

## AUSTRALIA

### King Contract Trade & Commercial Terms and Conditions

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#### 1 INTRODUCTION

- 1.1 King Living operates a Trade & Commercial business division which caters to the needs of designers, architects, developers, specifiers and other approved trade customers (**Trade Clients**). King Living may, in its discretion, offer certain discounts to Trade Clients who purchase goods from King Living for residential and commercial projects in Australia. If you are a Trade Client then your receipt of a discount from King Living is at the discretion of King Living and your purchase of those discounted goods is subject to these terms and conditions of sale (**Terms**).
- 1.2 At any time we may request you to provide us with evidence (specified by us) that you are presently qualified to be a Trade Client, and you agree to provide us with that evidence. King Living has the right terminate these Terms if we are not satisfied that you qualify to be a Trade Client.
- 1.3 As a valued Trade Client, you should understand that these Terms apply to all products which you purchase directly from King Living (**Products**) in your capacity as a Trade Client. Please feel free to speak with any one of our showroom consultants if you have any further questions.
- 1.4 **King Living, we, us** (and similar expressions) refers to King Furniture Australia Pty Limited (ABN 79 002 757 333)
- 1.5 **Trade Clients, you, your** (and similar expressions) refers to a person (including a corporate entity) which has been approved by King Living to open a Trade and Commercial Account, and to purchase Products subject to these Terms and Conditions.
- 1.6 These Terms govern the agreement between King Living and you, the Trade Client to the exclusion of any other terms that you or an End-Customer (as later defined) seek to impose or incorporate. To the extent permitted by law, these Terms also exclude any terms which are implied by law, trade custom, practice or course of dealing.

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#### 2 ROLE OF TRADE CLIENT

- 2.1 King Living relies upon and assumes that:
  - (a) the role of the Trade Client is to act as the primary contracting entity in all dealings with King Furniture; and
  - (b) if the Trade Client is purchasing Products from King Living for their own client (called the **End-Customer**), the End-Customer is not a customer of King Living with respect to a Product which is purchased by the Trade Client; and
  - (c) if the Trade Client is purchasing Products from King Living for the End-Customer, the Trade Client, in purchasing Products from King Living, is

not acting as the agent of the End-Customer.

- 2.2 The Trade Client must be responsible for all aspects of the order placed by it with King Living for the purchase of Products including (but not limited to):
- (a) all communications with King Living as part of the purchase of the Products process;
  - (b) choice of design and any cover/colour option;
  - (c) size of furniture and ensuring this will fit in the intended space and be fit for purpose;
  - (d) arranging for King Living to receive payment for the purchase of Products; and
  - (e) arranging delivery and/or installation (if applicable) of the Product to you or, at your request, to your End-Customer.
- 2.3 Where a Trade Client places an order with King Living for the purchase of Products for their End-Customer, King Living will not provide any quotation, price, invoice or other information regarding the purchase to their End-Customer. You agree that King Living will liaise exclusively with you, the Trade Client, in relation to the purchase of Products.
- 2.4 Where a Trade Client places an order with King Living for the purchase of Products for their End-Customer, to the fullest extent permitted by law, from the time you, the Trade Client, first make contact with us in relation to a purchase of Products until at least three months following the delivery of Products, you agree to:
- (a) use all reasonable efforts to ensure that no contact is made to King Living directly by your End-Customer or any other third party in relation to the order for Products, delivery, payment of the purchase price for the Products, or any other customer service issue including any claim under a warranty offered by King Living or a consumer guarantee under the Australian Consumer Law; and
  - (b) be solely and exclusively responsible (as between you and your End-Customer or any third party) for communicating with King Living in relation to the order for Products, delivery, payment of the purchase price for the Products, or any other customer service issue including any claim under a warranty offered by King Living or a consumer guarantee under the Australian Consumer Law.
- 2.5 Where a Trade Client places an order with King Living for the purchase of Products for their End-Customer, and if you, the Trade Client, provide details to your End-Customer for them to pay for the Products that you have selected for the End-Customer directly, the End-Customer may have the benefit of the Trade Client's trade discount provided that you have requested and obtained an Authorisation Form (which may be issued by King Living at its discretion) for that End-Customer. In that case the End-Customer will be acting as the agent of the Trade Client and the Trade Client, (not the End-Customer) will remain as the customer of King Living. The Trade Client must notify the End-Customer of these terms and conditions, particularly with respect to pricing, the trade discount and product selections. The Trade Client is, and remains, solely responsible at all

times with respect to the Product selection, including all components of the Products, and compliance with these Terms. King Living will rely upon its communications with the Trade Client, to the exclusion of communications with the End-Customer. If there is a dispute between King Living and the End-Customer about these circumstances, you agree at all times to indemnify King Living from all loss, liability, including any special, indirect or consequential loss or damage of any nature whatsoever caused to King Living arising in connection with that dispute.

- 2.6 In performing your obligations under these Terms, you agree you shall comply with all applicable laws, statutes, regulations and codes from time to time in force.
- 2.7 The Products are intended for use only in Australia. King Living does not warrant that the Products will comply with the laws, regulations or standards outside Australia. In the event that you export any Products outside of Australia you are solely responsible for compliance with laws, regulations or standards and you agree to indemnify King Living from all loss, liability, including any special, indirect or consequential loss or damage of any nature whatsoever caused to King Living arising in connection with such export.

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### **3 QUOTATION**

- 3.1 A quotation provided by us will be valid for 60 days from the date of issue or such other period stated therein, whichever is earlier. Unless otherwise stated in writing, the quotation price will be for supply in: Australia and in Australian Dollars (AUD) based on Ex Works King Living's depot in the applicable Australian capital city.
- 3.2 The Quotation excludes delivery, installation, insurance in transit, packaging, crating, handling charges, agents' charges and any other charges, which are payable in addition to the quotation where this is required.
- 3.3 Any alteration to the specifications of an item in a quotation is subject to a price review.
- 3.4 If you elect to have the Products delivered and installed by us, the delivery and installation costs will be quoted separately prior to delivery.
- 3.5 King Living reserves the right to accept or reject in its absolute discretion any order, or part of an order, which it may receive from you.

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### **4 PRICING AND TRADE DISCOUNT**

- 4.1 All prices are, for supply in Australia, in Australian Dollars (AUD) based on Ex Works King Living's depot in the applicable Australian capital city.
- 4.2 'Starting from' prices are based on the smallest dimensions and/or most basic model and finish available.
- 4.3 Trade discounts are not available in conjunction with any clearance items.
  - (a) If the sale of Products is deemed to be a small business contract under section 23 of Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* (**ACL**) then the price of a Product (if previously quoted) and trade discount

may be changed by prior mutual agreement between the parties;

- (b) If the sale of Products does not fall within the scope of this section 23 of Schedule 2 of the of the ACL, then King Living may in its sole discretion, at any time without notice:
  - (i) change the price;
  - (ii) change the trade discount rate;
  - (iii) discontinue a Trade Client's eligibility to receive a trade discount;  
or
  - (iv) refuse to honour a trade discount.

4.4 If we discover an error in the price or payment of any Products which you have ordered, we will inform you as soon as possible and give you the option of reconfirming your order at the correct price or cancelling it. If we are unable to contact you, we will treat the order as cancelled. If the order is cancelled because we have discovered an error in the price and you have:

- (a) paid a deposit for the Products; or
- (b) paid the full price for the Products,

we will provide you with a full refund of the amount of the price that you have paid.

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## **5 TAXATION**

5.1 Unless otherwise stated, all recommended trade prices quoted include Goods and Services Tax (**GST**), which is listed separately on the tax invoice. You are responsible for payment of all taxes (including GST), duties, excises, levies, and charges associated with supplying the Products.

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## **6 PAYMENT**

6.1 Full and cleared payment for Products must be made by the Trade Client at the time of placing their order, except in the event of "made to order" Products which require a deposit. We will notify you of the deposit required before we process the order. Production for "made to order" Products will commence once the required deposit in cleared funds has been received by King Living.

6.2 When full payment or a deposit is received by King Living, in accordance with these Terms, the order becomes immediately binding on King Living, and you agree to all of the terms and conditions set out in these Terms.

6.3 When placing an order and making full payment or paying a deposit as required by these Terms, you acknowledge and agree that you have satisfied yourself that the Products meet your requirements and are suitable and sufficient for your intended purpose in all respects.

6.4 Full and cleared payment of the final balance owing for "made to order" Products must be received by King Living within a week prior to the estimated delivery date of the Products.

6.5 The full payment required comprises the price of the Products and all other charges payable by you pursuant to these Terms, less the deposit paid. Upon full

payment, the deposit is applied as part of the price of the Products.

- 6.6 At the time that you place an order and pay the deposit for that order, we will issue you with a document called a '*Customer Sales Order*' that specifies the details of your order. The Customer Sales Order becomes a tax invoice upon your full payment.
- 6.7 Where a Trade Client places an order with King Living for the purchase of Products for their End-Customer, the Trade Client, and not the End-Customer, is responsible for directly paying the price of purchased Products to King Living in full. If your End-Customer makes a direct payment to King Living, you acknowledge and agree that such payment is made by the End-Customer acting with your authority and as your agent.
- 6.8 If you elect to have the Products delivered and installed by us, the delivery and installation costs must be paid in full prior to delivery.
- 6.9 You are also responsible for any costs incurred in making payment for the Products e.g. bank transfer fees and related charges.

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## **7 RISK AND TITLE**

- 7.1 All risk in the Products passes to you on delivery of the Products (except if King Living is storing a product on your behalf and you have been notified in writing that you must obtain insurance). Delivery occurs just prior to the Product:
- (a) being loaded onto your (or a third party arranged) carrier if you collect the Products from King Living's depot in Auckland for supplies in New Zealand and in the relevant Australian state for supplies in Australia; or
  - (b) unloaded at the delivered address if King Living delivers the Products directly to you or your customer.
- 7.2 All title in the Products passes to you on receipt of full payment of the Products and all other charges payable by you pursuant to these Terms.

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## **8 STORAGE, AWAITING DELIVERY OR COLLECTION**

- 8.1 You can defer delivery and we will store your order at no extra cost for up to two weeks beyond the previously advised Delivery Date ('Free Storage') provided that:
- (a) your order is ready in full in our warehouse; and
  - (b) you must request the Free Storage option by notifying us at least 48 hours before the Delivery Date.

Your order will be stored by us until the next Delivery Date (which must be within two weeks). This deferral and Free Storage option is available once only, with respect to an order.

- 8.2 As an alternative to the Free Storage option offered in clause 8.1, you can request deferred delivery and pay for up to 4 weeks of additional storage in our warehouse ('Extended Storage'). You must request the Extended Storage option by notifying us at least 48 hours before the Delivery Date. A fee quotation will be provided to you (based upon total volume of storage space occupied by your order) so that

you can decide whether to accept the Extended Storage Option. Your order will be stored by us at your cost, until the next Delivery Date (which must be within four weeks). This deferral and paid Extended Storage option is available once only, with respect to an order.

- 8.3 After either one of the storage options in clauses 8.1 or 8.2 is exhausted, delivery must be received. Delivery may be either Express Delivery or Deluxe Delivery. You may also elect Express Delivery with the option of deferred assembly. Contact King Living despatch team on 1300 005 464 to arrange a time for the Products to be assembled.

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## 9 DELIVERY

- 9.1 If you arrange for King Living to deliver the Products to you or, if applicable, the End-Customer, the following applies:

- (a) Any time quoted for delivery is an estimate only. The estimated delivery date will be arranged with you in advance, however, you must not defer the estimated delivery date without King Living's prior written consent.
- (b) We reserve the right to make part deliveries of any order. Each part delivered shall constitute a separate sale of Products and will be invoiced accordingly. A part delivery of an order will not invalidate the balance of an order or these Terms.
- (c) Delivery charges will depend on where your Product is being delivered and the volume of the order. You are liable for payment of all delivery charges, including any additional charges incurred as a result of difficulties with access (unless the failure to deliver on that date is due to King Living's fault).
- (d) Products for delivery in Australia are quoted *Ex Works*.
- (e) Deliveries outside of Australia and New Zealand are quoted FOB Shanghai, FOB Port of Auckland or FOB the applicable Australian capital city depending on the product mix. You are responsible for collecting the Products from the specified port, and for transporting the Products to the final destination.
- (f) You are responsible for ensuring that the correct delivery address details are provided to us.
- (g) You are responsible for ensuring there is adequate access and entry to the premises at the delivery address to allow the delivery of the Products. **You will be required to sign an access check prior to delivery.** It is your responsibility to ensure that all access points, including doorways, stairwells, and goods lifts are able to accommodate the size of the Products. You must notify us in advance if there will be difficulties accessing the delivery address (e.g. staircases and narrow passages). Delivery that involves multi-level staircases will be charged at an hourly rate per person required. Any additional costs in relation to access into the premises at the delivery address are your responsibility.
- (h) We do not arrange any special deliveries involving cranes or access via a balcony or council or other permits that might be required to complete

delivery. You are responsible for arranging, organising and paying for these permits and services.

- (i) Products will only be delivered if a person aged over 18 years and who is able to accept delivery at the delivery address is present at the time of delivery. Should:
  - (i) an appropriate person not be available to accept delivery on the pre-arranged delivery date and time; or
  - (ii) there be no space available to lay out the Products at the delivery address or it is otherwise not possible for the Products to be delivered into the premises,  
  
and delivery cannot be made, the Products will be returned to our warehouse and you will be charged for transport and re-delivery costs.
- (j) We cannot deliver to PO boxes.

9.2 If you do not accept delivery within:

- (a) 2 weeks after the estimated delivery date for clearance stock items; or
- (b) 3 weeks after the estimated delivery date for all other stock,  
  
(the applicable '**Delivery Period**'), then immediately on expiry of the Delivery Period, King Living will either:
  - (c) If you have paid the full purchase price, require that you arrange for the Products to be delivered to a storage facility of your choosing and you are liable for all delivery and storage charges. King Living may assist you with arranging this; or
  - (d) If you have not paid the full purchase price or if you do not attend to the matters in (c), rescind these Terms for sale of the Products by notice to you and treat your failure to accept delivery on the above terms as your cancellation of the original order. In these circumstances, you:
    - (i) agree to forfeit the deposit paid or, if the Products are clearance stock items, the full price of the Products;
    - (ii) will have no further claim to the Products; and
    - (iii) King Living may (at its discretion) agree to sell the Products to you at a later date for the full purchase price without any discount for the deposit forfeited.

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## 10 CONDITIONS FOR ORDERS WITHOUT A DELIVERY DATE

10.1 If you place an order for Products and King Living in its absolute discretion agrees not to set a delivery date for that order at the time of order placement, King Living does so subject to your strict compliance with the following conditions:

- (a) within 6 weeks of receipt by King Living of your deposit you must confirm your order and mutually agree on an estimated delivery date from the dates that are offered by King Living as possible delivery dates for your

order; and

- (b) once the estimated delivery date is booked with King Living, you may not make any changes to your order. When an estimated delivery date is agreed upon, clause 9 (**Delivery**) and clause 14 (**Cancellation of Order**) will apply to the delivery and cancellation of the order.

10.2 If you do not comply with the conditions in paragraph (a) above or you choose to cancel your order in circumstances where no estimated delivery date is set pursuant to paragraph (a), King Living will rescind these Terms for sale of the Products by notice to you and treat your failure to agree to an estimated delivery date as your cancellation of your original order. In these circumstances, you:

- (a) agree to forfeit \$500 of the deposit paid by you to King Living in payment for King Living's administrative costs and expenses incurred in handling and cancelling the order;
- (b) agree to receive the balance of the deposit by refund to the credit card, debit card or bank account, depending on how the customer made the initial deposit; and
- (c) will have no further claim to the Products.

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## **11 COLLECTION**

11.1 You acknowledge that if you select the option to collect the items, on King Living's receipt of your full payment, you are responsible for the collection of the items from the warehouse specified by King Living from the nominated point of collection within the timeframe stated on the invoice. You agree to present any proof of identity and purchase as reasonably requested by King Living staff in order to verify your identity and your purchase.

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## **12 INSTALLATION**

12.1 If you arrange for King Living to install your Product/s, installation charges apply and will vary based on the Product ordered and volume of the order. The installation site at the delivery address must be clear and free from obstruction. You must notify us prior to the delivery date if there will be any other trades involved in the installation.

12.2 We do not install Products delivered outside of Australia.

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## **13 INSPECTION**

13.1 If you have arranged to collect the Products from King Living's depot, you may inspect your Products 48 hours before collection. If you exercise this option, you will be required to note any damage and/or non-conformity on the documentation which is provided to you upon inspection. To the fullest extent permitted by law, unless notified within the time specified above, the Products and their condition are deemed to have been delivered and accepted.

13.2 If King Living is delivering the Products to the delivery address, you or the End-Customer are required to inspect the Products upon delivery. The entity taking



delivery at the delivery address will be required to note any damage and/or non-conformity on the delivery documentation which is presented by the carrier for signature.

- 13.3 In all other cases, to make a claim you must notify King Living in writing of any damage to and/or nonconformity with the Products or shortages in delivery within 24 hours of delivery by King Living by:

**In Australia:**

- (a) contacting: 1300-13-KING (5464); or
- (b) sending an email to: [service@kingliving.com.au](mailto:service@kingliving.com.au).

- 13.4 The notice must contain the order number, delivery date and reasonable details of the damage and/or non-conformity. King Living may refuse to honour a claim for loss, damage to and/or nonconformity with the Products or shortages in delivery if you do not notify us in accordance with these Terms.

- 13.5 To the fullest extent permitted by law, unless we receive notification of a claim within the time and in the manner specified above, the Products and their condition are deemed to have been delivered and accepted.

- 13.6 Damage and/or non-conformity of any part of the ordered Products does not entitle you to reject all of the ordered Products.

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## 14 CANCELLATION OF AN ORDER

- 14.1 Please choose Products carefully. We do not refund or exchange if you change your mind or make a wrong selection. We recommend that you check any proposed orders in person at the King Living showrooms or online on the checkout page, whichever is applicable to you, before purchasing the Products.

- 14.2 If you cancel your order where:

- (a) the Products are clearance stock items; or
- (b) the manufacture of your Products has commenced; or
- (c) you do not accept delivery of your Products,

then you agree to pay a cancellation fee up to the entire purchase price of the Products plus all costs and losses incurred by King Living associated with handling fees, at King Living's discretion. If this eventuates, you will have no further claim to the Products.

- 14.3 King Living accepts no returns, refunds or exchanges on clearance stock.

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## 15 DELAY

- 15.1 King Living will not be liable for any delay in performing any of its obligations including where any delay is caused by factors beyond King Living's reasonable control.

- 15.2 We will use reasonable endeavours to meet the estimated delivery date. King Living's liability (if any) for any late delivery is limited at its option to resupplying

the Products at a different time.

15.3 If at any time after receiving an order from you, King Living, its supplier, subcontractor, manufacturer or any carrier suffers a Force Majeure Event or an Insolvency Event that prevents or delays King Living from supplying some or all of the Products set out in an order by the estimated delivery date, King Living may elect to extend the time for performance of the delivery or terminate the order if the Force Majeure Event continues for a period of 14 days or more, without any liability to you.

15.4 In this paragraph:

(a) **Force Majeure Event** means any act of God, fire, earthquake, flood, storm, strikes, lock-outs, bans or other industrial disturbances, civil riot, government interference, by-laws, rules and regulations or order of any competent authority that is beyond King Living's, its suppliers, subcontractors, manufacturers or any carriers control and that could not reasonably have been expected to have known at the time King Living receives an order from you; and

(b) **Insolvency Event** means any one or more of the following events:

(i) a controller, administrator, liquidator, trustee in bankruptcy or similar person being appointed to it or to any of its assets or undertakings or any step is taken to do so;

(ii) a resolution that it be wound up is passed or proposed or process is filed in a court seeking an order that it be wound up;

(iii) it resolves to enter into, or enters into, any moratorium, arrangement, compromise or composition with any of its creditors, other than in the ordinary course of its business;

(iv) anything having a substantially similar effect to any of the events specified in paragraphs (i) to (iii), inclusive, of this definition happens to it under the law of any jurisdiction.

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## 16 THE PRODUCTS

16.1 The Products shall be required only to conform in all material respects to the specification on your quotation. The Product may exhibit different characteristics to the sample of the King Living showroom furniture. Soft furniture may vary in appearance and characteristics such as creasing and the degree of softness. Colour swatches and samples are an approximate guide only as leather and fabrics vary in colour and texture. Leather will exhibit scars, marks and areas of differing density and shade, which are the hallmarks of genuine leather, which vary from product to product. Photographs, drawings, illustrations or other descriptions or particulars of the Products issued by King Living in any form are for illustrative purposes only and do not form part of these Terms. You must attend to your own investigations of the Products prior to purchase.

16.2 To the full extent permitted by law, we reserve the right to change dimensions, design and construction and to pattern match fabrics according to King Living's best judgment to improve the design of the King Living product where these changes are limited to the internal changes to the products and are not noticeable

to you.

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## **17 INSPECTION OF CLEARANCE ITEMS AND SPECIAL CONDITIONS FOR CLEARANCE ITEMS**

- 17.1 Where you are purchasing Products that are clearance stock items you must inspect the Products prior to purchase and in purchasing such Products you accept any defects and minor damage to those Products. Any scratches, marks or damage not affecting the performance of the Products will be noted at time of purchase and will not form part of any warranty provided by King Living in relation to those Products.
- 17.2 All clearance items with electrical components will be covered for a maximum warranty period of 2 years. After this period, a call out fee and the cost of all parts and repairs will be payable by you.

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## **18 DISCLAIMER AND ACKNOWLEDGEMENT**

- 18.1 Where a Trade Client places an order with King Living for the purchase of Products for their End-Customer, you, the Trade Client acknowledge and agree that:
- (a) the agreement is made between King Living and you, the Trade Client; For the avoidance of doubt, there is no agreement between King Living and the End-Customer;
  - (b) the Trade Client must act as the primary contracting entity in all dealings with King Furniture with respect to that order;
  - (c) the End-Customer is not a customer of King Living with respect to a Product which is ordered and/or purchased by the Trade Client; and
  - (d) the Trade Client, in purchasing Products from King Living, is not acting as the agent of the End-Customer.
- 18.2 If you purchase the Products for your own personal use (**Personal Products**), you agree that:
- (a) these Terms will not apply to your purchase of the Personal Products other than to the extent that your trade discount will apply towards the purchase of those products only; and
  - (b) the terms and conditions of sale for retail clients will apply to your purchase of those Personal Products.

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## **19 WARRANTIES**

- 19.1 Orders processed by King Living cannot be amended so you must ensure that you have the correct information at the time of order placement. Where a Trade Client places an order with King Living for the purchase of Products for their End-Customer, King Living is not liable for any dissatisfaction or rejection of any Products by the End-Customer due to the selection of Products by the Trade

Client.

- 19.2 Subject to clause 2.4, if you purchase a Product for on-sale to your End-Customer and if that Product is covered by King's warranty then King Living will honour that warranty if a warranty claim is made by the End-Customer, provided all other requirements for claiming the warranty are satisfied.
- 19.3 You warrant that:
- (a) the contents of each order placed by you or on your behalf with King Living for the purchase of Products, are true, accurate and correct at the time of completion; and
  - (b) all responses in the Discount Application Form, where you apply for a trade discount with King Living through submission of a Discount Application Form or similar document, are true, accurate and correct at the time of completion; and
  - (c) you have correctly nominated the type of location (whether it be commercial or retail) into which the Products are being delivered and the purpose of usage of the Products by your End-Customer.
- 19.4 Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 19.5 To the extent permitted by law:
- (a) King Living will not provide any refund, returns, exchange or credit where you or other third parties have caused or contributed directly or indirectly to any damage to the Products;
  - (b) King Living will not be responsible for ensuring that the Products are suitable for a particular purpose unless that has been accepted in writing by King Living;
  - (c) Unless Products are faulty, we are unable to refund, exchange or credit your account.

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## **20 SPARE PARTS**

- 20.1 This section applies only if you purchase Products directly from King Living.
- 20.2 King Living offers a range of spare parts and associated repair services which are available to you and/or your End-Customer for a reasonable period after the Product is supplied to you. The date for the supply of spare parts will vary depending on the availability of such parts. The date and time for the supply of repair services will depend on the availability of parts and our technicians, and you and/or your End-Customer will be given several options from which to select a suitable date and time. Please contact King-Care® Service Team on 1300 546 422 for more details.
- 20.3 King Living may also in its absolute discretion offer spare parts and repair services to owners of a King Living product who did not purchase that product directly from

King Living. This is subject to the following conditions:

- (a) King Living's call out fees and service fees apply. Please contact King-Care® Service Team on 1300 546 422 for details; and
- (b) full payment for the spare parts and repair services must be received by King Living before King Living will supply the spare parts and repairs and, if applicable, book a technician to carry out the repair services.

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## **21 LIMITATION OF LIABILITY**

- 21.1 To the full extent permitted by law, all warranties whether implied or otherwise, not set out in these Terms are excluded and King Living is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate you for:
- (a) any increased costs or expenses;
  - (b) any loss of profit, revenue, business, contracts or anticipated savings;
  - (c) your or the End-Customer's use or misuse of the Products;
  - (d) any act, omission or negligence by you, your agents or representatives or the End-Customer;
  - (e) any loss or expense resulting from a claim by a third party; or
  - (f) any delays in delivery of the Products;
  - (g) any special, indirect or consequential loss or damage of any nature whatsoever caused by King Living's failure to complete or delay in completing the order to deliver the Products.
- 21.2 To the full extent permitted by law, where King Living's liability cannot be excluded, the maximum aggregate liability of King Living for any breach of a condition, guarantee or warranty whether implied by law or otherwise, is limited to, at the option of King Living:
- (a) the replacement of the Products;
  - (b) the repair of the Products;
  - (c) the payment of the cost of replacing the Products or acquiring equivalent products; or
  - (d) the payment of the cost of having the Products repaired.
- 21.3 In circumstances where King Living's liability cannot be limited to the matters set out in the paragraph above, the maximum aggregate liability of King Living for any breach of a condition, guarantee or warranty whether implied by law or otherwise, is limited to the amount payable by you to King Living in respect of the Product giving rise to the liability.
- 21.4 Nothing contained in these Terms shall be construed so as to limit or exclude the liability of King Living for death or personal injury as a result of King Living's negligence or that of its employees or agents.

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## **22 INTELLECTUAL PROPERTY**

- 22.1 Nothing in this agreement grants you rights in our intellectual property. You acknowledge that all intellectual property including, but not limited to, designs, techniques, methods of manufacture, photographs, specifications, artwork, text, patented inventions, trade marks and registered designs remain the property of King Living.
- 22.2 You will not knowingly allow a Product to be reverse engineered, pirated or copied or our intellectual property rights to be breached in any manner. King Living may be entitled to compensation for any loss of royalties, damages and/or costs arising from the breach of our intellectual property rights.
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## **23 INDEMNITY**

- 23.1 To the full extent permitted by law, you will indemnify and keep indemnified King Living from and against all claims, liability, loss, or damage King Living may sustain directly or indirectly which arises from any act or omission by you which is a breach of these Terms or a claim by a third party arising from your act or omission, including where you selected Products on behalf of an End-Customer and the End-Customer rejects the Product in whole or in part.
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## **24 PRIVACY**

- 24.1 We may collect personal information in connection with our dealings with you. If so, we will abide and you agree to be bound by King Living's Privacy Policy.
- 24.2 King Living's Privacy Policy for Australia is available for view [here](#).
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## **25 ELECTRONIC DIRECT MARKETING**

- 25.1 King Living requires the ability to send Electronic Direct Marketing communications (like emails, text messages and similar) (**EDM**) to Trade Clients.
- 25.2 In return for receiving the benefits of being a Trade Client, you consent to receive EDM from King Living. If you withdraw that consent or opt out of EDM then you may no longer qualify to be a Trade Client and King Living reserves the right, in its absolute and unfettered discretion, to terminate these Terms and cease providing the benefits to you.
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## **26 TERMINATION**

- 26.1 Without limiting King Living's other rights or remedies, King Living may terminate these Terms with immediate effect by giving written notice to you if:
- (a) you commit a material breach of these Terms and (if such a breach is remediable) you fail to remedy that breach within 10 days after being notified in writing to do so;
  - (b) you take any step or action in connection with: entering administration, provisional liquidation or any composition or arrangement with creditors (other than in relation to a solvent restructuring); being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring); having a receiver appointed to any of your assets; ; or, if the

- step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business;
  - (d) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under these Terms has been placed in jeopardy; or
  - (e) your action or behaviour in any communication with King Living is abusive threatening or offensive.
- 26.2 Without limiting its other rights or remedies, King Living may suspend provision of the Products under these Terms or any other contract between you and King Living if you become subject to any of the events listed above, or King Living reasonably believes that you are about to become subject to any of them, or if you fail to pay any amount due under these Terms on the due date for payment.
- 26.3 Without limiting its other rights or remedies, King Living may terminate these Terms with immediate effect by giving written notice to you if you fail to pay any amount due under these Terms on the due date for payment and remain in default not less than 14 days after being notified in writing to make such payment.
- 26.4 On termination of these Terms for any reason you shall immediately pay to King Living all of King Living's outstanding unpaid invoices and interest.
- 26.5 Termination of these Terms shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of these Terms that existed at or before the date of termination.
- 26.6 Any provision of these Terms that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

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## **27 GENERAL**

- 27.1 Subject to these Terms and to the full extent permitted by law, these Terms constitute the whole agreement between King Living and you for the purchase of the Products and supersedes and extinguishes all previous terms, agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral. Each party agrees that it shall have no remedy in respect of any statement, representation, assurance or warranty that is not set out in these Terms.
- 27.2 King Living may assign or transfer any of its rights under these Terms to any other person by giving written notice to you. You may not assign or transfer any of your rights or obligations under these Terms to any other person.
- 27.3 If any part of these Terms is found to be void, invalid, illegal or otherwise unenforceable, then that part of the Terms will be deemed to be superseded by a valid, enforceable provision that matches the intent of the original provision as closely as possible. The remainder of these Terms continue to be enforceable and valid.
- 27.4 No amendment to or modification of these Terms shall be effective unless it is in

writing identified as an amendment to these terms and authorised by King Living.

- 27.5 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 27.6 No entity other than King Living and the Trade Client has the right to enforce these Terms.
- 27.7 We reserve the right to revise these terms from time to time at our discretion. If we make substantial changes we will use reasonable efforts to inform you. If you purchase Products from us and receive a trade discount, you will be deemed to have accepted the revised terms in their entirety.

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## **28 GOVERNING LAW**

- 28.1 These terms and conditions are governed by and construed in accordance with the laws of the State of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of that state or country and courts entitled to hear appeals from those courts.
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For further information please contact:

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