

# TERMS AND CONDITIONS FOR GOODS AND SERVICES

**FREEDOM FLOORING LIMITED ("the Seller")** supplies all goods and services to the Buyer subject to these terms and conditions.

## 1. ACCEPTANCE

1.1 Receipt of any order for the supply of goods and/or services will be deemed to be acceptance by the Buyer of these terms and conditions, despite anything stated to the contrary on the Buyer's order, terms and conditions of purchase or similar document. Orders may not be cancelled.

## 2. PRICE

2.1 All orders will be filled at prices quoted by the Seller in writing or otherwise prevailing at the date of delivery of the goods and/or performance of the services. Prices are subject to change without notice. Where no price is stated in writing the goods and/or services shall be deemed to be sold at their current value as determined by the Seller. Pricing structure will vary according to the timeframe, degree of difficulty and any work required to be undertaken outside normal working hours, including public holidays, weekends and/or at night.

2.2 All quotes will remain open for acceptance for a validity period of 30 days from the date of the quotes. All quotes are based on the Seller's personnel working normal hours and in the event that the Buyer requires the Seller's personnel to work outside normal hours then the price may be varied upwards at the Seller's reasonable discretion to reflect the greater cost of labour to the Seller. The Seller reserves its right to alter any quotation necessary due to circumstances beyond the Seller's control.

2.3 Unless stated otherwise, all prices are exclusive of GST or other taxes payable on the work done or services performed by the Seller for the Buyer or on any amount payable under clause 7, freight costs, insurance charges and maintenance costs. The Buyer must pay all of these taxes and charges unless the Seller agrees otherwise with the Buyer in writing.

2.4 In the event that any action or lack of action from the Buyer or variation of the Buyer's instructions causes additional cost or expense to the Seller, then such further expense or cost shall be invoiced to the Buyer as an addition to the quoted price and the Buyer will be liable for payment of the same.

2.5 Any additions or variations agreed between the Seller and Buyer after the original quote will be regarded as an extra cost to the Buyer and shall be priced according to the degree of extra time required to complete. Consideration of additional work pricing shall include any timeframes which need to be shifted for the Seller's other work, if it is affected by the additional work.

## 3. TERMS OF PAYMENT

3.1 For all orders quoted under \$6,000 the Buyer shall pay a Deposit of 50% in cleared funds prior to the delivery of any goods and/or performance of any services by the Seller. The balance of the price shall be paid on completion.

3.2 For all orders quoted between \$6,000 to \$35,000 the Buyer shall pay a Deposit of 1/3 of the quote in cleared funds prior to the delivery of any goods and/or performance of any services by the Seller. A second payment of 1/3 of the quote shall be payable upon receipt the Buyer of an invoice for such payment. The balance (including any additional costs for the supply of timber and/or materials or as a result of any variations to the quote) shall be paid upon completion.

3.3 For all orders over \$35,000 the Deposit amount and payment schedule shall be as agreed in writing between the Seller and the Buyer.

3.4 Subject to clause 3.8, unless previously agreed, payment is due on the 20<sup>th</sup> of the month following the date of invoice.

3.5 Interest will be charged on amounts overdue for payment at the rate of 2.5% per month or part month.

3.6 Payment of all amounts owing to the Seller shall be made in full without any set-off or deduction. Where any amount owing is partially paid, the Seller at its discretion may accept such payment from the Buyer, but the Seller will not be bound by any condition or qualification of terms which the Buyer attempts to attach to such payments. In particular, any payments expressed by the Buyer to be in full and final settlement will only be accepted as a final payment by the Seller where the Seller has communicated its specific acceptance in writing to the Buyer and failing such acceptance, any such payment may be accepted by the Seller as part payment of the total debt due to the Seller without releasing the Buyer from its obligation to pay the balance of the total debt due.

3.7 Any additions or variations requested by the Buyer must be signed off and agreed by the Seller and the Buyer. These additions will be added to the payment schedule and a new invoice(s) issued. Such additions may be added to the final payment invoice or a previous progress payment at the discretion of the Seller. Where additional goods are required the Buyer agrees to pay for the additional costs of such goods.

3.8 Unless otherwise stipulated by the Seller, the cost of timber shall be additional to the quotation for services to be provided. All timber shall be paid for in full in addition to any deposit payable by the Buyer for the services. The Seller shall not be required to deliver any timber until the Buyer has paid for the timber in full. The 20<sup>th</sup> of the month terms set out in clause 3.4 shall not apply in respect of timber.

3.9 Any additions or variations requested by the Buyer must be signed off and agreed by the Seller and the Buyer. These additions will be added to the payment schedule and a new invoice(s) issued. Such additions may be added to the final payment invoice or a previous progress payment at the discretion of the Seller. Where additional goods are required the Buyer agrees to pay for the additional costs of such goods and in the case of additional timber, payment for such additional timber shall be required in full prior to delivery of same.

## 4. COMPLETION AND DELIVERY

4.1 Dates given for completion of work and delivery of goods on which work has been performed are stated in good faith but are not to be treated as a condition of the sale. If completion and delivery is delayed for any reason at all the Seller will not be responsible or liable in any way to the Buyer or any other party for loss or damages suffered due to the delay.

4.2 Any change in delivery date notified to the Seller by the Buyer will be accommodated to the extent that the Seller is able to accommodate it but in the event that the change necessitates price increases through staff working overtime, a variation of planned staff availability, or increased cost of materials then all such extra expenses will be charged to the Buyer.

- 4.3 The Seller may schedule work at the Seller's discretion and may make delivery of goods on which the Seller has carried out work by instalments. The Seller shall not be required to refund any deposit paid by the Buyer in the event that the delivery date is rescheduled. The Seller may cancel delivery without limiting or affecting the Seller's rights to recover all money owed by the Buyer to the Seller for deliveries already made or services already provided.
- 4.4 If the Buyer does not take delivery of the finished work or goods by the delivery date specified or any later date the Seller agrees on, the Buyer must pay reasonable storage costs until the Buyer takes delivery. The Seller will determine the costs of storage and may invoice the Buyer for these.
- 4.5 The Seller is not required to accept any claim for discrepancy in orders unless the Buyer makes written claim (with full reasons) to the Seller within 5 days of delivery.
- 4.6 Delivery by the Seller to a carrier will be deemed to be delivery to the Buyer.
5. **WARRANTIES AND CONDITIONS**
- 5.1 This clause applies where the supply of goods and/or services pursuant to this agreement would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 ("Act"), and where such supply is a supply for business purposes. In such circumstances, the Buyer agrees that the goods and/or services are supplied for business purposes in terms of the Act and that the provisions of the Act do not apply to the supply to the Buyer. Such a buyer is not a "consumer" for the purposes of the Act.
- 5.2 Where the Buyer supplies the goods and/or the services to any customer of the Buyer and that supply would otherwise be subject to the provisions of the Act and where the Buyer's customer acquires or holds themselves out as acquiring the goods and/or services for business purposes pursuant to the Act then the Buyer warrants that it shall obtain the agreement of the Buyer's customer that the Act shall not apply to the supply to the Buyer's customer.
- 5.3 The Buyer warrants that the services or work carried out by the Seller are according to the Buyer's specifications for the Buyer's own purposes. The Seller's liability regarding supply of goods and/or services is limited as set out in clause 9.
- 5.4 With the exception of any express written warranty the Seller may give, no warranty or condition will be implied against the Seller by any statute, at common law or otherwise and no representation, condition, warranty or variation of these terms and conditions will bind the Seller unless it is in writing and signed by the Seller.
- 5.5 All goods and services are subject to usual trade tolerances over and under in respect of weight, dimensions or other measures of quality or performance.
6. **OWNERSHIP AND RISK**
- 6.1 Despite the fact that ownership in the goods may not have passed to the Buyer, risk in the goods shall pass to the Buyer on delivery to the Buyer or into the custody of the party acting on the Buyer's behalf. The Buyer shall be obliged to insure the goods from the time of such delivery from the Seller's premises and pending payment in full to insure the goods in the name of the Seller and for their respective interests.
- 6.2 Notwithstanding any period of credit, legal and beneficial ownership of goods supplied by the Seller shall remain with the Seller until payment in full is made for the goods and services and

- for all other goods and services supplied by the Seller to the Buyer.
- 6.3 While ownership of such goods remains with the Seller:
- (a) The Buyer will hold the goods on trust for the Seller as bailee;
  - (b) The Buyer must ensure the goods supplied by the Seller for work to be undertaken and held pending work, in the course of work, or after the completion of work are stored separately and clearly identified as belonging to the Seller to the greatest extent possible
  - (c) If the goods are sold or otherwise disposed of by the Buyer prior to payment in full, the Buyer will have been deemed to have done so as agent for the Seller and the proceeds of such sale will be the property of the Seller. The Buyer will hold the proceeds of such sale on trust, on account for the Seller and keep them in a separate fund from its own money.
- 6.4 The Seller may re-take possession of all or any goods in the Seller's discretion wherever they are situated as long as the goods are capable of independent identification, and the Seller may sell the same by private treaty or by public auction. All proceeds of sale shall be applied to the amounts owing to the Seller and upon receipt of payment any excess which has brought the Buyer's account in credit shall forthwith be paid to the Buyer. The exercise of such rights shall not constitute a waiver of any other rights contractual or otherwise, which the Seller may have against the Buyer in respect of unpaid accounts.
- 6.5 The Buyer shall if required by the Seller permit the Seller, at any time, to register a security interest in favour of the Seller in respect of the Buyer's right title and interest in all of the Buyer's present and after acquired property (being all of the Buyer's personal and all other property) to secure payment of all moneys owing (together with all other obligations) from the Buyer to the Seller under this agreement now and in the future, in terms of the Personal Property Securities Act 1999.
- 6.6 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 the guarantor (if any) agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or other asset to the Seller or the Seller's nominee to secure payment of all moneys owing (together with all other obligations) from the Buyer to the Seller under this agreement now and in the future. The Buyer and/or guarantor (if any) 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 monetary obligations payable under this agreement have been met.
- 6.7 To give effect to the provisions of this clause 6 the Buyer and the guarantor (if any) irrevocably appoint the Seller or the Seller's nominee as the Buyer's and/or guarantor's true and lawful attorney to execute mortgages, charges (whether registerable or not) and all other assurances on such terms and conditions as the Seller or the Seller's nominee considers appropriate (in their sole discretion) against the joint and/or several interest of the Buyer and/or guarantor in any land, realty or asset in favour of the Seller or Seller's nominee in the name of the Buyer and/or guarantor as may be necessary to secure the Buyer's and/or guarantor's

- obligations to the Seller and further to do and perform all necessary acts and execute all or any documents which may be necessary to give effect to the provisions of this clause.
- 6.8 The intellectual property comprised in the copyright, confidential information, design, specification, manufacturing methods and know-how created by the Seller in the course of carrying out works shall at all times be and remain the property of the Seller.
7. **DEFAULT**
- 7.1 Where the Seller considers the Buyer may be unable to meet its payment obligations to the Seller, the Seller may, without limiting or affecting its other rights and remedies, do all or any of the following:
- (a) Demand payment of all or part of any moneys due to the Seller;
  - (b) Require security for the Buyer's obligations before making further supplies of goods or services;
  - (c) Without notice, withhold deliveries of goods and provision of services.
- 7.2 Where:
- (a) The Buyer is in breach of any of these terms and conditions (including failure to make payment on due date); or
  - (b) The Buyer becomes insolvent or is adjudicated bankrupt or an application is made for the Buyer's liquidation or a liquidator or a receiver is appointed in respect of any of the Buyer's assets; or
  - (c) The Buyer no longer carries on business or threatens to stop carrying on business; or
  - (d) The Buyer enters into or threatens to enter into an arrangement with its creditors,
- then, without limiting or affecting the Seller's other rights and remedies, the Seller may do all or any of the following:
- (e) Where the Buyer has failed to make payment on due date, require the Buyer to compensate the Seller by making payment to the Seller on demand of interest as liquidated damages on the amount due from the due date until the date of payment at a rate equal to 2.5 percent per month (in addition to the Buyer remaining liable for the full amount outstanding);
  - (f) Cancel this and any other contract of supply with the Buyer;
  - (g) Exercise all and any of a secured party's rights in Part 9 of the Personal Property Securities Act 1999.
- 7.3 The Buyer will pay all costs and expenses (including costs on a solicitor/client basis and debt collectors' costs) the Seller or the Seller's nominee incurs in enforcing or attempting to enforce their rights under this clause and under the Personal Property Securities Act 1999. These costs and expenses incurred may be deducted from the proceeds of sale.
- 7.4 Payments received from the Buyer will be applied first in reduction of interest, liquidation damages and costs due under this clause, with the balance being applied in reduction of any amounts due under clause 3.
- 7.5 The Buyer hereby irrevocably authorises the Seller to enter any premises occupied by the Buyer or on which goods are situated at any time after a default by the Buyer to remove and repossess any goods and any other property to which goods are attached or in which goods are incorporated. The Seller shall not be liable for

- any costs, damages, expenses or losses incurred by the Buyer or any third party as a result of this action nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Where any goods are removed and repossessed by the Seller pursuant to clauses 6.4 and 7.5, the Buyer waives its rights under sections 120 and 121 of the Personal Property Securities Act 1999.
- 7.6 For the purposes of this clause 7 the following shall constitute a default by the Buyer:
- (a) Non-payment of any sum by the due date;
  - (b) The Buyer intimating that it will not pay any sum by the due date for payment;
  - (c) Any goods supplied under these terms and conditions are seized by any other creditor of the Buyer or any other creditor intimates that it intends to seize goods;
  - (d) Any goods in the possession of the Buyer are materially damaged while any sum due from the Buyer to the Seller remains unpaid;
  - (e) A court judgement is entered against the Buyer and remains unsatisfied for 7 days;
  - (f) The Seller becomes aware of any material adverse change in the financial position of the Buyer.
8. **CLAIMS FOR DAMAGED OR DEFECTIVE GOODS**
- 8.1 Subject to clauses 5, 6 and 10.1, the Seller may, at the Seller's discretion, repair any damaged or defective goods or make a reasonable allowance on the purchase of goods to replace the goods provided:
- (a) The Buyer returns the goods to the Seller, or if the goods are not easily movable, notifies the Seller, within 5 days of delivery at the Buyer's cost, and within the same period provides a copy of the invoice and a claim specifically identifying the damage or defect(s);
  - (b) The Seller has a reasonable opportunity to investigate the claim; and
  - (c) The Buyer is not in default or breach.
- 8.2 If the Buyer does not comply with the above requirements, the Buyer will be deemed to have accepted the goods and the Seller will not incur any liability whatsoever to the Buyer in relation to the goods.
9. **LIMITATION OF LIABILITY**
- 9.1 Without restricting the limitations of liability contained elsewhere in these terms and conditions, the Seller's liability is limited to the price of the goods and/or services in respect of which such liability arises. The Seller has no further liability or responsibility for any direct, indirect or consequential injury, loss or damage of whatever type or however arising.
- 9.2 In no circumstances shall the Seller be liable to the Buyer or any other person for any loss or damage or injury arising directly or indirectly from the non-delivery or late delivery or supply of any goods or services or any irregularity or defect in any goods supplied whether such damages arise as a breach of this contract or as a result of any tortious duty owed by the Seller to the Buyer. In any case where the Seller is found to be liable to the Buyer for any reason whatsoever, the extent of the Seller's liability will be limited as set out in clause 9.1 above to the price of the goods and/or services in respect of which such liability arises.

- 9.3 The Buyer shall not be entitled to make any claim against the Company for loss of profit, consequential damage or loss arising out of a breach of any term or implied term of these Terms and Conditions except to the extent specifically permitted by statute. Any claim by the Buyer for goods or services supplied must be made within 10 days of final payment.
- 9.4 The Seller is not responsible for any damage whatsoever caused either to the goods supplied or as a result of malfunction if:
- (a) Goods are fitted by unqualified tradespersons or are fitted in an unprofessional manner; or
  - (b) Goods are adapted to a use for which they are not specifically intended; or
  - (c) Goods are added to or repaired using components not recommended or approved by the Seller or the manufacturer; or
  - (d) Goods are improperly stored or transported.
  - (e) Work is performed or services are provided by the Seller according to the Buyer's specifications and (in the Seller's sole discretion) the damage or malfunction is the direct result of the specification or the Buyer's communication of the specification to the Seller.
10. **GENERAL**
- 10.1 The Seller will not be in breach of these terms and conditions because of any failure on the Seller's part directly or indirectly due to wars, strikes, lockouts, delays or defaults of manufacturers or suppliers, acts of God or any other cause (whether similar or dissimilar) beyond the Seller's reasonable control. Should the Seller be delayed in performing its obligations due to any cause outside of the Seller's control, then the Seller may cancel or suspend its contract with the Buyer without inducing any liability for any loss or damage suffered by the Buyer or any other persons.
- 10.2 The Buyer indemnifies the Seller against any liability for any direct, indirect or consequential injury, loss or damage arising out of any act, default or omission of, or any representation made by, the Buyer, or the Buyer's servants or agents.
- 10.3 If any of these terms or conditions is held by a Court to be ineffective because of non-registration, illegality or any other reason, then that term or condition or part of it will be severed from all other terms and conditions without affecting the validity or enforceability of all other terms and conditions or part of them.
- 10.4 No waiver by the Seller of any term or condition will constitute a waiver of any other of these terms or conditions.
- 10.5 The Seller may vary these terms and conditions at any time by notice in writing to the Buyer. The Buyer may not vary these terms and conditions unless we agree in writing.
- 10.6 The Buyer authorises the Seller to seek and obtain from and supply any information concerning the credit or business standing of the Buyer from any other person and directs any such person to supply or receive and record such information to and from the Seller.
- 10.7 Any dispute or difference arising between the Seller and the Buyer concerning the agreement or its construction or interpretation shall be subject to arbitration by a sole arbitrator to be agreed upon between the parties or failing agreement to be appointed by the President of the Auckland District Law Society. Every arbitration shall be conducted under the provisions of the Arbitration Act 1996.
- 10.8 The Buyer must notify the Seller in writing of any change of ownership or business structure of the Buyer and obtain the Seller's written approval of such change. No change of ownership or business structure shall release the Buyer from any liability for debts incurred by any other persons trading on the Buyer's account with the Seller. The Seller shall not be required to verify or check that any person using the Buyer's account has the Buyer's authority to do so. The Buyer may not refuse to pay charges to the account on the basis that the person using the Buyer's account did not have the requisite authority. Where there is more than one party named as the account holder, the liability of these parties shall be joint and several.
- 10.9 In consideration of the Seller agreeing to supply the Buyer with the goods and/or services at the request of the person entering into these terms and conditions as guarantor ("Guarantor") (which is acknowledged), the Guarantor unconditionally guarantees the due and punctual performance by the Buyer of all of the Buyer's obligations under these terms and conditions. Such guarantee is a continuing guarantee and shall not be discharged or affected by the Seller giving any time or indulgence, extension or credit, waiver or consent at any time to the Buyer or by any variation to any agreement in respect of the supply under these terms and conditions.

## ACKNOWLEDGEMENT

*Please sign below and initial every page of the attached terms and conditions to acknowledge they have been read and understood and fax back to **Freedom Flooring Limited, Fax: 09 448 5729** along with the completed and signed Credit Application Form (where applicable)*

### Signed by the Buyer:

Sign: \_\_\_\_\_ Name: \_\_\_\_\_ Position: \_\_\_\_\_

Address : \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### Signed by the Guarantor:

Sign: \_\_\_\_\_ Name: \_\_\_\_\_ Position \_\_\_\_\_

Address: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_