

## Total Care Flooring Limited - Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Seller" shall mean Total Care Flooring Limited its successors and assigns or any person acting on behalf of and with the authority of Total Care Flooring Limited.
- 1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Buyer.
- 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 3 of this contract.
2. **Acceptance**
- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be amended with the written consent of Total Care Flooring Limited.
- 2.4 The Buyer undertakes to give the Seller at least fourteen (14) days notice of any change in the Buyer's name, address and/or any other change in the Buyer's details.
3. **Price and Payment**
- 3.1 At the Seller's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
  - (b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation in writing within thirty (30) days.
- 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 3.3 At the Seller's sole discretion a **deposit of at least a minimum of 50%** of the Price may be required.
- 3.4 **Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.**
- 3.5 At the Seller's sole discretion:
  - (a) payment shall be due on delivery of the Goods, or
  - (b) payment shall be due before delivery of the Goods, or
  - (c) payment for approved Buyers shall be made by instalments in accordance with the Seller's payment schedule, or
  - (d) payment for approved Buyer's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Buyer's address or address for notices.
- 3.6 In the event that the Buyer store the Goods with the Seller for a period greater than six (6) weeks then the Seller shall be entitled to charge the full Price of the Goods prior to storage commencing.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (excluding American Express and Diners), or by direct credit, or by any other method as agreed to between the Buyer and the Seller. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
4. **Delivery of Goods**
- 4.1 Delivery of the Goods shall take place when:
  - (a) the Buyer takes possession of the Goods at the Seller's address; or
  - (b) the Buyer takes possession of the Goods at the Buyer's address; or
  - (c) the Seller's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Seller's agent and risk for the Goods does not pass the Buyer takes possession of the Goods at the Buyer's address; or
  - (d) the Buyer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Buyer's agent.
- 4.2 The costs of Delivery are included in the Price unless the Price does not include installation of the Goods in which event costs of Delivery are for the Buyer's account.
- 4.3 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 4.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
  - (a) such discrepancy in quantity shall not exceed 5%, and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 4.7 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 4.8 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
5. **Extras**
- 5.1 **Floor Preparation, moving furniture and lifting flooring materials, are extras unless otherwise stated.**
- 5.2 **Unless otherwise agreed it is the Buyer's responsibility to ensure that floors are clear of furniture, effects and fittings (including, but not limited to, ranges, freezers, fridges, nightstores, supertubs, dishwashers and doors) prior to the installation of the Goods. It is also the Buyer's responsibility to replace such items following installation unless otherwise agreed to.**
- 5.3 **In the event that the Seller assists with removal of furniture, effects and fittings then neither the Seller nor their agents shall be held responsible for any loss or damage thereto.**
- 5.4 **Unless otherwise agreed to it is the Buyer's responsibility to trim and refit doors if necessary.**
6. **Risk**
- 6.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. Total Care Flooring Limited – Terms & Conditions of Trade.
7. **Title**
- 7.1 It is the intention of the Seller and agreed by the Buyer that ownership of the Goods shall not pass until:
  - (a) the Buyer has paid all amounts owing for the particular Goods, and
  - (b) the Buyer has met all other obligations due by the Buyer to the
- 7.2 Receipt by the Seller 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 and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
  - (a) until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease; and
  - (b) if the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods.
8. **Personal Property Securities Act 1999 ("PPSA")**
- 8.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer.
- 8.2 The Buyer undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and upto- date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of the Seller; and
  - (d) immediately advise the Seller 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.
- 8.3 The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 8.1 to 8.5.
9. **Buyer's Disclaimer**
- 9.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by the Seller and the Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgement.
10. **Defects**
- 10.1 The Buyer shall inspect the Goods upon delivery and shall within twenty-one (21) days notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.
- 10.2 Shading is the appearance of light and dark patches that can be particularly visible in cut pile carpets. Causes of shading are not understood and cannot be accurately predicted or prevented. This phenomenon does not affect the durability of the carpet and the Seller accepts no responsibility for shading.
- 10.3 Whilst the Seller takes all care during installation of the Goods, some carpet joints may be noticeable particularly in areas where light shines across the joint, which in no way detracts from the quality of the carpet or the installation. The Seller accepts no responsibility for noticeable joints, beyond the reasonable control of the Seller.
11. **Warranty**
- 11.1 Subject to the conditions of warranty set out in Clause 11.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller then the Seller will either (at the Seller's sole discretion) repair the defect or remedy the workmanship.
- 11.2 The conditions applicable to the warranty given by Clause 11.1 are:
  - (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) Failure on the part of the Buyer to properly maintain any Goods; or
    - (ii) Failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or
    - (iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
    - (iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) Fair wear and tear, any accident or act of God; or
    - (vi) The Buyer using the Goods in a commercial or business setting, and such defect or damage is not reported to the Seller in writing within twelve (12) months of installation (time being of the essence).
  - (b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
  - (c) In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyer's claim.
- 11.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.
- 11.4 In the case of second hand Goods, the Buyer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
12. **Contractual Remedies Act 1979**
- 12.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
13. **Consumer Guarantees Act 1993**
- 13.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Buyer is contracting within the terms of a trade/business (which cases are specifically excluded).
14. **Intellectual Property**
- 14.1 Where the Seller has designed, drawn or written Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 14.2 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order.
15. **Default & Consequences of Default**
- 15.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 15.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 15.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 15.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 15.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
  - (b) the Buyer 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 Buyer or any asset of the Buyer.
16. **Security and Charge**
- 16.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
  - (a) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.
17. **Cancellation**
- 17.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including, but limited to, any loss of profits) up to the time of cancellation.
18. **Privacy Act 1993**
- 18.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to:
  - (a) collect, retain and use any information about the Buyer for the purpose of assessing the Buyer's creditworthiness or marketing products and services to the Buyer; and
  - (b) to disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.
- 18.2 Where the Buyer is an individual the authorities under (clause 18.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller.
19. **Unpaid Seller's Rights**
- 19.1 Where the Buyer has left any item with Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
  - (a) a lien on the item;
  - (b) the right to retain the item for the Price while the Seller is in possession of the item;
  - (c) a right to sell the item.
- 19.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.
20. **General**
- 20.1 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.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 20.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 20.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 20.5 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller. The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 20.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.