

JAMES MUDGE FURNITURE STUDIO

www.jamesmudge.com

QUOTE

Qu. No.	QU-3543	Expiry Date:	07 Jul 2024
Quote Date:	07 Jun 2024		
Customer:	Clout SA (Pty) Ltd	Reference:	Nandos Aberdeen
Customer VAT No.:	4930300225		
Details:	22 Oxford Road Parktown	Contact No:	Yasmeen Patel 081 353 9824
Product Description	Quantity	Unit Price	Full Amount
Hardwood Dining Chair 540 W x 560 D x 460/790 H mm - Solid Walnut with a Clear Oil finish - Upholstered seat: leather TBC - Indoor use only	19	R 5 700.00	R 108 300.00
30mm Cardboard Crates for shipping * External dimensions: 1540 L x 700 W x 1023 H mm. Including 2 x tilt and 2 x shock watches per crate. *estimate only, subject to change	5	R 2 550.00	R 12 750.00
Wrapping & packaging	1	R 2 300.00	R 2 300.00
Own Collection - UK delivery			
Delivery quoted according to address, access & size of order. Subject to change.			
Lead time on production: 6-10 weeks from receipt of 50% deposit payment.			
Payment in full before delivery.			
	Sub Total	R 123 350.00	
	VAT at 15%	R 18 502.50	
	TOTAL AMOUNT	R 141 852.50	
	50% Deposit Payment on acceptance of quote	R 70 926.25	

Account Name: James Mudge Furniture Studio, First National Bank, Account Number: 6233 9200 636, Branch Code: 250655
VAT No: 4210262632

Physical Address: 1 Calcutta Street, Paarden Eiland, Cape Town 7420 - Tel: +27 (0)79 448 1683 – Email: info@jamesmudge.com

Terms & Conditions:

Your order will be processed upon receipt of your non-refundable 50% deposit payment. Our standard lead time on production is 6-10 weeks from date of receipt of the deposit payment, with payment in full before delivery. Invoices for progress payments will be issued on receipt of such payment. Any defects to goods delivered/installed to be notified in writing within 3 days of delivery/installation failing which the goods/installations shall be deemed to be in good order. Thereafter there is a 1 year guarantee against any defective workmanship. By accepting the quote you accept our full Terms & Conditions as laid out below:



1 Calcutta Street | Paarden Eiland
Cape Town 7420 | South Africa
+27 (0) 79 448 1683
info@jamesmudge.com
vat no: 4210262632 | reg. no. 2006/115080/23 | www.jamesmudge.com

JAMES MUDGE FURNITURE STUDIO CC - TERMS & CONDITIONS

THIS AGREEMENT IS ENTERED INTO BETWEEN JAMES MUDGE FURNITURE STUDIO CC AND THE CLIENT (AS SUCH PARTY IS DEFINED IN THIS AGREEMENT).
PLEASE READ THIS DOCUMENT CAREFULLY AND NOTE THAT THESE TERMS AND CONDITIONS WILL BE DEEMED TO BE ACCEPTED BY THE CLIENT UPON THE CLIENT OR THE CLIENT'S REPRESENTATIVE CONFIRMING ITS ORDER. THIS AGREEMENT CONTAINS PROVISIONS THAT PROVIDE IMPORTANT GUIDELINES TO AND OBLIGATIONS OF THE CLIENT AND WHICH LIMITS LIABILITY.

1. DEFINITIONS

1.1 "Agreement" means these terms and conditions, incorporating the written Order Quotation issued to and accepted by or on behalf of the Client;
1.2 "Client" means the person or entity for whom the goods will be manufactured and are sold to in terms of this Agreement, reference to whom may in certain instances also include a procurement agent, and/or interiors design service provider placing an order on behalf of the party to whom the Goods will be delivered, and reference herein to "You" or "Your" shall have the same meaning;
1.3 "Goods" means the furniture and/or related products described in the Order Quotation, to be manufactured by JMFS and sold to the Client and reference herein to "products" and "furniture" shall have the same meaning;
1.4 "JMFS" means James Mudge Furniture Studio CC (Registration number 2006/115080/23), a close corporation registered in accordance with the laws of South Africa, and reference herein to "We", "Our" and "Us" shall have the same meaning;
1.5 "Order Quotation" means the document in which JMFS sets out the details relating to the Client's requested order for Goods, the price(s) and other terms relevant to the order;
1.6 "Parties" means JMFS and the Client, and "Party" shall mean any one of them as the context requires.

2. ORDERING PROCESS & LEAD TIME

Unless otherwise specifically agreed to by the Parties in writing at the time of the order being placed by the Client, the following provision will apply to orders of Goods:-
2.1 Orders will be processed upon receipt of a non-refundable 50% (fifty percent) deposit payment which is inclusive of 15% VAT (value added tax).
2.2 In addition to clause 2.1, orders can only be processed for production when all details (design style, dimensions, materials, finishes etc) have been confirmed by the Client in writing.
2.3 JMFS's standard lead time on production ex-works is six to eight (6-8) weeks, calculated from the date of receipt by us of the deposit payment into our bank account, unless a different period is specified by JMFS as determined in our sole discretion. See clause 2.9 below.
2.4 JMFS's bank account details are:-
Account Name: James Mudge Furniture Studio
Bank: First National Bank
Account Number: 62339200636
Branch Code: 209809
2.5 The Client is responsible for ensuring that it pays into the correct bank account, the details of which are above. Any notice that advises that JMFS' bank account details have been changed must be verified by the Client in writing and via telephone with JMFS's authorised representative, prior to payment being made to such account. In the event of the Client paying into the incorrect bank account, the Client shall remain liable for payment due to JMFS and shall not be entitled to delay payment due to incorrect payment.
2.6 The Client is required to cite their proforma invoice number or quote number as a reference when making payment (eg: Qu-19045 or Inv-1904-2175-01).
2.7 Tax Invoices for progress payments or intermediate payments will be issued upon receipt by us of such payment.
2.8 Input Tax (VAT) may only be claimed as each payment is made and upon receipt of a valid tax invoice.
2.9 JMFS shall be entitled to charge interest levied at the prime rate for any late payments, such interest to be calculated from the due date for payment to actual payment received by JMFS.
2.10 Orders will only be released for delivery or collection once JMFS has received the full balance payment and the order has been paid for in full, including any additional costs such as transportation, additional packaging etc.
2.11 JMFS reserves the right to delay or postpone the standard six to eight (6-8) weeks lead time on production without penalty in the event of unforeseen circumstances and/or situations outside of our control.

3. DELIVERY

3.1. All risk in the Goods shall pass from JMFS when it leaves JMFS's premises, whether via collection by the Client, or some other third party such as inter alia the delivery supplier.
3.2. Delivery costs are not included in the price of our products and are quoted on a case by case basis according to the physical address, the size of the order, and accessibility at the premises where the Goods are to be delivered. For large pieces of furniture or very tricky access at such premises, JMFS requires that the Client discuss this with JMFS before placing its order.
3.3. Prior to JMFS quoting for delivery, the Client is required to notify JMFS in writing of lift access, flights of stairs, narrow passages, glass balustrades and/or any other difficult obstacle or situation which could hinder delivery of the Goods. The delivery cost will be affected by certain factors, including that there is a surcharge for a carry-up service.

3.4. Hoisting of furniture is a specialized field and will incur additional delivery costs. If hoisting is required in order to facilitate delivery the Client is required to discuss this with JMFS before delivery is quoted for and will only be considered final once the parties have agreed it in writing. JMFS may recommend a different delivery service provider in the event of hoisting being required.

3.5. The Client acknowledges that it is its responsibility to make sure that the piece(s) of furniture ordered can physically be delivered to the delivery location specified and be sure that such furniture can fit inside fully assembled, given that not all of JMFS's designs break down in size. JMFS shall not be liable for any inability to deliver on this basis.

3.6. In respect of delivery locations that are based in Cape Town, JMFS can on the Client's request arrange a site visit with JMFS's recommended delivery service provider in order to test access to premises and/or hoisting ability based on the size of the product/s requested. The cost associated herewith will be quoted by JMFS at an additional rate.

3.7. The Client acknowledges and agrees that bespoke or customised pieces of furniture may not be returned to us for a refund in the event that they are unable to fit inside the premises, as Clients are advised to check before placing an order. Where JMFS has made goods specifically to a Client's requirements (whether in terms of material, finish, dimensions and/or custom design) JMFS is unlikely to be able to sell it on to another buyer. In this regard, the Client is referred to the returns policy at clause 8 below.

3.8. Delivery, both locally in Cape Town and nationally within South Africa, is outsourced to independent third party contractor/s. In terms of delivery times, delivery is likely to take at least one week for transportation to major cities in South Africa (apart from Cape Town and its surrounds which would be a shorter period), and one and a half weeks for rural or more remote areas within South Africa but JMFS is unable to guarantee delivery timetables.

3.9. The workmanship of JMFS's products is of fundamental importance to JMFS and as such, it endeavours to recommend individuals and companies who deliver exemplary service. JMFS does not, however, as provided in clause 3.8, attend to the delivery of its products itself and these services are carried out by independent suppliers. JMFS does not accept any liability whatsoever for any such individuals or companies whether in transit, on the premises to where the Goods are being delivered, or elsewhere. By accepting delivery arranged by JMFS, the Client acknowledges that delivery is carried out by a third party and the Client hereby agrees that under no circumstances would the Client hold JMFS (and/or its officers, directors, members and employees) liable for delivery carried out by such third party.

3.8. JMFS makes no representations and gives no warranties or undertakings in relation to, or on behalf of any delivery supplier party, including but not limited to, guarantees in respect of delivery times by such third parties.

3.9. Should the Client prefer to arrange its own transportation or collection of order(s) of Goods ex-works (i.e. ex the JMFS factory), the Client should select professional furniture carriers and not courier companies. JMFS advises against the use of courier companies who whilst frequently offering better transportation rates are not equipped to carefully handle the transportation of heavy, large and delicate Goods (such as furniture) that often results in damage to product(s) in transit. However, as this is outside of JMFS's control, the Client acknowledges and agrees that it cannot accept liability for any damage occurring in transit where the Client has selected their own transportation company or have collected the Goods themselves.

3.10. The Client is responsible to ensure that a representative of the Client is available to collect/receive the order on the Client's behalf at the Client's chosen delivery address and to provide contact details of such person (including cell phone numbers) to JMFS prior to the departure of the Client's order from JMFS. In the event of no such person being available at the chosen address to accept delivery of the Goods at the time and day that has been pre-arranged for delivery, JMFS reserves the right to charge the Client an additional fee for storage and re-delivery of the Goods.

3.11. Upon delivery, and before signing for the acceptance of the Goods, the Client shall be responsible for checking that the Goods are intact and that there are no breakages, missing items or defective products. Any damages or defects to the Goods that have been delivered must be notified in writing to JMFS within 3 (three) days of delivery, failing which the Goods shall be deemed to have been received in good order.

4. WRAPPING AND SPECIALIZED WRAPPING

4.1. With the exception of designs incorporating brass which will have a light covering over the brass area only, JMFS does not wrap product(s) for local delivery (Cape Town and surrounds). The delivery companies that JMFS often recommends to its clients usually supply reusable blankets which serve to fully protect the product(s) in transit.

4.2. For deliveries within South Africa, but outside of the Cape Town area, and for international deliveries, JMFS fully wraps the product(s) with a light wrapping to prevent scuffing and scratching.

4.3. Should the Client require wrapping of any kind including additional specialized wrapping and/or heavy duty wrapping, the Client is responsible for making its request in writing to JMFS, who will quote for the cost thereof at an additional cost to the Client.

4.4. In certain instances and for certain product(s) (including but not limited to product(s) that incorporate marble, glass, or mirrors) significant additional packaging (such as cardboard crates, pallet wrapping, heavy duty wrapping) may be required and in such event JMFS will quote for the cost thereof as an additional cost to the Client.

4.5. International orders will often also require significant additional packaging to offer adequate protection for international transit and JMFS will quote for the cost thereof as an additional cost to the Client.

5. DAMAGE AND LIABILITY DURING DELIVERY

5.1. Unless otherwise specified in writing by JMFS, third party deliveries are not insured against total loss. However, in the event of any minor damage occurring during delivery where the Client has engaged one of JMFS's recommended delivery suppliers, JMFS may, but shall not be obliged to 'visibly' repair product(s) to the best of its ability at no additional cost (either in terms of transportation or repairs) to the Client. Should the Client wish to take out insurance against total loss, this must be done by the Client who should be able to obtain such insurance through the delivery company and quoted at an additional amount.

5.2. In the event of minor damage during transit or delivery, the Client is required to email photographs of the damage(s) to JMFS immediately, in order to show the damage to the protective wrapping (before removing or discarding the wrapping) and to show the damage to the Goods.

5.3. In the event of severe damage occurring during transit or delivery, JMFS may require that such damaged goods be returned to JMFS directly by the delivery supplier and not to be unwrapped and/or left with the Client.

6. DELIVERY DELAY AND/OR CANCELLATION

6.1. Subject to the provisions of this Agreement, the Client's Goods will be made to order within the specified lead time and will be ready for delivery on the appointed completion date specified in the Order Quotation, or as otherwise agreed to in writing between the Parties. JMFS is not able to meet the Client's requests to delay the delivery and store an order, due to its space restrictions. In the event of the Client requesting the delay the delivery of an order for more than one week, the Client shall be obliged to notify JMFS in writing at least two weeks before the appointed completion date. The Client's failure to do so may result in the order being delivered to the Client premises, or delivered to a storage facility at the Client's expense.

6.2. If the Client needs to postpone delivery within the Cape Town area and its surrounds, the Client shall be obliged to give JMFS written notice of postponement at least twenty four (24) hours during business days, in which event no delivery cancellation penalty shall be charged to the Client. Should the Client fail to give the requisite notice, JMFS shall be entitled to charge a cancellation fee, equal to the amount charged to JMFS by the third party delivery company, which fee must settle in full before delivery can take place.

6.3. JMFS reserves the right to delay or postpone pre-arranged deliveries and/or collections without penalty in the event of any circumstances arising which are beyond JMFS's reasonable control that causing delays.

7. INSTALLATION

7.1. Whilst JMFS does not offer installation of its products as a service, in order to assist the Client with the installation process, JMFS offers its clients some guidelines which are in its Installation Instruction Manual (which is available on request from JMFS).

7.2. JMFS records and the Client acknowledges that the Client is advised that the Client is required to exercise caution that there are many factors to consider with regards to installation of Goods, including that certain circumstances and details could impact the suitability and safety of installation of the Goods.

7.2. All clients are advised to take into account the precautions and guidelines listed herein below in respect of installation and use of any Goods that are wall-mounted or wall-attached, including that:-

7.2.1. The products have not been load-tested and should NOT be overloaded;

7.2.2. Adults, children and pets should NOT climb on or stand on the products;

7.2.3. Drywall structures may not be structurally strong enough to bear the load of the installation of Goods. In the event of drywall installation, the Client should ensure that the installer locates the studs and ensure that fixings screw directly into the studs. The drywall itself has no structural integrity and the Client should always consult his/her builder and/or a professional before installation takes place;

7.2.4. Face-brick walls are often not true 90 degree surfaces, are not always flat surfaces, and installing products on a bulging, convex or concave wall can damage the product and/or cause the installation to be unstable. Clients are advised to consult an expert;

7.2.5. Victorian brick walls mostly have very soft unbaked clay bricks which are less solid and installation instructions must be appropriately modified for mounting products on these surfaces. Clients are advised to consult with an expert to ensure the correct fixings are anticipated, which may include the use of chemical anchor and extra-long fixings, preferably installed directly through the wall with large washers in the event of heavy loads;

7.2.6. If walls are not flat and true (i.e. in one flat plane) failure of installation and serious damage can occur to walls and/or furniture and/or people and/or pets;

7.2.7. The Client should be aware that installation could cause damage to existing electrical wires, plumbing, structural elements, under-floor heating, glass, light fittings etc;

7.2.8. The Client should exercise caution if the Client, or any person, and/or other contractors remove the products in order to repaint and/or move the product as this may, in the process damage the installation mechanism resulting in possible failure of the installation of the product at a future date.

7.3 The terms set out in clause 7.2 are guidelines only and JMFS cannot and does not warrant that its recommended installation methods will be suitable or adequate in regards to the safety of the Client's installation of the Goods. JMFS therefore makes no representations and give no warranties or undertakings of any kind in relation to or on behalf of any installation supplier (whether or not they have been recommended by JMFS).

8. RETURNS AND CANCELLATIONS

8.1 Where JMFS has made the Client's product to custom order and should the Client elect to cancel the order, the Client agrees to forfeit the 50% deposit payment including VAT and the Client agrees that such forfeiture shall constitute a reasonable cancellation penalty to which JMFS shall be entitled as a result of such cancellation. This right shall not, if applicable to the Client in law, apply to a client's right to a "Cooling-Off Period" as provided for in section 8 of the Consumer Protection Act ("CPA"), in terms of which a consumer shall be entitled to a five (5) day cooling off period after an order that has been placed as a result of direct marketing (as that term is defined in the CPA).

8.2. Should the Client elect to cancel an order where JMFS has already commenced production thereof, the Client agrees to forfeit the 50% deposit payment including VAT and the Client agrees that such forfeiture shall constitute a reasonable cancellation penalty to which JMFS shall be entitled as a result of such cancellation.

8.3. Should the Client elect to cancel an order where JMFS has not commenced production thereof, JMFS reserves the right to charge a reasonable cancellation penalty based on any costs or time that it has incurred up to the date of cancellation, including a minimum administrative fee of 5% of the total value of the item(s) being cancelled and the Client agrees that such forfeiture shall constitute a reasonable cancellation penalty to which JMFS is entitled. The balance of the deposit paid by the Client will thereafter be refunded to the Client.

8.4 JMFS will only accept the return of any product(s) which it in its determination finds to be defective, within six (6) months of delivery of such product(s) to the Client. In the event of returns, it shall be the Client's responsibility to have the product(s) delivered to JMFS at the Client's expense. The address for return of defective Goods is:

James Mudge Furniture Studio, 7 Transvaal Street, Paarden Eiland, Cape Town, 7420, South Africa. Email: info@jamesmudge.com

8.5. With regards to returns of Goods, the Client is required to inform JMFS via email to email: info@jamesmudge.com, of any intended returns and must do so prior to dispatch in order allow JMFS to track the product(s). The Client is further required to ensure that the returned package contains the Client's full details including, name, contact number and JMFS's full name and physical address referred to in clause 8.4 above.

8.6 All risk of loss of or damage to the Goods while en route to JMFS will remain with the Client until such time as an authorised representative of JMFS has accepted delivery thereof. The Client is obliged to return the Goods wrapped in its original packaging, or properly wrapped to sufficiently protect the Goods during transportation.

8.7 Upon receipt of the Goods, JMFS will carefully examine the product(s) and contact the Client within 3 business days thereafter to discuss whether the product(s) are defective. Should JMFS determine that the product(s) are defective, it will repair or replace the product(s), or refund the purchase price of the product(s) to the Client, and will compensate the Client for the reasonable delivery cost incurred by the Client for the return of the product(s) to JMFS (if any).

8.8. If the product(s) is found to NOT be defective, the Client will NOT be entitled to any repair, replacement or refund and will be liable for the costs incurred by JMFS in having such product(s) redelivered to the Client including any incidental charges or fees which may be applicable such as packaging and/or insurance costs. The Client agrees to make payment of any such amounts due on demand by JMFS.

8.9. JMFS records and the Client agrees that the following are examples of what would NOT be regarded as defects and which will NOT entitle the Client to any repair or replacement of a product(s) or a refund of the purchase price:

8.9.1 a slight difference of colour or texture from product to product, resulting from the use of materials which may have natural flaws and natural variances, including materials such as wood, brass, stone or leather;

8.9.2. non-defective products that have been custom "made to order";

8.9.3. a product that has been damaged as a result of inadequate care, or as a result of negligence (as determined in JMFS's sole discretion);

8.9.4. a product that the Client or any other person has altered, repaired, used, incorporated or added to where such alteration, repair, incorporation or addition has not been authorised in writing and in advance by JMFS;

8.9.5. a product, where by its nature of being handmade and/or using natural materials, have cracks, repair marks and/or imperfections which are a fundamental element of the product and which adds to the intrinsic value of the Goods, will NOT be considered to be a defect;

8.9.6. a product which has not been correctly maintained (as determined in JMFS's sole discretion), including but not limited to, Goods such as outdoor furniture that has not been regularly oiled to protect it from extreme weather conditions, or non-adherence to any other maintenance guidelines as set out in JMFS's furniture care manuals.

8.10. In the event of the incorrect Goods being delivered to a Client in error (i.e. it is not the product the Client purchased), the Client must not remove the product from its original packaging and is required to return it directly and immediately to JMFS using the same delivery company. The Client is further required to promptly contact JMFS, so that it may resolve the error by arranging to collect such Goods from the Client (if not already returned) and deliver the correct product to the Client as soon as possible.

9. USE OF THE GOODS

9.1. This clause 9 applies to both the domestic/personal and commercial public space use of the Goods. The Client must familiarise themselves and those who make use of the Goods with the terms.

9.2. Whilst its products are well made and designed to the best of its ability, JMFS products are NOT specifically tested for 'commercial' or public use environments and JMFS therefore does not warrant the suitability of products for use in commercial and/or public use environments, and for commercial, non-personal purposes.

9.3. Given that JMFS cannot control the environment in which the product(s) is intended to be used by the Client and other persons, it cannot be held responsible for any damage or injury to people or otherwise whatsoever. As with all environments (namely domestic use but also specifically in commercial public use spaces), JMFS is unable to prevent or guard against the misuse of its products, such as continued 'rocking' on or dropping of chairs, rough handling, and/or standing on chairs, tables, shelves or other furniture items not specifically designed for such a purpose.

9.4. In consideration of clause 9.2 and 9.3 above, the Client is responsible for ensuring regular inspections (at least every second month) of the product(s) in order to identify signs of damage, failure or loose joints on chairs, and to remove said product(s) from use immediately if any sign of a crack or loose joint is evident therein.

9.5. Further to the Client's responsibility in clause 9.4, the Client agrees that it shall further use its best efforts to ensure that any persons handling the Goods including but not limited to cleaning staff, refrain from rough handling of furniture which can often fracture the Goods, and that in the event of the Goods being damaged through cleaning, that such persons report any fractures or other damage to the Client. JMFS emphasizes the importance of regular maintenance and inspections by the Client in order to identify damage because it causes damage to persons, property and/or to the Goods.

9.6. In relation to the materials from which the Goods are made, JMFS uses solid wood which is a very durable and strong material but advises that because timber is a natural product it can contain latent defects such as hairline cracks that only become apparent through the passing of time and that could not have reasonably been identified by JMFS at the time of production or completion of Goods. In line with the Client's obligation in clause 9.4 and 9.5, the Client should inspect the Goods regularly as advised so that it can become aware of any such defects before they become problematic or cause damage of any kind. Whilst JMFS warrants that to the best of its knowledge there are no structural defects in the timber used at the time of producing the Goods, it cannot reasonably foresee and therefore cannot be held responsible for future defects. Further information on the aforementioned can be found on JMFS's document titled 'Natural Materials' which is available on request.

9.5. JMFS advises that certain climatic conditions, such as air-conditioning, and/or extreme temperatures can cause timber to crack and cause damage that is out of JMFS's control.

9.6. With respect to certain materials and finishes, those listed below either contain, or will over time display naturally occurring imperfections, for which JMFS cannot be held liable:- *Sustainability; Solid Timbe; French Oak; Outdoor Furniture; Timber Veneer; Brass; Oil; Varnish and Painted Finishes*

9.7. If the Client subsequently sells the Goods purchased in terms of this Agreement to a third party, the Client acknowledges that it is the Client's responsibility to advise such third party of the use and care terms relating to the Goods (as set out in this Agreement- specifically clauses 7 and 9 hereof) and the Client undertakes to JMFS that it shall do so.

10. INDEMNITY AND LIMITATION OF LIABILITY

10.1. BY ACCEPTING DELIVERY AND/OR INSTALLATION OF GOODS THAT HAS BEEN ARRANGED BY JMFS, THE CLIENT ACKNOWLEDGES THAT DELIVERY AND/OR INSTALLATION WILL BE CARRIED OUT BY AN INDEPENDENT THIRD PARTY FOR WHOM JMFS IS NOT RESPONSIBLE, AND IN ADDITION; IN INSTANCES WHERE THE CLIENT ORS ITS REPRESENTATIVES OR AGENTS HAS ARRANGED ITS OWN DELIVERY SUPPLIER OR HAS ITSELF COLLECTED THE GOODS, THE CLIENT HEREBY INDEMNIFIES AND HOLDS JMFS COMPLETELY HARMLESS IN RESPECT OF ANY LOSSES, INJURY, DEATH, THEFT AND/OR DAMAGES OF WHATSOEVER NATURE (WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL), HOWSOEVER ARISING, WHICH THE CLIENT OR ANY OTHER PERSON, ANIMAL OR PROPERTY MAY SUSTAIN (COLLECTIVELY REFERRED TO HEREAFTER AS "LOSSES") AS A RESULT OF, OR ARISING IN CONNECTION WITH, THE DELIVERY TO AND/OR INSTALLATION OF PRODUCTS AT THE CLIENT'S PREMISES, OR ELSEWHERE AS DIRECTED BY THE CLIENT.

10.2. IN ADDITION TO CLAUSE 10.1 AND TO THE FULL EXTENT

PERMITTED IN LAW, THE CLIENT HEREBY FULLY INDEMNIFIES AND HOLDS JMFS (ITS OFFICERS, DIRECTORS, MEMBERS AND EMPLOYEES)

COMPLETELY HARMLESS IN RESPECT ANY LOSSES (AS DEFINED IN

10.1), ARISING OUT OF OR IN CONNECTION WITH THE GOODS

PURCHASED FROM JMFS AND/OR FOR ANY LOSSES ARISING OUT OF THE CLIENT'S BREACH OF ITS OBLIGATIONS IN TERMS OF THIS AGREEMENT.

11. INTELLECTUAL PROPERTY

The Client acknowledges that copyright, design, trademarks and all intellectual property rights in the Goods (whether custom made to order by the Client or not) and the business name and trading style of JMFS (collectively referred to as "JMFS IP") vests solely in JMFS and that no rights of any kind in the JMFS IP including but not limited, the right of licence, are granted to the Client or to any other party. The Client further undertakes to JMFS that it/she/he will in no way, whether directly or indirectly in any capacity replicate, reproduce, or misuse any of the JMFS IP, or cause or permit any other person to do any of the foregoing.

12. DISPUTE RESOLUTION

In the event of any dispute or claim arising out of, or in connection with, the Agreement, including any question regarding its existence, termination, validity or any breach thereof ("Dispute"), arising between the Client and JMFS, such Dispute will be the first instance to be referred to duly authorised senior representatives of the Client and JMFS for resolution. In the event that such Dispute is not resolved within 10 (ten) days from the date of such referral, the Client or JMFS may refer the Dispute to arbitration in accordance with the rules of Arbitration Foundation of Southern Africa. Such arbitration will be held in Cape Town or such other place as agreed between the Parties. The award of the arbitrator will be final and binding and may be entered as a judgment in any court having jurisdiction. These provisions will not prevent the Client or JMFS from approaching any court or other judicial forum having jurisdiction (subject to clause 14.10 below) to obtain timely injunctive or other relief in cases of urgency.

13. FORCE MAJEURE

JMFS shall not be held liable for any Losses which are a result of any default or delay in the performance of its obligations in terms of this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, government failures or delays, rebellions or revolutions in any country or any other cause beyond the reasonable control; provided that JMFS is without fault in causing such default or delay.

14. GENERAL

14.1 **No assignment without consent:** No assignment without consent: Neither party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other party.

14.2 **Severability:** Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition is held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

14.3 **Waiver:** No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless in writing and signed by an authorised representative of the party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege under the Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14.4 **Whole agreement and amendment:** This Agreement (as defined) constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by a Party's duly authorised representatives.

14.5 **No Warranties:** JMFS makes no representations and gives no warranties or undertakings other than what is specifically set out in these Terms and Conditions;

14.6 **Relationship of Parties:** The Parties warrant and acknowledge that the relationship between them is not in the nature of a partnership or that of employer/employee and that neither Party is in any manner entitled to make or enter into binding agreements of any nature on behalf of the other Party.

14.7 **Survival:** The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

14.8 **Implementation and Covenant of good faith:** The Parties warrant to each other that they have taken or caused to be taken all steps, actions and corporate proceedings necessary to cause this Agreement to be binding on themselves. Either party shall, if requested by the other Party, furnish to the latter sufficient evidence of the authority of the person or person who shall, on behalf of the party so requested, take any action or execute any documents required or permitted to be taken or executed by such person under this Agreement. Each party agrees that, in its respective dealings with the other party under or in connection with this Agreement, it shall act in good faith.

14.9 **Costs:** Each party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.

14.10 **Governing Law and Jurisdiction:** This Agreement will be governed, constituted and interpreted in accordance with the laws of the Republic of South Africa, without regard to conflict of law principles. The Parties hereby consent to the exclusive jurisdiction of the courts of South Africa in the determination of any matters arising out of this Agreement.