



TERMS AND CONDITIONS

I Quotes and acceptance

- (a) Our prices will strictly be in accordance with our Quote. Any Quote provided by us is valid for 14 days from the date of issue, after which we reserve the right to change our original Quote.
- (b) You may accept our Quote by emailing us, verbally confirming your acceptance or otherwise conducting yourself in a way consistent with acceptance.
- (c) If you accept our Quote, you also accept these terms and conditions.

2 Collection and delivery

- (a) We will notify you once the Goods you have Ordered are complete. Within seven calendar days of us providing such notice, you must either collect the Goods from our Premises, or arrange with us for the Goods to be delivered to you by a Courier.
- (b) You may collect the Goods from our Premises during the hours of 8.30am to 3.00pm on a weekday (excluding public holidays). Any collections outside of these times and days can be made by prior appointment only.
- (c) You may organise for the Goods to be delivered to you by a Courier as follows:
 - (i) you must email us your request to have the Goods delivered by a Courier prior to the completion of your Order. Please note that any request for delivery after completion of the Goods may be rejected by us;
 - (ii) you must notify us in writing of the delivery location. Delivery to a PO box will not be accommodated unless we agree otherwise in writing;
 - (iii) delivery charges will be determined by the Courier based upon the quantity, size and your delivery location; and
 - (iv) you must pay all delivery charges when you agree to delivery of the Goods by a Courier. We may refuse to ship the Goods if we do not receive full payment for delivery prior to the intended shipping date.
- (d) Unless we have expressly stated otherwise in writing, our Quotes do not include the costs associated with the delivery of Goods by Courier.
- (e) We will use our reasonable efforts to send you a confirmation email once the Goods have been collected by the Courier.

3 Payment

- (a) Our payment terms depend upon the nature of the Goods. You must pay for any Goods that you Order strictly in accordance with the payment terms set out in the table below.



Type of Goods	Payment Amount and Due Date
Standard Goods	100% of Quoted price must be paid upon placing an Order unless we have expressly stated otherwise in writing.
Custom Goods	70% of the Quoted price must be paid prior to collection of the Goods by you, or prior to the intended shipping date if the Goods will be delivered by Courier. The Deposit will be applied to your account to satisfy the 30% of the Quoted price.

- (b) All payments made by you in connection with a Quote or these terms and conditions (including the Deposit) must be made in cash, or by credit card (only MasterCard and Visa accepted), PayPal or electronic funds transfer to our bank account notified to you in writing.
- (c) If you pay for any Goods via a credit card provider, we reserve the right to charge you a credit card processing fee proportionate to the amount that we incur for processing the relevant payment.

4 Deposit

- (a) You must pay a deposit of 30% of the total value of a Quote for any Custom Goods upon placing an Order (**Deposit**). The Deposit must be paid in accordance with clause 3(b). We will notify you if we require you to pay a Deposit.
- (b) We will only refund the Deposit to you if both of the following are satisfied:
 - (i) if you email us a written request to refund the Deposit; and
 - (ii) we receive that email before commencing production of the Order and also prior to us purchasing any materials specifically required by us for the production of the Order.
- (c) In all cases except for as contemplated in clause 4(b), the Deposit will be non-refundable and will be retained by us.

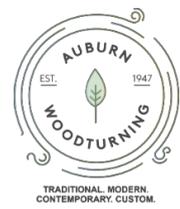
5 Failure to pay

If you fail to pay the Deposit or make a payment in accordance with clause 3, we may:

- (a) not commence production of the Order until payment is received; or
- (b) refuse to release or make available the Goods for collection or delivery until we receive such payment.

6 Risk of Goods

- (a) Risk in the Goods passes to you immediately upon:
 - (i) you collecting the Goods at our Premises; or
 - (ii) the Courier loading the Goods for delivery at our Premises.
- (b) You expressly acknowledge that the Courier is a third-party delivery service. We do not control how they provide their services nor their delivery timeframes. We are not



responsible for and will not pay for any loss, damages, costs or expenses related to the Courier's delivery services, including (but not limited to):

- (i) any damage caused to the Goods once the Goods are loaded by the Courier at our Premises (including during transport or delivery);
 - (ii) any damage caused to your property while the Goods are being transported or delivered;
 - (iii) if the Goods are lost, stolen or misplaced by the Courier; or
 - (iv) if the Courier fails to deliver the goods within a notified or estimated timeframe for delivery.
- (c) If you request us to leave Goods outside our Premises for collection, then such Goods will be left at your sole risk.
- (d) Unless you request otherwise by emailing us, the Courier will have an authority to leave the Goods unattended at the delivery location. In this case, the Goods will be left at your sole risk.
- (e) In no circumstances will we install the Goods on your behalf. Any installation of the Goods must be completed by a builder, handyman or other appropriately trained person. We take no responsibility for any damage caused to the Goods during installation.

7 Title to the Goods

- (a) Ownership and title to the Goods remains with us until we receive full payment in cleared funds for the total amount of those Goods as set out in our Quote.
- (b) Until we receive payment for all Goods as set out in clause 7(a), where the Goods are in your possession, you must:
- (i) hold the Goods on our behalf, as fiduciary bailee and agent for us;
 - (ii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (iii) maintain the Goods in a good condition;
 - (iv) not attempt to sell, assign, charge or otherwise encumber or grant any right or security interest in any of the Goods; and
 - (v) immediately advise us of any breach by you of this clause 7.

8 Failure to collect Goods

If you fail to collect your Goods within seven calendar days of us notifying you that they are complete, we may do any of the following in our absolute discretion:

- (a) store the Goods and charge you a storage fee (acting reasonably); or
- (b) after a reasonable period of time, if the Goods remain uncollected or no arrangements have been made with us to deliver the Goods in accordance with clause 2(c), we may (acting reasonably):
 - (i) dispose of the Goods; or
 - (ii) sell the Goods and retain such proceeds to cover our reasonable costs.



9 Accuracy of specifications

Where you or a representative of yours (such as a trades person) provides us with any design specifications, measurement or any other information or data relating to the Goods, you acknowledge and agree that:

- (a) it is your responsibility to verify the accuracy of the information before placing an Order with us;
- (b) we are fully entitled to rely upon the accuracy of such information; and
- (c) in the event that any such information provided by you is inaccurate, incomplete or incorrect, we will accept no responsibility for any loss, damages, costs or expenses resulting from same (including replacement costs).

10 Modifications

Any modification, change, alteration or addition that you request made to any Goods after placing an Order will incur a separate charge (in addition to the prices set out in a Quote). We will notify you of the amount of such charge before making any modification, change, alternation or addition to the Goods.

11 Miscellaneous

- (a) You may provide us with your own timber in certain circumstances for the Goods. We will accept and use your timber in our absolute discretion and strictly provided that all fixing materials and nails have been removed and the timber is free of all hazardous chemicals and substances.
- (b) Any wood character, grain type, or timber colour supplied in order to match a sample or example provided by you will be matched as close as possible when we produce the Goods. We cannot promise an exact match.
- (c) You must:
 - (i) make an assessment about the suitability of any Goods for your situation, purpose or particular use before placing an Order; and
 - (ii) cooperate with all reasonable requests made by us in connection with the Goods, including any requests for information.

12 Australian Consumer Law

- (a) 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.
- (b) These terms and conditions will apply to the extent to which they do not infringe the Australian Consumer Law.

13 Limitation of liability

Subject to the Australian Consumer Law and other applicable laws, we:



- (a) exclude all warranties and implied representations in respect of the Goods;
- (b) are not liable for any claim and / or damage to Goods caused by your misuse, abuse or for normal wear and tear (include any damage caused by water, sunlight or excessive heat or cold); and
- (c) are not liable for any consequential, incidental, special or economic loss, damage or injury in connection with providing you the Goods.

14 Force Majeure

- (a) If we fail to observe or perform any of our obligations in relation to these terms and conditions and such failure is occasioned by or in connection with Force Majeure, such failure is deemed not to be a breach of our obligations and we are not liable to you in respect thereof, whether in respect of damages, loss of profits or otherwise.
- (b) If the Force Majeure event referred to in clause 14(a) continues for a consecutive period of 30 calendar days, we may (acting reasonably):
 - (i) terminate your Order and not produce any Goods pursuant to that Order; and
 - (ii) refund any amounts which you have paid pursuant to that Order.

15 Intellectual property – Custom Goods

- (a) Where you or a representative of you (such as a trades person or consulting service provider) provides us with any Custom Specifications for the purposes of making any Custom Goods, you warrant and represent that:
 - (i) you either own, or have permission to use for the purposes of making the Custom Goods, the Intellectual Property Rights in any Custom Specifications; and
 - (ii) the manufacture or supply of the Custom Goods by us will not infringe the Intellectual Property Rights of any third-party.
- (b) To the extent permitted by law, you indemnify and hold us harmless from and against any loss, damages or costs suffered or incurred, or any claims, demands, actions, proceedings or prosecutions against us arising out of or relating to:
 - (i) any breach or alleged breach of any such warranties which you provide; or
 - (ii) any infringement or alleged infringement of third-party Intellectual Property Rights relating to the manufacture of Custom Goods by us or our use of any Custom Specifications.
- (c) The warranties in clause 15(a) and indemnities in clause 15(b) will continue to remain in force once the Custom Goods have been made and pass to you.
- (d) If we produce any samples, drawings, photographs, specifications or designs in the course of manufacturing Custom Goods, and you do not make payment for the Custom Goods in accordance with clauses 3 and 4, we may reuse those samples, drawings, photographs, specifications or designs as we see fit. To the extent it is necessary, you hereby grant a perpetual and royalty free licence for us to do this.



16 Intellectual Property – Standard Goods

- (a) Where we make, manufacture, process or supply Standard Goods, we retain ownership of all Intellectual Property Rights in the Standard Goods as well as in any Standard Specifications which are created by us in the course of making the Standard Goods, even after the products have been made and pass to you.
- (b) Unless expressly authorised in writing by Auburn Woodturning, you must not use, or authorise any other person to use, the Standard Goods or Standard Specifications:
 - (i) in any way which infringes or may infringe our Intellectual Property Rights; or
 - (ii) for any purpose other than the agreed purpose for which the Goods were supplied (including manufacturing replicas of the Goods).
- (c) The restriction in clause 16(b) will continue to remain force once the Standard Goods have been made and pass to you.

17 GST

- (a) In these terms and conditions:
 - (i) words used in this clause which have a particular meaning in the GST law (as defined in the GST Act) have that same meaning, unless the context otherwise requires; and
 - (ii) if the GST law treats part of a supply as a separate supply for the purposes of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- (b) To the extent that any supply made under or in connection with these terms (including the supply of the Goods) is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.

18 General

- (a) The laws of the State govern these terms and conditions. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts in the State.
- (b) Both parties represent and warrant that they have the power to enter into these terms and conditions and have obtained all necessary authorisations to allow them to do so.
- (c) No failure or delay by either party in exercising any right, power or privilege under these terms and conditions will impair the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (d) Any provision of these terms and conditions which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the terms and conditions enforceable, unless this would materially change the intended effect of the terms and conditions.



- (e) You may not assign or otherwise transfer any or all of your rights and obligations under these terms and conditions without our prior written consent.
- (f) We may assign, transfer or novate any or all of our rights and obligations under these terms and conditions without receiving your prior written consent
- (g) Any email to be sent to us (or by you) in connection with these terms and conditions must either be sent to, or include a CC to, the following email address: info@auburnwoodturning.com.au. Any email which does not conform to the requirements of this clause cannot be considered received by us for the purposes of these terms and conditions.
- (h) You acknowledge and agree that we may amend these terms and conditions from time to time by notifying you in writing. These changes will be deemed to take effect from the date on which you accept such changes, or otherwise at such time as you make a further request for us to provide Goods to you.
- (i) Neither party will be in default nor liable for any delay or failure to comply with these terms and conditions to the extent that, that default, delay or failure is due to any act beyond the control of the affected party, excluding industrial disputes, provided such party immediately notifies the other of same.

19 Definitions

In these terms and conditions, unless the context otherwise requires, the following words and phrases have the following meanings:

- (a) **“Australian Consumer Law”** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and its associated regulations as amended;
- (b) **“Courier”** means a third-party courier on our preferred supplier list at the relevant time;
- (c) **“Custom Goods”** means any Goods which are made, manufactured, processed or ordered according to the specifications, guidance or instructions provided by you or a representative of you (such as a trades person);
- (d) **“Custom Specifications”** mean any samples, drawings, photographs, specifications or designs provided by you or a representative of you (such as a trades person) for the purposes of us making, manufacturing, processing or supplying the Custom Goods;
- (e) **“Force Majeure”** means acts of God, including:
 - (i) cyclones, excessive heat, storms, lightning, earthquakes, landslides, floods, fires and washouts;
 - (ii) strikes, lockouts or other industrial disturbances;
 - (iii) acts of enemies of any country, sabotage, wars, blockades, insurrections, riots, arrests and restraints, and explosions;
 - (iv) breakages of or accidents impacting upon our machinery or our delivery facilities;
 - (v) the declaration of any pandemic or epidemic effecting the supply of Goods by us (including the disruption of supplies to us from our suppliers); and
 - (vi) the orders or actions of any court or governmental agency,or any other cause whether of the kind set out above or otherwise not within our direct control;



- (f) **“Goods”** means any goods to be made, manufactured, processed or supplied by us in connection with these terms and conditions (including Standard Goods and Custom Goods). For the avoidance of doubt, Goods includes an individual good;
- (g) **“GST”** has the meaning given to that term in the GST Act;
- (h) **“GST Act”** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (i) **“Intellectual Property Rights”** means all rights in respect of copyright, designs, trade marks (whether registered or unregistered), patents, goodwill, rights to bring associated causes of action in passing off or contravention of the Australian Consumer Law (or equivalent causes of action), in Australia and throughout the world;
- (j) **“Order”** means an order for Goods in response to a Quote and as varied in writing from time to time by the parties;
- (k) **“Quote”** means a quote provided by us in connection with these terms and conditions. For the avoidance of doubt, we may provide a Quote verbally, or in writing with a written description of the Goods to be provided and our corresponding charges;
- (l) **“Premises”** means the premises located at 11 Prime Street, Thomastown VIC 3074;
- (m) **“Standard Goods”** means any Goods which are not Custom Goods;
- (n) **“Standard Specifications”** means any samples, drawings, photographs, specifications or designs which are created by us in the course of making, manufacturing, processing or supplying the Goods;
- (o) **“State”** means the state of Victoria in the Commonwealth of Australia;
- (p) **“we,” “us” or “our”** means CURT Pty Ltd ACN 606 045 676 as trustee for the Curtain Family Trust No.3; and
- (q) **“you” or “your”** means any person or entity purchasing the Goods.