

## KOIKAA CURTAINS & BLINDS - TERMS AND CONDITIONS

### 1. DEFINITIONS

1.1. In this Contract, unless the context otherwise requires capitalised terms have the meaning set out below:

- (a) **"Customer"** means the person/s, entities (including but not limited to, partnerships and/or a trust and where applicable shall include the Customer's executors, administrators, successors and permitted assigns) or any person acting on behalf of and with the authority of the Customer requesting KOIKAA to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation.
- (b) **"Goods"** means any Goods or Services (including any documentation, advice, consultancy, or recommendations and where these terms and conditions give allowance to, the terms 'Goods' or 'Services' may be identified and substitutable for the other) provided to the Customer as specified in any Contract, quotation, proposal, order, or any other documentation.
- (c) **"Price"** means the Price due under this Contract for the supply of Goods and/or Services, as agreed between KOIKAA and the Customer and (if applicable) shall include any Goods and Services Tax ("**GST**") payable, in accordance with clause 2.
- (d) **"KOIKAA"** means Kim Phung Kiwimart Limited T/A Koikaa Curtains & Blinds, its successors, and assigns.

### 2. PAYMENT TERMS

- 2.1. The Price will be payable by the Customer on the date determined by KOIKAA, which failing any notice to the contrary, the due date will be 7 days following the date of any invoice/s furnished by KOIKAA to the Customer.
- 2.2. Payment is accepted by either electronic bank transfer, credit card (bank-imposed charges may apply per transaction) or by any other method as agreed to between the Customer and KOIKAA.
- 2.3. Unless otherwise stated, the Price will always be inclusive of GST. In addition, the Customer must pay any other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

### 3. DELIVERY

- 3.1. Delivery ("**Delivery**") and/or ("**Return**") of the Goods is understood to occur when:
  - (a) The designated courier company records a signed receipt of pick-up of the Goods at KOIKAA's address; or
  - (b) The designated courier company records a signed receipt of pick-up from the Customer and return of the Goods to KOIKAA' address.
- 3.2. Any Delivery costs associated with the supply of Goods or Services shall be either included or in addition to the Price and as such will be stated on the invoice issued to the Customer by KOIKAA. Additional Charges may apply where Delivery or Return is subject to a rural area pick-up.
- 3.3. Delivery dates for the supply of the Goods and/or Services will only always be an estimate, as delays may occur beyond KOIKAA's control i.e., Third Party Sellers, Force Majeure, etc

(including Government imposed lockdowns effecting the KOIKAA's suppliers and employees, if a workplace is closed due to all individuals being required to, self-isolate). The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. KOIKAA will **not be liable for any loss or damage incurred by the Customer because of Delivery being late**, however, KOIKAA will at every opportunity liaise with the Customer to ensure Delivery does take place, as soon as reasonably possible.

### 4. DEFECTS GOODS/SERVICES & RETURNS

4.1. The Customer agrees to examine the Goods (Services on completion) on Delivery and shall satisfy itself that they comply with the quote, description, purchase order or any other document applicable to this Contract, that the Goods are of merchantable quality, fit for purpose and in a useable condition.

4.2. If the Customer discovers a defect in the quality, or a shortage in the quantity of the Goods, or a failure to comply with KOIKAA's quote and these terms and conditions, they must immediately notify KOIKAA of that defect. If no notice is received by KOIKAA within 14 Business Days from the time of delivery, then the Goods and Services shall be presumed to be free from any defect or damage and thereby KOIKAA shall have no liability or responsibility for any indirect or consequential injury, loss, damage, or expense whatsoever and howsoever that arises.

4.3. For defective Goods or Services, which KOIKAA has agreed in writing that the Customer is entitled to reject, KOIKAA's liability (subject to clause 9.3 and the Consumer Guarantee's Act 1993, where applicable) is limited to either (at KOIKAA's discretion) replacing the Goods, repairing the Goods, or rectifying the Services.

4.4. **Returned Goods will only be accepted by KOIKAA, provided that:**

- (a) The Customer has complied with the provisions of clause 4.1;
- (b) KOIKAA has **confirmed in writing**, that they are willing to accept the return of the Goods; and
- (c) The Goods for return are done so (at the Customer's expense) within 30 Business Days of the Delivery date, or any other date as agreed with KOIKAA; and
- (d) Returned Goods are still in good condition (as reasonable possible) together with all the original packaging materials, brochures, and instructions.

4.5. All Goods made to the Customer's designs, plans or specifications or any Goods that are not deemed stock standard items by KOIKAA will not under any circumstances be acceptable for credit or return, unless the Customer is entitled to reject under clause 4.1.

4.6. **Warranties:** If a warranty is applicable, all conditions pertaining to said warranty over the Goods supplied by KOIKAA shall be contained in the Warranty Documentation that will be supplied with the Goods at the point of Delivery and/or installation. **KOIKAA recommends that the Customer familiarises themselves with this information, prior to making any claim against a warranty offered on the Goods.**

NOTE: a larger print version of these Terms and Conditions is available upon request from KOIKAA.

## 5. TITLE

- 5.1. Title in the Goods and/or Services pass to the Customer when payment for those Goods and/or Services (together with any additional interest or charges as set out in these Terms of Trade) have been made in full by way of cleared funds and the Customer's obligations have been fulfilled.

## 6. DEFAULT

- 6.1. In any event, KOIKAA reserves the right to charge the Customer interest in respect of the late payment of any sums due under this Agreement, calculated and cumulated monthly, at the rate of five percent (5%) per year above the cash rate from time to time of the Reserve Bank of New Zealand, from the due date until receipt of payment.
- 6.2. If the Customer owes KOIKAA any money the Customer shall indemnify KOIKAA from and against all costs and disbursements incurred by KOIKAA in recovering the debt, such as, any legal costs on a solicitor and own client basis or internal administration fee (which may include bank dishonour charges that KOIKAA has incurred from their banking institute for dishonours or chargebacks) or any collection fees if a debt is passed to a recognised Debt Collection Recovery Agency.

## 7. CANCELLATION

### 7.1. By KOIKAA:

- (a) Upon written notice, giving no less than 7 Business Days any time before the Services are carried out; and
- (b) KOIKAA will repay to the Customer any money paid by the Customer for the Goods or Services, less any amounts owing to KOIKAA for any Goods purchased on the Customer's behalf where credits or refunds cannot be obtained from KOIKAA's third-party suppliers; and
- (c) KOIKAA shall not be liable for any loss or damage whatsoever arising from such cancellation.

### 7.2. By the Customer:

- (a) Upon written notice, giving no less than 7 Business Days, prior to the commencement of the manufacture of the Goods. The Customer remains liable for any costs incurred by KOIKAA (including, but not limited to, loss of profit) up to the time of cancellation; or
- (b) Where the Customer cancels an order that has commenced:
  - (i) The initial notification may be by telephone but must be confirmed in writing or email within 7 Business Days; and
  - (ii) The Customer shall be invoiced for all work completed up until the date of cancellation. Any deposit paid prior to the commencement of the Services will be forfeited in lieu of monies due, however, the Customer remains liable for any monies due over and above any deposit paid; or
  - (iii) At KOIKAA's discretion, where failure of clause 7.2(b)(i) occurs, the Customer may be required to pay the full quoted Price.
- (c) Cancellation is **not accepted** by KOIKAA if the new Goods have been used, if the Customer later changes

their mind, unless the cancellation is subject to the Consumer Guarantees Act 1993.

## 8. PRIVACY POLICY

- 8.1. The Customer authorises KOIKAA to collect, retain and use personal information about the Customer for the following purposes:
- (a) Assessing the Customer's creditworthiness;
  - (b) Administering the Customer orders;
  - (c) Receiving information from one or more credit reference agencies, concerning the credit history of the Customer;
  - (d) Disclosing credit-related information to, and using the credit services of, one or more credit reference agencies, on a continuing basis at any time and entirely at its discretion concerning the Customer's credit worthiness.
- 8.2. For the avoidance of doubt, all authorities given above are continuing authorities, to apply throughout the duration of the term of KOIKAA and Customer's trading relationship.
- 8.3. The Customer, if an individual, has a right of access to Personal Information about the Customer held by KOIKAA and may request correction of the information.
- 8.4. For the purposes of this clause 8, personal information has the meaning given to it in the Privacy Act 2020.

## 9. JURISDICTION AND INDEMNITY

- 9.1. If any term or provision of this Agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms and conditions.
- 9.2. The legality, construction and performance of this Agreement shall be governed by the laws of New Zealand. The Customer agrees that any dispute arising from the Agreement between the two parties that cannot reasonably be resolved by mediation shall then be litigated only, by the jurisdiction of the Auckland Courts of New Zealand.
- 9.3. KOIKAA shall be under no liability whatsoever to the Customer for any expenses, claims, costs (including but not limited to, legal fees and commissions), damages suffered or incurred by KOIKAA or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by KOIKAA of these Terms and Conditions, caused by any failure by the Customer to comply with their obligations under this Contract, or that arise from any claim relating to the Goods or Services by any person that the Customer authorises to use the Goods, (alternatively KOIKAA liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Services supplied under this Contract).

## 10. Other terms

- 10.1. This quote is valid for 30 days after the date of the offer. After this, it is subject to any price changes or labor costs that may

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occur. All promotional specials offered with curtains or blinds are valid for the promotion period and any offer made by Koikaa will be valid until the last day of the promotion. Koikaa employees offer advice freely, but the final selection of fabrics and treatment remains the sole responsibility of the customer. Koikaa is not responsible for the dimensional stability of fabric due to humidity and temperature fluctuations. Fabrics can fade within a very short period of time if adequate sun protection is

not provided. Koikaa accepts no responsibility for excessive fading where there is no protection from direct sunlight. The goods remain the property of Koikaa until payment in full is received.

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