

## **ERGO DESIGNER KITCHENS CONTRACT TERMS & CONDITIONS**

(Ergo Designer Kitchens & Cabinetry is hereafter referred to as Ergo)

### **1. PREAMBLE**

- 1.1. The Client is required to sign the design floor plan(s) to confirm his/her approval of the designs.
- 1.2. The Client is required to sign the quotation accepted to confirm his/her approval thereof.
- 1.3. No alterations or additions will be made to the quotation(s) & floor plan(s), after the agreement has been signed, unless both parties agree to changes & the changes are confirmed in writing.
- 1.4. Any person signing this agreement (quotation) in a representative capacity of a company, close corporation or a trust, binds himself/herself as surety & co-principal debtor of the Client to Ergo. It is duly accepted that the signatory is entitled to act on behalf of the Client.
- 1.5. The price is calculated on the assumption that Ergo will install the new cabinetry against square & level floors, walls, doors, windows & ceiling finishes.
- 1.6. The price stated in this agreement has been calculated on the basis that the work will be executed during normal working hours from 08h00 until 16h30 hours Monday to Thursday & Friday 08h00 until 12h00 only, unless the parties agree otherwise.

### **2. MATERIALS & FINISHES**

- 2.1. The Client confirms that the finishes, patterns, profiles, styles & other materials are correctly specified on the quotation(s) & that the different materials in question have been explained to full satisfaction of the Client.
- 2.2. Ergo will not accept any changes to the quotation(s) once it has been signed/approved, unless so agreed upon in writing (refer to 1.3 above).
- 2.3. Paint, granite, quartz & veneer products are natural materials & can differ slightly from samples presented to the client during the consultation.
- 2.4. In the event of any defects, it is the responsibility of the Client to provide Ergo with a written list of all defects, within 7 (seven) days after installation completion. Failure to comply herewith, will exempt Ergo of any liability in respect of any defects as regards to the products & installation.
- 2.5. It is the Client's responsibility to ensure that the detailed quotation includes all accessories required. Should anything be required afterwards, an additional quotation will be issued. The additional quotation will then be added onto the existing contract once it has been approved by the Client, who is then also responsible for the additional payment(s). A new installation date will be provided for any additional work approved & deposit paid by the client.

### **3. MANUFACTURING & INSTALLATION**

- 3.1. Final measurements can only be done by Ergo once the full deposit has been paid by the Client. All subcontractors need to be present for this meeting to ensure that all parties involved know what needs to be done.
- 3.2. On final measurement all the design, finishes & fittings will be confirmed for a final time. It is the Client's responsibility to ensure that all appliance & sink specifications are confirmed with the consultant on this day. Ergo will not be held financially liable for any alterations to the design or cabinetry due to incorrect specifications of appliance & sinks. Manufacturing cannot commence if these specifications are not confirmed.
- 3.3. This agreement does not include the following (unless specified on the quotation): removal of old cupboards, sinks, appliances or

any other equipment; moving of water pipes, mixers, electrical cables, switches, installation &/or connection of appliances &/or sinks, alteration of wall structures or any other activity connected with building, plumbing or electrical work. The Client shall ensure that all the work mentioned in this paragraph is completed by the delivery date agreed to by Ergo & the Client.

- 3.4. Any changes made to the design after final measurements by the Client, has to be communicated to the consultant in writing. After which a new / additional quotation will be for the Clients' account.
- 3.5. As a member of the Kitchen Specialist Association (KSA), Ergo has instructed all installers to adhere to approved KSA standards & suggested specifications during installations. The Client should direct all communication regarding the installation directly to the consultant & must not make any arrangements directly with the installer. Ergo will not be accountable for arrangements & agreements made directly with an installer.
- 3.6. It is the Client's responsibility to ensure that the site is ready for installation as agreed with the consultant. A call-out fee of R1750.00 VAT exclusive will be charged in the event that the site is not ready on the arrival date stipulated for the project manager to commence with the installation.
- 3.7. In the event of an installation being delayed as a result of a site not being ready, the installation will be re-scheduled according to the next available date suitable for all parties.
- 3.8. Installation dates are determined once orders have been placed with suppliers & lead times are confirmed. The order will be placed with suppliers within 3 (three) working days after the deposit is paid in full & final measurements are completed. Please allow up to 4 – 8 (four to eight) weeks, depending on the finish of the cabinetry, for manufacturing & delivery from the date final measurements were taken & all relevant information is confirmed in writing (paragraph 3.2).
- 3.9. An estimate installation timeline will be confirmed prior to the installation start date. Installation lead times are dependent on the complexity of the installation, types of materials & time required by the installation team on site.
- 3.10. The installation dates given are estimates, although Ergo will do its best to adhere to the original completion date provided. The dates are dependent on the following factors – all of which are NOT within Ergo's control:
  - a) Timeous delivery of material from suppliers,
  - b) Availability of material,
  - c) Weather conditions, &
  - d) Load shedding
- 3.11. Ergo will not be held accountable for any costs involved with the Client's third-party Contractors such as tilers, electricians & plumbers, which may result in a delay to the proposed installation dates agreed upon by Ergo & the Client.
- 3.12. The Client shall make adequate provision for the safe storage of the goods & the risk of damage to the goods especially by other contractors on site rests with the Client.
- 3.13. The Client will not have the right to impose penalties of any sort against Ergo Designer Kitchens due to delays that may occur as a result of factors outside of Ergo's control (paragraph 3.10).
- 3.14. In the event that Ergo is not able to commence or continue with an installation due to a power failure for any reason whatsoever, the cost of hiring a generator for R500.00 per day & fuel will be for the Client's account. Alternatively, the Client needs to ensure for a generator to be on site promptly.
- 3.15. Each of Ergo's installation team consists out of 2 – 3 capable installers. All our staff members are entitled to three (3) breaks during working hours at 10h00, 12h00 & 15h00. If needed, arrangement can be made to have a supervisor to be present on site at for an additional R500 per day.

- 3.16. If the Client accepts the quotation for the counter tops through Ergo Designer Kitchens, the following should be noted:
- a) Supply & installation of Granite & Quartz products is subcontracted to a third-party supplier.
  - b) Such products need to be measured on-site once the cabinet carcasses have been installed.
  - c) Installation of counter tops is dependent on the availability of material & should commence within 5 – 7 (five to seven) working days after measurement. Installation dates is to be confirmed 2 (two) days after the measurements have been taken.
  - d) Ergo shall not be held responsible for any price changes of any Granite & Quartz products quoted by third-parties, based on final measurement or price increases.
- 3.17. In the event of the Client providing items such as hobs & sinks, these items need to be on site on the day worktops are scheduled to be installed. Service fees will be charged by the respective counter top supplier (as specified on the contract given by the Sub-contractor) should an installer need to return to a site to fit these or to make cut-outs.
- 3.18. After installation, the Client needs to provide a detailed snag list to the consultant of Ergo within 7 (seven) days after initial installation is completed. Please take extreme care in completing this list as a second list will not be accepted.

#### 4. PAYMENT TERMS & DISCOUNTS GRANTED

- 4.1. The Client agrees to & accepts the following payment terms:
- a) 60% payment of total sale value on acceptance of the quotation. No ordering of required materials can be done without receipt of the 60% payment. Proof of payment needs to be sent to the consultant. If the deposit is not paid 3 (three) months after the acceptance of the quotation, the Client will be liable for all industry-related price increases, if any, to apply to the accepted quote.
  - b) Goods will not be released for installation without valid proof of the 2nd payment of 35%. An electronic transfer payment needs to be made at least 2 (two) days before scheduled delivery, to ensure confirmation of the received payment. If the delivery payment is not received & goods are not delivered 3 months after the order, the Client will be liable for all industry-related price increases.
  - c) 5% final payment to be made within 7 days after sign-off of the installation, i.e., after successful completion of the project. Interest will be charged for overdue accounts.
  - d) Quotations under the value of R4000.00, needs to be paid in full.
  - e) No holding deposit can be made for any project under R50 000.00. If a holding deposit is made, the quotation is only valid for the next 3 months.
  - f) The Client is welcome to come & view their products / cabinetry at the factory before installation.
- 4.2. In the event that the Client has to postpone the initial collection date for a period of 30 days or more for whatever reason the following will apply:
- a) The Client agrees to pay the delivery payment in full & to only withhold the final payment until successful completion of the project. Ergo agrees to arrange for storage of all materials to be charged to the Client's account.
  - b) In the event that the final payment is not paid in full, any price increases that might occur (for material or fittings) during the time products are in storage, will be added on to the project amount.
- 4.3. No deviation from the payment terms will be accommodated without prior negotiation.

- 4.4. All deposits & payments are non-refundable.
- 4.5. By paying the deposit the Client acknowledges that he/she has read & accepts the terms & conditions of this agreement.
- 4.6. This contract is subject to payment of all amounts by the Client as stipulated in paragraph 4.1.
- 4.7. The Client will forfeit any & all discounts initially allowed & agreed to, should the Client not meet any of the payment requirements as stipulated in paragraph 4.1.
- 4.8. The Client shall pay all amounts due, in terms of this agreement & in accordance with paragraph 4, without any deductions from the amounts payable for any reason.
- 4.9. The Client will be in breach of this agreement if the Client:
- a) Does not make the agreed payments on time in terms of this agreement.
  - b) Is provisionally or finally sequestrated, liquidated or placed under judicial management.
  - c) Has a court judgment that is not paid within 7 (seven) days.
- 4.10. The Client agrees to judgment being taken against him/her in the event of default in payments to Ergo as per any terms & conditions as set out in paragraph 4 of the agreement.

#### 5. DISPUTES

- 5.1. Should a dispute arise between the parties with regard to the quality of Ergo's workmanship, the materials, or the finishes, such dispute shall be referred to The Kitchen Specialists Association (KSA) to attempt to resolve the dispute, & where necessary, appoint a mediator.
- 5.2. The parties shall be bound by the decision of The Kitchen Specialists Association's appointed mediator.
- 5.3. Prior to The KSA providing its mediation service, the balance of any monies due by the Client to Ergo shall be paid to the Kitchen Specialists Association Holding Account pending resolution of the dispute.
- 5.4. In the event of a dispute arising from any matter other than a dispute arising from alleged faulty workmanship, materials or finishes, the parties shall be entitled to institute legal proceedings in a court of law.

#### 6. WARRANTY

- 6.1. The warranty does not cover water damage or purposeful mishandling of products once collected from the Ergo factory. Nor any products not installed by the Ergo installation team. Thus, any built & supply (DIY) projects.

#### 7. DATA PROTECTION

- 7.1. In performing their obligations under the service agreement, Ergo shall:
- a) Comply with the provisions of the prevailing privacy & data protection legislation governing the collection, use & processing of Personal Information as defined in the relevant legislation.
  - b) Not disclose or otherwise make available the Personal Information to any third party other than authorized staff or suppliers who require access to such Personal Information strictly in order for Ergo to carry out its obligations pursuant to this agreement, & to ensure that such staff & any other persons that have access to the Personal Information are bound by appropriate & legally binding confidentiality & non-use obligations in relation to the Personal Information.
  - c) Take appropriate, reasonable technical & organizational measures to ensure that the integrity & confidentiality of the Personal Information in its possession or under its control is secure & that such Personal Information is

protected against accidental loss, destruction, damage, unlawful access or processing.

7.2. By accepting this agreement, the Client hereby consents that Ergo may, to the extent permitted by law, receive or disclose the Client's personal information from or to:

- a) Any law enforcement agencies that require the information for the prevention or investigation of criminal activities;
- b) Any of the Ergo's shareholders, affiliated entities, suppliers & professional advisors for marketing &/or statistical purposes, subject to your right to restrict receipt of unwanted marketing material or other rights in terms of the Consumer Protection Act, 2008.
- c) Any of the Ergo's shareholders, affiliated entities, suppliers & professional advisors for reporting, accounting, product supply & service &/or auditing purposes.

7.3. 9.3 The Client hereby indemnifies & holds harmless Ergo, its affiliates, respective staff, successors, cessionaries & assigns, from any & all losses, costs, expenses & damage, including consequential losses & damage as well as penalties & fines arising from Ergo's non-compliance with the provisions of this clause including any relevant data protection legislation.

**CLIENT**

Full Names & Surname / Legal Company Name & Trading Name

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ID Number / Company Registration number

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

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**ERGO REPRESENTATIVE / CONSULTANT (Who signs this document on behalf of Ergo Designer Kitchens & Cabinetry & is duly authorised to do so).**

Full Names & Surname

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

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