of any services. Payments by cheques are not made until the payments under the proceeds of the cheques are cleared.
8. Payment terms may be revoked or amended at the sole discretion of Divine Kitchen Diva by Divine Kitchen Diva giving written notice to the customer.

Passing of Property

9. Until the full payment in cleared funds is received by Divine Kitchen Diva for all goods to be supplied by Divine Kitchen Diva to the customer as well as any other amount which may be owing to Divine Kitchen Diva by the customer:
 - (i) title and property in all goods remains vested in Divine Kitchen Diva and do not pass to the customer and in the event that goods have been delivered by Divine Kitchen Diva to the customer and no title to the said goods shall pass to the customer who shall hold the said goods as fiduciary bailee and agent for Divine Kitchen Diva;

- (ii) Divine Kitchen Diva may without notice enter any premises where it suspects any such goods may be and remove them, notwithstanding that they have been attached to other goods, not the property of Divine Kitchen Diva and the customer irrevocably licences Divine Kitchen Diva to enter such premises and indemnifies Divine Kitchen Diva against all claims, actions, suits and demands brought by any party arising out of such action

10. Risk and Insurance

Any risk in the goods and any responsibility to cover the goods by insurance in respect of theft, damage or otherwise passes to the customer upon the goods being dispatched from the premises of Divine Kitchen Diva or from the warehouse of Divine Kitchen Diva or other place where the goods may be situated and the customer shall assume all risk and liability for loss, damage or injury to persons or to properties of the customer or to third parties arising out of delivery of the goods or their use and possession.

Acknowledgments by the Customer

11. The customer acknowledges that:

- (i) it has not relied on any advice, recommendation, information or assistance provided Divine Kitchen Diva or any employee or agent of Divine Kitchen Diva in relation to the sale of goods and/or services or the use or application of such goods or services;
- (ii) the customer has the sole responsibility to satisfy itself that the goods or services are suitable for the use of the customer or any contemplated use by the customer whether or not such use is known to Divine Kitchen Diva; and
- (iii) any description of goods provided in a quotation or notice is given by way of identification only and the use of such description does not constitute a contract of sale by description;
- (iv) the customer must provide to Divine Kitchen Diva particulars of its Australian business number, its order number and the quantity and model number, its delivery address and insurance details when Divine Kitchen Diva requests it.
- (v) once a deposit has been paid, goods may be held for a maximum of 8 weeks only from date of order at the Divine Kitchen Diva Warehouse. Should any order(s) be required to be held longer by Divine Kitchen Diva, a 5% charge will be incurred based on the purchase price of the order per week until the goods are ready to be picked up or dispatched.

Delivery

- 12. Divine Kitchen Diva shall provide to the customer the estimated dates of delivery and will use its best endeavours to maintain such estimates, but shall not be liable to the customer in the event that such estimates cannot be maintained.
- 13. The obligations of Divine Kitchen Diva as to delivery shall extend to the delivery of goods to the kerbside or street level only. In the event that there are additional delivery requirements the customer shall notify Divine Kitchen Diva at a reasonable time prior to any such delivery and any additional costs thereby incurred shall be to the customer's expense.

Inspection and Return of Goods

14. Unless the customer has inspected the goods and given written notice to Divine Kitchen Diva within two (2) business days of delivery that the goods do not comply with the relevant specifications or descriptions, the goods shall be deemed to have been accepted in good order and condition and no claim for credit, non-delivery or repair of goods shall be accepted unless notification is made within two (2) days in writing to Divine Kitchen Diva.
15. In the event that Divine Kitchen Diva otherwise accepts the return of goods for credit, such credit will endure for a maximum of twelve (12) months from the date of first sale to the customer of the returned goods and any such return will be liable to a re-stocking fee being not less than 25% of the invoice value of the goods.
16. In the event that Divine Kitchen Diva accepts the return of goods for credit, the customer remains liable for the costs of re-delivering the goods to the manufacturer and shall be liable to pay Divine Kitchen Diva such costs.
17. Nothing in these terms shall oblige Divine Kitchen Diva to accept returns of goods for credit if such goods were damaged during their assembly or installation and nothing shall oblige Divine Kitchen Diva to pay any of the costs of assembly or installation or make it responsible for any losses arising from defective assembly or installation and nothing in this clause shall affect the construction of Clause 19 of these terms.

Cancellation of Orders

18. No order may be cancelled, modified or deferred without the prior written consent of Divine Kitchen Diva and if Divine Kitchen Diva shall consent to any cancellation, modification or deferral the customer shall reimburse it for all losses including loss of profits and shall be liable to pay a cancellation and re-stocking fee being not less than 25% of the invoice value of the goods.

The limitation of liability of Divine Kitchen Diva

19. Nothing in these terms and conditions shall affect or shall be deemed to affect any right, entitlement or other remedy conferred upon the customer by the provisions of the Trade Practices Act 1974 or other State or Territory Legislation as amended and nothing in these terms shall be interpreted as excluding, restricting or having the effect of excluding, restricting or modifying the application of any of the Trade Practices Act or any State or Territory legislation applicable to the sale of goods or the supply of services which cannot be excluded, restricted or modified provided that Divine Kitchen Diva's liability under any aforesaid provisions is limited, at its option to:
 - (i) replacement or repair of the goods or the supply of equivalent goods or payment of the costs of replacing or repairing the goods or requiring equivalent goods; or
 - (ii) refund of the purchase price;

and Divine Kitchen Diva will not be liable in any case for any consequential or other direct or indirect loss or damage arising by breach of these terms.

Warranties

20. Subject to these terms:
 - (i) Divine Kitchen Diva at its discretion may repair or replace any goods to remedy any failure due to faulty workmanship or materials, provided that such goods may have acceptable variance (as determined by Divine Kitchen Diva).

- (ii) Divine Kitchen Diva is not obliged to repair or replace goods or remedy any failure due to faulty workmanship or materials unless the customer supplies it with detailed information on the warranty form provided by Divine Kitchen Diva as to the defects in the goods. Divine Kitchen Diva is not liable for any collateral damage caused to the customer for any collateral damage accruing to the customer for any faulty work or materials supplied;
- (ii) the customer acknowledges that any warranty given in respect of plant and equipment is the warranty of the manufacturer of the goods and that Divine Kitchen Diva is not responsible for such warranties and gives no warranty of its own in respect of the said goods;
- (iv) the customer acknowledges the provisions of any Act or law, (including but not limited to the Trade Practices Act 1974) implying terms and conditions and warranties or any other terms and conditions of warranties which might otherwise apply to or arise out of the agreement between Divine Kitchen Diva and the customer in relation to the goods, are hereby expressly negated and excluded to the full extent permitted by law;
- (v) the customer further acknowledges that the benefit of this warranty is subject to the customer not being in breach of these terms and conditions or of any additional agreement which is in place;
- (vi) Divine Kitchen Diva, or its representatives, being given access to the goods for the purpose of inspection and rectification of any claim;
- (vii) the customer not having repaired or undertaken to repair the goods without the prior authorisation of Divine Kitchen Diva nor altering the goods in any way;
- (viii) the customer having used and maintained the goods in accordance with the manufacturer's recommendations, their failure not being the result of incorrect or poor maintenance by the customer;
- (ix) the customer acknowledging that it has not relied upon any advice given by Divine Kitchen Diva, its agents, servants, representatives or employees in relation to the suitability for any purposes of the goods

Miscellaneous

- 21. This agreement shall be construed in accordance with the laws of the State of New South Wales and the parties agree to the non-exclusive jurisdiction of the Courts of the State of New South Wales and of Courts entitled to hear appeals from these Courts.
- 22. Failure by Divine Kitchen Diva to enforce any of these terms shall not be construed as a waiver of any of Divine Kitchen Diva's rights.
- 23. If any of the terms of this agreement shall be unenforceable such terms shall be read down so as to make it enforceable or if it cannot be read down the condition shall be severed from these terms without affecting the enforceability of the remaining terms and conditions.
- 24. Any notices given by either party to this agreement may be delivered personally or sent by facsimile or pre-paid mail to the last known address of the addressee and shall be deemed to be received upon posting or receipt of facsimile transmission or email.

Waiver and Assignment

25. No failure by Divine Kitchen Diva to insist on strict performance of any of any terms in these terms is a waiver of any right or remedy which Divine Kitchen Diva may have and is not a waiver of any subsequent breach or default by the customer.
26. Neither the agreement nor any rights arising under the agreement may be assigned by the customer without the prior written consent of Divine Kitchen Diva which it may give or refuse at its absolute discretion.