

New Living KITCHENS

CUSTOMER AGREEMENT

Part 1 – Proposal

Date: [insert date]

PARTIES

Company details

Name: **David James Holmes (ABN 22614915468) trading as New Living Kitchens**
Contractor licence: 191994c
Address: 8/20-22 Barry Road, Chipping Norton, NSW 2170
Mobile telephone: 0414 510 265
E-mail: david@newlivingkitchens.com.au
Website: www.newlivingkitchens.com.au

Client details

Name: [insert]
Address: [insert]
Telephone: [insert]
E-mail: [insert]

Date of Quotation: [insert]

Quotation ref. no: [insert]

COMMERCIAL TERMS

Services	[insert]
Commencement date	[insert]
Estimated period to undertake Services	[insert]
End date	[insert]
Service period	[insert]
Deposit	10% of Fee
Fee	[\$insert]
Payment schedule	The Fee shall be payable by the Client to the Company in installments according to the following timetable:

	Date for payment	Fee proportion	Instalment amount
	At time of executing this agreement	10% of Fee (Deposit)	[insert]
	Completion of final measure	20% of Fee	[insert]
	Prior to delivery of joinery	30% of Fee	[insert]
	Completion of work	40% of Fee	[insert]
Invoice Terms	Invoices will be issued monthly and should be paid within 5 days.		
Payment method	Direct deposit to following account: Account name: C&D Shopfitting Account no: 042183263 BSB: 112879		

This Proposal is valid for 5 days. The Terms and Conditions in Part 2, the Statement of Acknowledgment at Appendix 1 and the plans and specifications at Appendix 2 are incorporated into this Agreement.

I have read and I accept this Proposal and the Terms and Conditions in Part 2.

Agreed

Executed for and on behalf of
David James Holmes (ABN 22614915468) trading as
New Living Kitchens

Executed for and on behalf of **[Company Name]**
(ABN #) who warrants that they are duly authorised
 to execute this agreement on its behalf:

.....
 Signature

.....
 Signature

.....
 Date

.....
 Name of Director/Authorised Officer

.....
 Date

Executed for and on behalf of
[individual]

.....
 Signature

.....
 Date

Part 2 - Terms and Conditions

1. ACCEPTANCE

- 1.1 These Terms and Conditions (**Terms**) are between David James Holmes (ABN 22614915468) trading as New Living Kitchens, its successors and assignees (referred to as “**we**” or “**us**”) and you, the person, organisation or entity described in the Proposal (referred to as “**you**”), and collectively, the Parties. These Terms apply to all Services provided by us to you. These Terms are also available on our Website, www.newlivingkitchens.com.au.
- 1.2 You have requested the services set out in the Acceptance in Part 1 (**Services**). **You agree and accept that these Terms and Conditions (Terms) together with the Proposal in Part 1 form the entire agreement under which we will supply Services to you (Agreement). Please read the Terms carefully.** Please contact us if you have any questions.
- 1.3 You accept our Proposal and Terms by signing and returning the Proposal in Part 1 with these Terms attached.
- 1.4 We will not commence performing our Services until you have paid the Deposit or first instalment of our fees.

2. COOLING OFF PERIOD

- 2.1 There is a cooling-off period of 5 business days within which you may cancel this Agreement. To exercise this right, you must notify us in writing within 5 business days of the signing of the Proposal.
- 2.2 You will be provided with a signed copy of the Proposal within 5 days of signing.

3. CERTIFICATE OF INSURANCE

- 3.1 We will provide you with a certificate of insurance under the Home Building Compensation Fund before we commence performance of the Services.

4. SERVICES

- 4.1 We agree to perform the Services set out in the Proposal with due care and skill.
- 4.2 Our licence to perform the Services is 191994c.
- 4.3 The estimated period for us to perform the Services is set out in the Proposal. However, you acknowledge that starting and completion dates are subject to change due to weather conditions and other circumstances beyond our reasonable control.
- 4.4 We may provide the Services to you using our employees, contractors and third party providers and they are included in these Terms.
- 4.5 Suppliers of third party services who are not an employee or our direct contractor (**Third Party Services**) will be your responsibility. We are not responsible for the quality of service provided

by suppliers of Third Party Services. You must make direct arrangements with them.

- 4.6 Our Services cover the scope in the Proposal. If you request additional services, including but not limited to changes in plans, specifications, scope or other variations (**Variation**), we have discretion as to whether we perform this work and whether an adjustment to the Fee may be required in respect of the same, or if we are unable to accommodate for such Variation, we may request that we be paid for Services performed to date and terminate this Agreement.
- 4.7 If we agree to perform any Variation, then we will inform you of the additional costing (**Variation Fee**). We will provide you with a document setting out the Variation and Variation Fee (**Variation Document**) and you will be required to sign this Variation Document before we commence work, and upon signing, the Variation Document will form a part of this Agreement. We will invoice you accordingly for the Variation upon completion of the Services.

5. PRICE, INVOICING AND PAYMENT

- 5.1 You agree to pay us any Deposit and the fees, including any other payments and expenses, for the Services that you have requested, as set out in the Proposal (**Price**). All amounts are stated in Australian dollars, and the total Price includes Australian GST (where applicable).
- 5.2 The Price and Services can be varied by written agreement between us, including by email.
- 5.3 We will issue an invoice for the Price upon completion of the Services (**Invoice**).
- 5.4 You agree to pay our Invoice within 5 days of the date of the Invoice. If you fail to pay any Invoice within 5 days, we have the right to cease providing the Services.
- 5.5 We may charge interest at the rate of 2% per month on any amounts unpaid after the expiry of 7 days after the payment date.
- 5.6 If our Invoice is unpaid for 7 days after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debt, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 5.7 If the Proposal states that the fees and expenses are an estimate only, you acknowledge that the final Price may be more or less than the estimated amount. We will endeavour to advise you of any material variation from the estimate as it becomes apparent.
- 5.8 Our pricing structure, payment methods and these Terms may be amended from time to time in our discretion. The pricing changes will apply to you for services provided to you after

the date of the change. All other changes will apply from the date that the amended Terms are posted on our Website, www.newlivingkitchens.com.au, or are provided to you, whichever is earlier.

6. OUR OBLIGATIONS AND WARRANTIES

6.1 We agree to provide all the relevant warranties under the *Home Building Act 1989* (NSW) including:

- (a) a warranty that the Services will be provided with due care and skill and in accordance with the plans and specifications set out in the Proposal;
- (b) a warranty that all materials supplied by us will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this Agreement, those materials will be new;
- (c) a warranty that the Services will be provided in accordance with, and will comply with, this or any other law,
- (d) a warranty that the Services will be provided with due diligence and within the time stipulated in this Agreement, or if no time is stipulated, within a reasonable time;
- (e) a warranty that, if the Services consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the Services will result, to the extent of the Services conducted, in a dwelling that is reasonably fit for occupation as a dwelling; and
- (f) a warranty that the Services and any materials used in performing the Services will be reasonably fit for the specified purpose or result, if you expressly make it known to us, or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of us, the particular purpose for which the Services is required or the result that you desire the Services to achieve, so as to show that you rely on our skill and judgment.

6.2 We warrant that the Services will comply with:

- (a) the Building Code of Australia, to the extent required under the Environmental Planning and Assessment Act 1979 (NSW);
- (b) all relevant codes, standard and specifications that the Services are required to comply with under any law; and
- (c) the conditions of any relevant development consent or complying development certificate.

6.3 We accept no responsibility and will not be liable for failure to comply with clause 6.2 above, if the failure relates solely to:

- (a) a design or specification prepared by or on behalf of you; or
- (b) a design or specification required by you if we have advised you in writing that the design or specification goes against the work compliance clause set out in clause 6.2 above.

7. YOUR ACKNOWLEDGEMENTS, OBLIGATIONS AND WARRANTIES

7.1 You acknowledge that you are required to select particular concrete and other composite materials (**Composite Materials**) which are required to enable us to provide the Services, and you agree that where you have selected a particular Composite Material, we accept no responsibility for any cracks, colour separation and/or colour differences in such Composite Materials.

7.2 You understand that, unless otherwise agreed by the Parties in writing, our Services do not include any maintenance of the landscape that is completed using the Composite Materials and our Services (**Completed Landscape**). It is your responsibility to maintain the Completed Landscape, including, but not limited to, washing, sealing, and protecting, the Completed Landscape.

7.3 You acknowledge and agree that you have been provided with a Statement of Acknowledgment which includes a checklist as required by the *Home Building Regulation 2014* (NSW), and you have signed and returned this Statement of Acknowledgment to us. You are aware that if you cannot answer "yes" to each of the items on the checklist set out in the Statement of Acknowledgment, you may not be ready to sign this Agreement.

7.4 You warrant that you will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Services to you or the prior twelve (12) month period.

7.5 You warrant that throughout the term of this Agreement that:

- (a) there are no legal restrictions preventing you from agreeing the Terms;
- (b) you will cooperate with us and provide us with information and comply with requirements in a timely manner, as requested by us from time to time, that are reasonably necessary to enable us to perform the Services;
- (c) the information you provide to us is true, correct and complete;

- (d) you will not infringe any third party rights in working with us and receiving the Services;
- (e) you will inform us if you have reasonable concerns relating to our provision of Services under the Terms, with the aim that we and you will use all reasonable efforts to resolve the concerns;
- (f) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
- (g) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
- (h) if applicable, you have a valid ABN which has been advised to us; and
- (i) if applicable, you are registered for GST purposes.

8. OUR INTELLECTUAL PROPERTY

- 8.1 The work, drawings, specifications and materials that we provide to you in carrying out the Services contains material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the copyright which subsists in all creative and literary works incorporated into our Materials.
 - 8.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property ownership rights in our Materials, except as stated in these Terms or with our written permission.
 - 8.3 Your use of our Materials does not grant you a licence, or act as a right of use, any of the Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
 - 8.4 You must not breach our copyright or Intellectual Property rights by, including but not limited to:
 - (a) altering or modifying any of the Materials;
 - (b) creating derivative works from the Materials; or
 - (c) using our Materials for commercial purposes such as on sale to third parties.
- ## **9. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS**
- 9.1 You agree to provide information including Intellectual Property to us to enable us to provide the Services. You:
 - (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
 - (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable right and licence to use the Intellectual Property in any way we require to provide the Services to you; and
 - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
 - 9.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
 - (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us for the purposes of providing Services to you;
 - (b) irrevocably consent to us using or applying the Intellectual Property for the purposes of providing Services to you without any attribution of authorship;
 - (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
 - (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement.
- ## **10. CONFIDENTIAL INFORMATION**
- 10.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you and not for any other purpose.
 - 10.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
 - 10.3 These obligations do not apply to Confidential Information that:
 - (a) is authorised to be disclosed;
 - (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
 - (c) is received from a third party, except where there has been a breach of confidence; or
 - (d) must be disclosed by law or by a regulatory authority including under subpoena.
 - 10.4 The obligations under this clause will survive termination of these Terms.
- ## **11. FEEDBACK AND DISPUTE RESOLUTION**
- 11.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If

- you have any feedback or questions about our Services, please contact us.
- 11.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) the complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
 - (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to the New South Wales Fair Trading office.
- 11.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 12. TERMINATION**
- 12.1 This Agreement may also be terminated by circumstances as provided by the general law, but does not prevent the Parties from agreeing to additional circumstances in which this Agreement may be terminated.
- 12.2 The Parties may terminate the Terms by mutual agreement, by providing 10 days' notice in writing including by email, to the other Party, provided that we have not commenced in the performance of our Services.
- 12.3 Either party may terminate the Terms, if there has been a material breach of these Terms, subject to following the dispute resolution procedure.
- 12.4 We may terminate the Terms immediately, in our sole discretion, if:
- (a) we consider that a request for a Service is inappropriate, improper or unlawful;
 - (b) you refuse to comply with requirements and safeguards as published by New South Wales Fair Trading;
 - (c) you fail to provide us with clear or timely instructions to enable us to provide the Services;
 - (d) we consider that our working relationship has broken down including a loss of confidence and trust; or
 - (e) for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe.
- 12.5 On termination of the Agreement, you agree that any Deposit and payments already made are not refundable to you, and you are to pay all invoices for Services rendered to you.
- 12.6 If you terminate this Agreement early, you must pay for all Services provided prior to termination, including any Services which have been performed and have not yet been billed to you.
- 12.7 On termination of this Agreement, you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 12.8 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.
- 12.9 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to the Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 12.10 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 13. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 13.1 **ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the *Consumer and Competition Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**). Our liability is governed solely by the ACL and these Terms.
- 13.2 **Services:** If you are a consumer as defined in the ACL, the following applies to you: We guarantee that the Services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the Services for or for a result which you have told us you wish the Services to achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable to exclude liability; our total liability for loss or damage you suffer or incur from our Services is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates.

- 13.3 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in this estimated period, which is affected by your delay in response, incomplete or incorrect information.
- 13.4 **Referral:** On request by you, we may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or failure to advise or provide services.
- 13.5 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 13.6 **Liability:** To the extent permitted by law, and subject to the relevant clauses in these Terms, we exclude all express or implied representations, conditions, guarantees and terms relating to the Services and this agreement, except those set out in this agreement, including but not limited to:
- (a) implied or express guarantees, representations or conditions of any kind, which are not stated in the Terms;
 - (b) our Services being unavailable; and
 - (c) any loss, damage, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with the inability to access or use the Services, and the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 13.7 **Limitation:** Our total liability arising out of or in connection with our Services, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the twelve (12) month period prior to the event giving rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made, as applicable.
- 13.8 This clause will survive termination of these Terms.
- 14. INDEMNITY**
- 14.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - (b) any breach of these Terms; and
 - (c) any misuse of the Services from or by you, your employees, contractors or agents.
- 14.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 14.3 The obligations under this clause will survive termination of these Terms.
- 15. GENERAL**
- 15.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 15.2 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.
- 15.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 15.4 **GST:** If and when applicable, GST payable on our Services will be set out on the Proposal. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.
- 15.5 **Relationship of parties:** The Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.
- 15.6 **Assignment:** The Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations

under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).

- 15.7 **Severance:** If any provision (or part of it) of the Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) of these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of the Terms are valid and enforceable.
- 15.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under the Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 business days' notice in writing.
- 15.9 **Notice:** Any notice required or permitted to be given by either party to the other under these conditions will be in writing addressed to you at the address in the Proposal. Our address is set out in the Proposal. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.
- 15.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of New South Wales and the Commonwealth of Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.
- 15.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

16. DEFINITIONS

Confidential Information includes confidential information about the business, structure, programs, processes, methods, operating

procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".

GST means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.

Intellectual Property includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).

Statement of Acknowledgment means the statement under which you confirm that the Consumer Building Guide has been provided to you, and that you have completed the checklist therein as required by the *Home Building Regulation 2014* (NSW), which statement is attached at Appendix 1.

Contact details:

David James Holmes ABN 22614915468

t/a **New Living Kitchens**

8/20-22 Barry Road, Chipping Norton, NSW 2170

0414510265 | david@newlivingkitchens.com.au

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Appendix 1 – Statement of Acknowledgment

Appendix 2 – Plans and Specifications