



**TERMS & CONDITIONS between DGT INDUSTRIES, INC (doing business as “ENCORE CABINETS & MILLWORK”), hereinafter referred to as “Seller” or “Company,” and the party purchasing any Products or other materials, hereinafter referred to as “Buyer” or “Customer.”**

1. **AGREEMENT.** By ordering or accepting the products described in the Quote, Buyer Purchase Order, Invoice, or other Seller document. Buyer agrees to the terms and conditions set forth herein and in any attachments hereto, none of which may be added to, modified, superseded or otherwise altered except by written instrument signed by an authorized representative of Seller and delivered to Buyer. Any different or additional terms in Buyer’s acknowledgement, purchase order or other document of Buyer are hereby rejected, notwithstanding Seller’s act of shipping products or similar act of Seller. These terms and conditions, together with those appearing on the face of this form, shall constitute the complete and exclusive statement of all the terms of the agreement between Seller and Buyer unless different, contradictory or additional terms and conditions are agreed to in a writing signed by authorized representatives of both parties. In no event shall this invoice be deemed an acceptance by Seller of any terms and conditions included with Buyer’s purchase order or similar Buyer document, and Seller’s performance hereunder is expressly conditioned on Buyer’s assent to these terms and conditions of sale. Acceptance of orders, and deliveries thereunder, are at all times subject to the approval of an officer of Seller.
2. **TERMS OF PAYMENT.** Unless a completed and signed credit application has been filed, and an alternative credit arrangement has been agreed to in writing, all orders require a non refundable 50% deposit at time of Order. Invoices for the remaining amount due are issued as of the date of delivery and are due and payable in lawful money, upon the issuance thereof, unless otherwise specifically agreed in writing. The acceptance of any order or specification and terms of payment on all sales and orders is subject to approval of Seller’s Credit Department, and Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to Seller’s Credit Department.
3. **DELIVERY AND TRANSFER OF TITLE.** Unless Buyer takes possession of the products at one of Seller’s locations, products shall be shipped F.O.B. Origins, Seller’s shipping dock, freight pre-paid by Seller and added to the invoice. All title and risk of loss or damage in respect to the products shipped hereunder shall pass to Buyer on delivery to the first common carrier. For products picked up at one of Seller’s locations, title and risk of loss or damage transfers when Buyer takes possession of the products. Products are deemed accepted by Buyer either upon delivery to the carrier or when Buyer takes possession of the products at one of Seller’s stores, or if delivered by Seller then when Products are delivered to Buyer’s location, whichever is applicable. Buyer is responsible for payment of all costs relating to transportation, delivery and insurance. Buyer will be responsible for filing claims relating to any lost or damaged products.
4. **DELIVERIES DELAYED BY BUYER.** Any delivery that is delayed by Buyer for more than 10 days after the initially planned delivery date will be assessed a 2% per month storage and handling fee .
5. **LATE FEE.** All unpaid items will be charged a 1-1/2% per month late fee beginning the second month following delivery of shipment, such charge not to exceed the maximum charge permitted by law. Buyer will reimburse Seller for any costs associated with attempting to obtain payment for any overdue payments.
6. **CANCELLATION OR MODIFICATION OF ORDER.** Buyer shall have three (3) business days from the initial date of Buyer’s order in which to cancel or modify the order, except when order is placed within twenty (20) days or less for cabinets or any special order doors, millwork or other material, or ten (10) days for any stocked Products or materials.
7. **FORCE MAJEURE.** Seller shall not be liable to Buyer for any alleged loss or damage resulting from Seller’s failure to deliver products, or delay in making shipments, or resulting from acts of Buyer, fire, explosion, flood, earth-quake, war, riots, acts of terror, cyber incident, insurrection, civil disturbance, accident, storm, interruption or delay of transportation, epidemic, pandemic, shortages, strike or other labor dispute, inability to obtain materials and supplies, acts of government, any act of God, or any other causes of like or different character beyond Seller’s reasonable control.
8. **BUYER’S DUTY TO INSPECT.** Buyer must promptly inspect all shipped or delivered products for shortages, conformity with Buyer’s purchase order, if any, and defects. If products appear not to conform to Buyer’s purchase order, if any, or to be defective upon receipt, Buyer shall discontinue their use and immediately notify Seller of such condition and afford Seller a reasonable opportunity to inspect the same. Claims for shortage or deductions for erroneous charges must be presented within five (5) days after receipt of the products or they will not be allowed. Products may be returned to Seller only with Seller’s prior authorization, and only for repair of non-conformance or defect found upon receipt, due to shipment error by Seller or under warranty (see below).
9. **PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES.** All products are produced subject to (i) mill and manufacturing tolerances and variations in respect of dimension, weight, straightness, section, surface conditions, composition, mechanical properties, internal conditions and quality; (ii) deviations from such tolerances and variations consistent with practical testing and

- inspection methods and (iii) regular mill and manufacturing practices with respect to over and under shipments. Any representations, warranties or certifications by Seller shall be limited by the foregoing
10. DESIGN. Buyer agrees that s/he has reviewed all designs or other plans supplied by Seller and has confirmed the accuracy of all specifications, measurements, dimensions, and other details. Buyer will be responsible for any costs caused by failure to review the accuracy of Seller-supplied documents, and/or as-built changes or variances from plans, specifications, appliance information, or other information supplied by Buyer.
  11. DISCLAIMER FOR PAINTED WOOD PRODUCTS. Please be aware that wood expands and contracts. With painted cabinetry, doors and millwork, this natural process will create open joints in the painted finish. An open joint line is not considered a defect and it is widely accepted in the kitchen cabinet and millwork industry. Some people think joint lines actually add to the appeal of painted wood products. The finish will still protect the surface, and the structural integrity of the joint will not be affected. These issues are shared by every manufacturer of painted all wood cabinets, doors and millwork, and are not unique to Seller. Wood may expand and contract differently from cabinet to cabinet. Even joints within the same cabinet may behave differently. Some joined wood may not show any joint lines, others may be slightly visible, while others may display easily visible joint lines. Joint lines also may occur due to the repeated impacts from normal everyday use. An exposed open wood joint can be damaged from prolonged exposure to water or heavy moisture. Therefore, wipe off any excess moisture from cabinet surfaces as soon as possible. Discoloration: All Paints, especially lighter colors, are susceptible to discoloration due to airborne particles such as cooking, grilling, tobacco smoke, fireplaces or candles. Prolonged exposure to natural or artificial light may alter the finish color. Moisture may also discolor the finish.
  12. DISCLAIMER FOR WOOD PRODUCTS AND COLOR VARIATIONS. It is the Seller's goal to provide as color-consistent a product as wood and its natural imperfections will allow. Color and finish will be affected by the wild or coarse grain variations between different pieces of wood. They same stain or finish applied to two pieces of the same wood species may result in somewhat different appearances. It can also be affected by ultraviolet rays. Most woods are photo reactive materials. When in a raw state or finished with a transparent or semi-transparent stain or varnish, variations will become noticeable between different pieces over a period of time. Wood is an organic material and will react to large and/or rapid changes in temperature and humidity, causing things such as warping, growth, shrinkage, splitting, checking, discoloration, separation at joints, and decomposition of the adhesives and finish materials. These changes are due to the natural chemicals within the wood itself. Because the changes occur at various rates, Seller cannot guarantee perfect or exact color matches when additional items are order subsequent to the original order. The natural aging of the wood beneath the finish may subtly alter the color over time, and is beyond the control and responsibility of Seller.
  13. INSTALLATION: Seller does not install Products. The Buyer agrees to release, indemnify and hold Seller harmless from any liability due to structural failure related to soffits, walls, ceiling, floors, or backing, or any other materials of any kind which is used to hang, install or support the Products.
  14. PRODUCTION OR SHIPMENT DELAYS or additional costs caused by any changes requested by the customer shall be the sole responsibility of the customer.
  15. SECURITY INTEREST Buyer hereby grants Seller a security interest in all goods and Products purchased now or in the future, as described on each Quote, Purchase Order, Invoice or other Seller document.
  16. LIMITED WARRANTY; OBTAINING WARRANTY SERVICE; WARRANTIES EXCLUSIVE. (a) For one year from the date of delivery, Seller warrants all products furnished to customer against manufacturing defects in material and workmanship. This one year warranty does not apply to defects due to faulty installation or to misuse, abuse, alteration, normal wear and tear, or improper care of the Products or other material. SELLER SHALL NOT BE LIABLE UNDER THIS WARRANTY IF ITS TESTING AND EXAMINATION DISCLOSE THAT THE ALLEGED NONCONFORMITY IN THE PRODUCT DOES NOT EXIST OR WAS CAUSED BY BUYER'S OR ANY THIRD PERSON'S MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO REPAIR OR MODIFY THE PRODUCT, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING, OTHER HAZARDS OR ACTS OF GOD. (b) TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, OR ARISING FROM THE COURSE OF DEALING BETWEEN THE PARTIES OR USAGE OF TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.
  17. LIMITATION OF LIABILITY. (a) SELLER WILL NOT HAVE ANY LIABILITY TO BUYER OR ANY THIRD PARTY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, WORK STOPPAGE OR DELAY, OR ANY DAMAGES THAT ARE NOT DIRECT, ARISING OUT OF OR IN CONNECTION WITH THIS INVOICE OR OTHERWISE OR THE PERFORMANCE OR BREACH HEREOF, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. (b) SELLER'S MAXIMUM LIABILITY TO BUYER FOR DAMAGES HEREUNDER, IF ANY, SHALL NOT EXCEED THE ORIGINAL PURCHASE PRICE OF THE PRODUCTS GIVING RISE TO THE CLAIM. This warranty gives you specific legal rights which may vary depending on local law.

18. Buyer shall indemnify, defend and hold Seller and all of its agents, officers and employees harmless from and against all claims, damages losses and expenses including attorney's fees and costs in any way arising out of or resulting from any act(s) or omissions(s) of customer, its agents, employees or independent contractors.
19. ENFORCEMENT OF TERMS; NO WAIVER. Any forbearance or failure of Seller to enforce any provision of these terms and conditions or to exercise any right arising from any default of Buyer hereunder shall not affect or impair Seller's rights, and no such forbearance or failure shall be construed as a waiver of Seller's rights to act or to enforce each and every such provision. Seller's exercise of any right or remedy provided in these terms and conditions shall be without prejudice to Seller's right to exercise any other right or remedy provided by law or equity
20. DEFAULT. If Buyer fails to fulfill the terms of payment on any order, Seller may defer further shipments until such payments are made, or may, at its option, cancel the order. Seller reserves the right, even after partial shipment on account of any order, to require from Buyer satisfactory security for performance of Buyer's obligations, and refusal to furnish such security will entitle Seller to suspend shipments until such security is furnished, and, at Seller's option, to cancel the order.
21. NOTIFICATION. Buyer must notify Seller in writing within three (3) business days of any claimed breach or default as a condition of any right to claim damages or other remedies. Seller shall have a reasonable period to investigate and remedy any alleged defect.
22. PRICES; TAXES. The prices paid by Buyer shall be that stated on the face of the Quote, Purchase Order, Invoice or other Seller form. All prices are in U.S. dollars. The prices stated do not include taxes, duties, tariffs and other similar charges. Buyer is responsible for, and shall pay or reimburse Seller for, all taxes, including sales, use, gross receipts, excise, personal property, goods and services, value added, commodity or other federal, state or local taxes based on the sale to Buyer of the products, excluding taxes on Seller's net worth and net income. Any taxes which Seller may be required to pay or collect under any existing or future law upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the products covered hereby, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of Buyer and Buyer shall promptly pay the amount thereof to Seller on demand.
23. CONFLICT WITH APPLICABLE LAW: SEVERABILITY. No term or condition herein shall be effective or binding to the extent that it may be illegal or require an illegal action. If any provision of these terms and conditions shall be judged by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such adjudication shall not affect or modify any other provision of these terms and conditions, and the effect thereof shall be confined to the provision as to which such adjudication is made.
24. ENTIRE AGREEMENT. These terms and conditions, together with any attached specifications and drawings, constitute the entire final written agreement between the parties, and are a complete and exclusive statement of all the terms of such agreement.
25. ASSIGNMENT. Neither party may assign its rights or delegate its obligations hereunder without the prior written consent of the other, except that Seller may assign its rights and delegate its obligations hereunder to any subsidiary or affiliate or in connection with a merger, acquisition, spin-out or other transfer of all or substantially all of the business, stock or assets of Seller to which these terms and conditions relate. Any attempted assignment in violation of this provision shall be null and void. Subject to the foregoing, these terms and conditions are binding upon, inure to the benefit of, and are enforceable by the parties hereto and their respective successors and permitted assigns.
26. GOVERNING LAW. These terms and conditions shall be construed in accordance with the laws of the State of Washington without the application of the conflicts of law rules. The application of the United Nations Convention on Contracts for the International Sale of Goods (1980) to these terms and conditions is hereby excluded. Jurisdiction and venue shall be in either Snohomish County, Washington.
27. DISPUTE RESOLUTION. Should any dispute arise between the parties, other than nonpayment by Buyer, the parties will make a good faith effort to first resolve the dispute without resorting to litigation. If a successful resolution cannot be reached then the parties agree to resolve the dispute via binding arbitration. The parties agree to waive their right to trial by jury and agree to be bound by the results of the arbitration without right of appeal. The parties agree to the rules and process of the American Arbitration Association unless the parties mutually agree to another method of Arbitration.
28. UPDATES TO TERMS. Seller reserves the right to modify or otherwise update these terms. For the current version of these terms, please visit [www.encorecabinetsinc.com/contact](http://www.encorecabinetsinc.com/contact)