



Opening doors
for the commercial
fitout industry.

22 Tate Drive
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Nexdor Systems Terms and Conditions (August 2024)

1. Definitions

1.1 Nexdor: means Nexdor Systems Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Nexdor Systems Pty Ltd

1.2 Client: means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.

1.3 Goods: means all Goods or Services supplied by Nexdor to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.4 Price: means the Price payable for the Goods as agreed between Nexdor and the Client in accordance with clause 4 below.

2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods. 2.2 These terms and conditions may only be amended with Nexdor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Nexdor.

3. Change in Control

3.1 The Client shall give Nexdor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Nexdor as a result of the Client's failure to comply with this clause.

4. Price and Payment

4.1 At Nexdor's sole discretion the Price shall be either:

(a) as indicated on any invoice provided by Nexdor to the Client; or

(b) the Price as at the date of delivery of the Goods according to Nexdor's current price list; or

(c) Nexdor's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2 Nexdor reserves the right to change the Price if a variation to Nexdor's quotation is requested.

4.3 At Nexdor's sole discretion a deposit may be required.



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4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Nexdor, which may be:

- (a) on delivery/completion of the Goods;
- (b) by way of instalments/progress payments in accordance with Nexdor's payment schedule;
- (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven
- (f) days following the date of any invoice given to the Client by Nexdor.

4.5 Payment may be made by cheque, electronic/on-line banking, credit card (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by any other method as agreed to between the Client and Nexdor.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Nexdor an amount equal to any GST Nexdor must pay for any supply by Nexdor under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

5.1 Delivery (Delivery) of the Goods is taken to occur at the time that:

- (a) the Client or the Client's nominated carrier takes possession of the Goods at Nexdor's address; or
- (b) Nexdor (or Nexdor's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

5.2 At Nexdor's sole discretion the cost of delivery is in addition to the Price.

5.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Nexdor shall be entitled to charge a reasonable fee for re delivery and/or storage.

5.4 Nexdor may deliver the Goods in separate installments. Each separate installment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.5 Any time or date given by Nexdor to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Nexdor will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.



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6. Risk

6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Nexdor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Nexdor is sufficient evidence of Nexdor's rights to receive the insurance proceeds without the need for any person dealing with Nexdor to make further enquiries.

6.3 If the Client requests Nexdor to leave Goods outside Nexdor's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

7. Title

7.1 Nexdor and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid Nexdor all amounts owing to Nexdor; and
- (b) the Client has met all of its other obligations to Nexdor.

7.2 Receipt by Nexdor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

7.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Client in accordance with clause 7.1 that the Client is only a bailee of the Goods and must return the Goods to Nexdor on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Nexdor and must pay to Nexdor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Nexdor and must pay or deliver the proceeds to Nexdor on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Nexdor and must sell, dispose of or return the resulting product to Nexdor as it so directs.
- (e) the Client irrevocably authorizes Nexdor to enter any premises where Nexdor believes the Goods are kept and recover possession of the Goods.
- (f) Nexdor may recover possession of any Goods in transit whether or not delivery has occurred.



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(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Nexdor.

(h) Nexdor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

8. Personal Property Securities Act 2009 (PPSA)

8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Nexdor to the Client.

8.3 The Client undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Nexdor may reasonably require to;

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);

(b) indemnify, and upon demand reimburse, Nexdor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of Nexdor; (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Nexdor;

(e) immediately advise Nexdor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

8.4 Nexdor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.



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8.7 Unless otherwise agreed to in writing by Nexdor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

8.8 The Client must unconditionally ratify any actions taken by Nexdor under clauses 8.3 to 8.5.

8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

9. Security and Charge

9.1 In consideration of Nexdor agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

9.2 The Client indemnifies Nexdor from and against all Nexdor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Nexdor's rights under this clause.

9.3 The Client irrevocably appoints Nexdor and each director of Nexdor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.

10. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

10.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify Nexdor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Nexdor to inspect the Goods.

10.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

10.3 Nexdor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Nexdor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Nexdor's liability in respect of these warranties is limited to the fullest extent permitted by law.

10.5 If the Client is a consumer within the meaning of the CCA, Nexdor's liability is limited to the extent permitted by section 64A of Schedule 2.



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10.6 If Nexdor is required to replace the Goods under this clause or the CCA, but is unable to do so, Nexdor may refund any money the Client has paid for the Goods.

10.7 If the Client is not a consumer within the meaning of the CCA, Nexdor's liability for any defect or damage in the Goods is:

- (a) limited to the value of any express warranty or warranty card provided to the Client by Nexdor at Nexdor's sole discretion;
- (b) limited to any warranty to which Nexdor is entitled, if Nexdor did not manufacture the Goods;
- (c) otherwise negated absolutely.

10.8 Subject to this clause 10, returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 10.1; and
- (b) Nexdor has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

10.9 Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, Nexdor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Client failing to properly maintain or store any Goods;
- (b) the Client using the Goods for any purpose other than that for which they were designed;
- (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user; (d) the Client failing to follow any instructions or guidelines provided by Nexdor;
- (e) fair wear and tear, any accident, or act of God.

10.10 Nexdor may in its absolute discretion accept non-defective Goods for return in which case Nexdor may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.

10.11 Notwithstanding anything contained in this clause if Nexdor is required by a law to accept a return then Nexdor will only accept a return on the conditions imposed by that law.

11. Intellectual Property

11.1 Where Nexdor has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Nexdor.



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11.2 The Client warrants that all designs, specifications or instructions given to Nexdor will not cause Nexdor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Nexdor against any action taken by a third party against Nexdor in respect of any such infringement.

11.3 The Client agrees that Nexdor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Nexdor has created for the Client.

12. Default and Consequences of Default

12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Nexdor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

12.2 If the Client owes Nexdor any money the Client shall indemnify Nexdor from and against all costs and disbursements incurred by Nexdor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Nexdor's collection agency costs, and bank dishonour fees).

12.3 Without prejudice to any other remedies Nexdor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Nexdor may suspend or terminate the supply of Goods to the Client. Nexdor will not be liable to the Client for any loss or damage the Client suffers because Nexdor has exercised its rights under this clause.

12.4 Without prejudice to Nexdor's other remedies at law Nexdor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Nexdor shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Nexdor becomes overdue, or in Nexdor's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

13. Cancellation

13.1 Nexdor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Nexdor shall repay to the Client any money paid by the Client for the Goods. Nexdor shall not be liable for any loss or damage whatsoever arising from such cancellation.



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13.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Nexdor as a direct result of the cancellation (including, but not limited to, any loss of profits).

13.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

14. Privacy Act 1988

14.1 The Client agrees for Nexdor to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Nexdor.

14.2 The Client agrees that Nexdor may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(a) to assess an application by the Client; and/or

(b) to notify other credit providers of a default by the Client; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or

(d) to assess the creditworthiness of the Client. The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

14.3 The Client consents to Nexdor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

14.4 The Client agrees that personal credit information provided may be used and retained by Nexdor for the following purposes (and for other purposes as shall be agreed between the Client and Nexdor or required by law from time to time):

(a) the provision of Goods; and/or

(b) the marketing of Goods by Nexdor, its agents or distributors; and/or

(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.

14.5 Nexdor may give information about the Client to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Client;



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(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

14.6 The information given to the credit reporting agency may include:

(a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);

(b) details concerning the Client's application for credit or commercial credit and the amount requested;

(c) advice that Nexdor is a current credit provider to the Client;

(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;

(e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;

(f) information that, in the opinion of Nexdor, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);

(g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once; (h) that credit provided to the Client by Nexdor has been paid or otherwise discharged.

15. Building and Construction Industry Security of Payment Act 2002

15.1 At Nexdor's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.

15.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

16. General

16.1 The failure by Nexdor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Nexdor's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Nexdor has its principal place of business, and are subject to the jurisdiction of the courts in that state.



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16.3 Subject to clause 10 Nexdor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Nexdor of these terms and conditions (alternatively Nexdor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

16.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Nexdor nor to withhold payment of any invoice because part of that invoice is in dispute.

16.5 Nexdor may license or sub-contract all or any part of its rights and obligations without the Client's consent.

16.6 The Client agrees that Nexdor may amend these terms and conditions at any time. If Nexdor makes a change to these terms and conditions, then that change will take effect from the date on which Nexdor notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Nexdor to provide Goods to the Client.

16.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

16.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Nexdor Systems -Terms & Conditions of Trade