

- 1 Definitions
- 1.1 "ICS" means Lost for Space Pty Ltd T/A Innovative Cabinet Solutions its successors and assigns or any person acting on behalf of and with the authority of Lost for Space Pty Ltd T/A Innovative Cabinet Solutions.
- 1.2 "Client" means the person/s requesting ICS to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by ICS in the course of it conducting, or supplying to the Client, any Services.
- 1.4 "Services" means all Services supplied by ICS to the Client at the Client's request from time to time.
- 1.5 "Price" means the price payable for the Services as agreed between ICS and the Client in accordance with clause 4 of this contract.
- 2 Acceptance
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by ICS.
- 2.2 These terms and conditions may only be amended with ICS's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and ICS.
- 3 Change in Control
- 3.1 The Client shall give ICS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by ICS as a result of the Client's failure to comply with this clause.
- 4 Price and Payment
- 4.1 At ICS's sole discretion the Price shall be either:
 - (a) the Price as at the date of delivery of the Services according to ICS's current price list; or
 - (b) ICS's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 ICS reserves the right to change the Price if a variation to ICS's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works or as a result of any increase to ICS's in the cost of materials and labour) will be charged for on the basis of ICS's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At ICS's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by ICS, which may be:
 - (a) on delivery of the Services;
 - (b) before delivery of the Services;
 - (c) by way of instalments/progress payments in accordance with ICS's payment schedule;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by ICS.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and ICS.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to ICS an amount equal to any GST ICS must pay for any supply by ICS under this or any other agreement for providing ICS's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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.
- 5 Retentions
- 5.1 At ICS's sole discretion payment of the Price shall be subject to retention by the Client of an amount (hereafter called the "retention money"), being equal to a percentage of the Price or as agreed between the parties. The Client shall hold the retention money for the agreed period following completion of the works during which time all works are to be completed and/or all defects are to be remedied.
- 6 Delivery of Services
- 6.1 At ICS's sole discretion delivery of the Services shall take place when:
 - (a) the Services are supplied to the Client at ICS's address; or
 - (b) the Services are supplied to the Client at the Client's nominated address.
- 6.2 ICS may delay the completion date of the Services (by giving the Client written notice) where they experience a delay in materials and/or hardware in the preparation of the Incidental Items for the Client.
- 6.3 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.4 ICS may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by ICS for delivery of the Services is an estimate only and ICS will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that ICS is unable to supply the Services as agreed solely due to any action or inaction of the Client then ICS shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 7 Risk
- 7.1 Irrespective of whether ICS retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client. The Client must insure all Incidental Items on or before delivery.
- 7.2 ICS reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 7.1.
- 7.3 Marble and Granite being porous products, therefore, all products supplied by ICS are sealed for protection as per the standard required by ICS's suppliers. However, oil and other acidic substances are prone to causing discolouration and staining if left on surfaces for some time. The Client agrees to indemnify ICS against any damage occurring after delivery and installation.
- 7.4 The Client acknowledges and accepts that ICS shall not be held liable for any damages to the materials once they have arrived onsite, including but not limited to, scratches, dents, marks or other damage resulting from third parties that may be working onsite.
- 8 Dimensions, Plans and Specifications
- 8.1 All customary building industry tolerances shall apply to the dimensions and measurements of the goods unless ICS and the Client agree otherwise in writing.
- 8.2 ICS shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.
- 8.3 ICS shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. Should the Client requested a change prior to production, all change requests must be in writing and ICS shall be entitled to charge for such variation as per clause 4.2.
- 8.4 If the giving of an estimate or quotation for the supply of goods involves ICS estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of ICS's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.
- 8.5 Should the Client require any changes to ICS's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
- 8.6 Where the Client is to supply ICS with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. ICS shall not be liable whatsoever for any errors in the goods that are caused by incorrect or inaccurate data being supplied by the Client.
- 9 Title
- 9.1 ICS and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
 - (a) the Client has paid ICS all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to ICS in respect of all contracts between ICS and the Client.
- 9.2 Receipt by ICS 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 and until then ICS's ownership or rights in respect of the Incidental Items shall continue.
- 9.3 It is further agreed that:
 - (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to ICS immediately upon request by ICS;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for ICS and must pay to ICS the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for ICS and must pay or deliver the proceeds to ICS on demand.
 - (d) the Client should not convert or process the Incidental Items or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of ICS and must dispose of or return the resulting product to ICS as ICS so directs.
 - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of ICS.
- 10 Personal Property Securities Act 2009 ("PPSA")
- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Client 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 Incidental Items that have previously been supplied and that will be supplied in the future by ICS to the Client.
- 10.3 The Client undertakes to:
 - (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 ICS may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, ICS 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 Incidental Items charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of ICS;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items in favour of a third party without the prior written consent of ICS.
- 10.4 ICS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by ICS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by ICS under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11 Security and Charge

- 11.1 In consideration of ICS agreeing to supply Services, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies ICS from and against all ICS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ICS's rights under this clause.
- 11.3 The Client irrevocably appoints ICS and each director of ICS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.
- 12 Defects, Warranties and the Competition and Consumer Act 2010 (CCA)
- 12.1 The Client must inspect ICS's Services on completion of the Services and must within seven (7) days notify ICS in writing of any evident defect in the Services or Incidental Items provided (including ICS's workmanship) or of any other failure by ICS to comply with the description of, or quote for, the Services which ICS was to supply. The Client must notify any other alleged defect in the Incidental Items/Services as soon as reasonably possible after any such defect becomes evident provided such damage is not caused by any other third party. Upon such notification the Client must allow ICS to inspect the Incidental Items or to review the Services provided.
- 12.2 The Client must notify any other alleged defect in ICS's Services or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow ICS to review the Services or Incidental Items that were provided.
- 12.3 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).
- 12.4 ICS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, ICS makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. ICS's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.6 If the Client is a consumer within the meaning of the CCA, ICS's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.7 If ICS is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then ICS may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Incidental Items which have been provided to the Client which were not defective.
- 12.8 If the Client is not a consumer within the meaning of the CCA, ICS's liability for any defective Services or Incidental Items is:
- limited to the value of any express warranty or warranty card provided to the Client by ICS at ICS's sole discretion;
 - limited to any warranty to which ICS is entitled, if ICS did not manufacture the Incidental Items which may be;
 - for glass defects either five percent (5%) or as per glazier standards and warranties;
 - for hardware, gloss board, general materials and paint being five percent (5%).
 - otherwise negated absolutely.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, ICS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Client failing to properly maintain or store any Incidental Items;
 - the Client using the Incidental Items for any purpose other than that for which they were designed;
 - the Client continuing to use any Incidental Item after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - interference with the Services by the Client or any third party without ICS's prior approval;
 - the Client failing to follow any instructions or guidelines provided by ICS;
 - the Client failing to heed recommendations from ICS regarding the inappropriate use of unsuitable products and the Client then proceeds to use those products;
 - fair wear and tear, any accident, or act of God.
- 12.1 The Client acknowledges that ICS is only responsible for materials that are supplied by ICS and does not at any stage accept any liability in respect of goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify ICS against any loss or damage to the materials, or caused by the materials, or any part thereof howsoever arising.
- 13 Intellectual Property
- 13.1 Where ICS has designed, drawn or developed Incidental Items for the Client, then the copyright in any Incidental Items shall remain the property of ICS.
- 13.2 The Client warrants that all designs, specifications or instructions given to ICS will not cause ICS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify ICS against any action taken by a third party against ICS in respect of any such infringement.
- 13.3 The Client agrees that ICS may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items (including but not limited to, any documents, designs, digital or photographic imaging, drawings, or plans) which ICS has created for the Client.
- 14 Default and Consequences of Default
- 14.1 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 ICS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes ICS any money the Client shall indemnify ICS from and against all costs and disbursements incurred by ICS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ICS's contract default fees, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies ICS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions ICS may suspend or terminate the supply of Services to the Client. ICS will not be liable to the Client for any loss or damage the Client suffers because ICS has exercised its rights under this clause.
- 14.4 Without prejudice to ICS's other remedies at law ICS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to ICS shall, whether or not due for payment, become immediately payable if:
- any money payable to ICS becomes overdue, or in ICS's opinion the Client will be unable to make a payment when it falls due;
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 15 Cancellation
- 15.1 ICS may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice ICS shall repay to the Client any money paid by the Client for the Services. ICS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by ICS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16 Privacy Act 1988
- 16.1 The Client agrees for ICS to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by ICS.
- 16.2 The Client agrees that ICS may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by the Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 16.3 The Client consents to ICS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Client agrees that personal credit information provided may be used and retained by ICS for the following purposes (and for other purposes as shall be agreed between the Client and ICS or required by law from time to time):
- the provision of Services; and/or
 - the marketing of Services by ICS, its agents or distributors; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 16.5 ICS may give information about the Client to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Client;
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 16.6 The information given to the credit reporting agency may include:
- personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - details concerning the Client's application for credit or commercial credit and the amount requested;
 - advice that ICS is a current credit provider to the Client;
 - advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of ICS, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - that credit provided to the Client by ICS has been paid or otherwise discharged.
- 17 General
- 17.1 The failure by ICS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ICS'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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which ICS has its principal place of business, and are subject to the jurisdiction of the Sandgate courts in Queensland.
- 17.3 Subject to clause 12 ICS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by ICS of these terms and conditions (alternatively ICS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 17.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by ICS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5 ICS may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.6 The Client agrees that ICS may amend these terms and conditions at any time. If ICS makes a change to these terms and conditions, then that change will take effect from the date on which ICS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for ICS to provide Services to the Client.
- 17.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.