

## Terms and conditions

### 1. Definitions and interpretation

In these Terms and Conditions:

**Customer** means the person identified on the Credit Application or Quotation as the customer and includes the Customer's agents and permitted assigns.

**Goods** means any goods supplied by the Supplier including those supplied in the course of providing Services.

**Order** means a purchase order in writing for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

**PPS Law** means:

- (a) the Personal Property Security Act 2009 (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

**Quote** means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

**Services** means the services to be provided by the Supplier to the Customer in accordance with a Quote and these Terms of Trade.

**Supplier** means the entity specified as the supplier of Goods or Services on the Quote and includes the Supplier's agents and permitted assigns, and more specifically is known as Andersens Floor Coverings Pty Ltd ABN 17 009 733 617 and its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

### 2. Quotations

2.1 The Supplier may provide the Customer with a Quotation (**Quote**). Any Quote issued by the Supplier is subject to normal price rises and is valid for 30 days from the date of issue, being the date the Quote has been signed by the Supplier.

2.2 Quotes are not taken to be accepted by the Customer (and the Supplier is not obliged to commence work) until the Customer has placed a written Order with the Supplier. Placement of an Order by a Customer will be construed as acceptance of the Supplier's offer made by Quotation and these terms and conditions.

2.3 Unless otherwise expressly agreed in writing, a Quote does not include delivery and/or installation of the Goods.

2.4 Quotes will be submitted by the Supplier on the basis that full payment will be due immediately on or before delivery or installation, unless the Customer has a credit application with the Supplier in which case payment terms are pursuant to clause 4 of these terms and conditions.

2.5 If clause 2.4 is not complied with by the Customer, the Supplier may:

- (a) Require any further dealings with the Customer to be on a cash before delivery basis;
- (b) Require that all amounts owing to the Supplier for any reason whatsoever shall become immediately due and payable without deduction or demand;
- (c) If the Customer is a Company, require that the director(s) or other nominated parties give a guarantee and indemnity in the form the Supplier requires;
- (d) Charge an account service fee of 1.5 per cent per month;
- (e) Reserve its right to rescind all discounted quotations or rates and to recalculate outstanding charges;
- (f) Require that the Customer pay any costs and interest pursuant to clause 6.

### 3. Orders and deliveries

3.1 Where an Order has been placed by the Customer to the Supplier which does not clearly identify the Goods or Services ordered, any costs incurred by the Supplier in reliance on incorrect or inadequate information may result in those costs being onbilled to the Customer.

3.2 Orders for product lines which are not normally stocked by the Supplier and which are ordered by the Supplier as a result of the Order cannot be cancelled.

- 3.3 Any other Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any losses incurred by the Supplier as a result of the cancellation, including but not limited to loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- 3.4 the Supplier makes no representations, warranties or guarantees as to the suitability of the goods, and no further representations, warranties or guarantees as to the quality of the goods, apart from the following:
- (a) those given by the manufacturer;
  - (b) those required by law;
  - (c) a replacement guarantee of any goods where notification of a defect (accepted as a defect in the discretion of the Supplier) is provided by the Customer to the Supplier in writing within 30 days of delivery; and
  - (d) a lifetime carpet installation warranty.
- 3.5 The Supplier will not be liable for any manufacturing or transport delays in the performance of its obligations.
- 3.6 The Supplier may deliver the goods to the address nominated by the Customer in the Order. If access is not provided at these premises at the date nominated for delivery or the performance of other Services (including installation pursuant to clause 3.7), the Supplier reserves the right to charge for all costs and expenses of storage and redelivery of the Goods.
- 3.7 Where floor coverings are to be installed, the following terms and conditions apply:
- (a) the Supplier is to carry out the installation or other Services at the address nominated by the Customer in the Order;
  - (b) the Customer must give clear and clean access to the Supplier and/or the Supplier's installers;
  - (c) if floor preparation is required, then the cost of such floor preparation will be additional to the Quote unless otherwise stated;
  - (d) unless otherwise stated, trimming of doors, removal of furniture and removal of old floor coverings is the Customer's responsibility;
  - (e) the Supplier will be entitled to subcontract the whole or any part of the supply and/or installation of the Goods;
  - (f) on becoming aware of the existence of a latent condition, the Supplier will give the Customer notice of that latent condition and the Customer must, within 7 days receipt of that notice, overcome the latent condition at the Customer's sole expense.

#### **4. Variation and return**

- 4.1 The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- 4.2 In the event that a variation occurs pursuant to clause 4.1, the Supplier has an automatic extension of time for the provision of the Goods and/or Services equal to the delay caused by the variation.
- 4.3 In the event that the Customer has a complaint about the Goods or Services provided by the Supplier, the Customer must allow the Supplier access to inspect at a time convenient to the Supplier;
- 4.4 The Supplier will only accept credits if the Goods are returned to the store of original purchase in a clean and saleable condition. The returned Goods must be of current warehouse shade, in full carton lots and returned within fourteen (14) days of the original delivery or pick up.
- 4.5 All ceramic tile credits will attract a 25 per cent handling surcharge plus any freight and handling fees incurred to return the ceramic tiles to the Supplier's warehouse;

4.6 No claim levied against the Supplier in relation to loss or damage of goods or defective workmanship will be considered unless all amounts owing by the Customer to the Supplier have been paid in full.

## **5. Payment**

5.1 The terms of payment are strictly payment immediately after installation (or on delivery where no installation is required) unless a credit application has been approved with the Customer. In the case of the latter, payment terms are strictly 30 days from the date of invoice by the Supplier, and payment is due and payable on that date.

5.2 Should the Customer fail to make payment for the Goods and/or Services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administrative fee of 10 percent of the amount of the invoice payable per year, or part thereof, from the date the Goods and/or Services were supplied until payment by the Customer.

5.3 The Supplier may, in its complete discretion, apply any payment received from the Customer to any amount owing by the Customer to the Supplier.

5.4 All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding. The Supplier may, at any time, set-off amounts owed by the Supplier to the Customer from the amounts owed by the Customer to the Supplier.

5.5 The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these Terms of Trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

5.6 The Customer acknowledges and agrees that the credit to be provided to the Customer by the Supplier is to be applied wholly or predominantly for commercial purposes.

5.7 The Customer and the Supplier may at any time agree in writing for the Customer to make payment to the Supplier for the Goods and/or Services by way of credit card. In the event that this occurs, the following applies:

- (a) The Customer agrees to make payment of a deposit of 50 per cent of the Quote prior to the Supplier prior to the Supplier supplying the Goods and/or Services;
- (b) The Customer authorises the Supplier to keep the Customer's credit card details in its system;
- (c) Upon completion of supply of the Goods and/or Services by the Supplier to the Customer, the Customer authorises the Supplier to charge all amounts payable to the Supplier under any invoice issued and these terms and conditions to the credit card;
- (d) At the discretion of the Supplier, credit card surcharges of 1.98% for Visa and MasterCard, 2.97% for American Express, and 3% for Diner's Club will apply when the Customer authorises payment by credit card.
- (e) The Customer acknowledges that it may take between 3-5 business days for the Customer's financial institution to release any amount which has been authorised by that institution at the request of the Supplier under clause 5.7(c) which is in excess of the Quote;
- (f) If the Customer's credit card is declined or any charge is declined when the Supplier seeks to charge for its invoice, the Customer will be in default of these terms and conditions, must pay to the Supplier all amounts due immediately on demand, and if the Customer does not: clause 6 will apply.

## **6. Costs and interest**

6.1 The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Customer. The Customer must also pay for any stamp duty or other taxes payable on this agreement (if any).

6.2 The Customer is to pay the Supplier on demand interest at the rate of 10% per annum on

- all overdue amounts owed by the Customer to the Supplier, calculated daily.
- 6.3 All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees, collection costs, and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these terms and conditions.
- 6.4 The Customer acknowledges and agrees that payments by the Customer will be applied by the Supplier as follows:
- (a) First, in payment of any and all collection costs and legal costs in accordance with clause 6.3;
  - (b) Secondly, in payment of any interest incurred in accordance with clause 6.2;
  - (c) Thirdly, in payment of any internal costs in accordance with clause 6.3;
  - (d) Finally, in payment of the outstanding invoice(s).

## **7. Title and Risk**

- 7.1 If the Supplier retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 7.3 If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 7.4 The Supplier and Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Supplier all amounts owing for the particular Goods; and
  - (b) the Customer has met all other obligations due by the Customer to the Supplier in respect of all contracts between the Supplier and the Customer.
- 7.5 Receipt by the Supplier 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 Supplier's ownership or rights in respect of the Goods shall continue.
- 7.6 It is further agreed that:
- (a) Where practicable, the Goods shall be kept separate and identifiable until the Supplier shall have received payment and all other obligations of the Customer are met;
  - (b) until such time as ownership of the Goods shall pass from the Supplier to the Customer, the Supplier may give notice in writing to the Customer to return the Goods or any of them to the Supplier. Upon such notice, the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;
  - (c) the Supplier shall have the right of stopping the Goods in transit whether or not delivery has been made;
  - (d) if the Customer fails to return the Goods to the Supplier then the Supplier or the Supplier's agent may enter upon and into land and premises owner, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods;
  - (e) the Customer is only a bailee of the Goods and until such time as the Supplier has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Supplier;
  - (f) the Customer shall not deal with the money of the Supplier in any way which may be adverse to the Supplier;
  - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Supplier;
  - (h) the Supplier can issue proceedings to recover the Price of the Goods sold, notwithstanding that ownership of the Goods may not have passed to the Customer; and
  - (i) until such time that ownership of the Goods passes to the Supplier, if the Goods are converted into other products, the parties agree that the Supplier will be the owner of the end products.

## **8 PPSR**

- 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 Customer 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 the Supplier to the Customer.
- 8.3 The Customer 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 the Supplier 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 9.3(a)(i) or 9.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Supplier 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 the Supplier;
  - (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 the Supplier;
  - (e) immediately advise the Supplier 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 The Supplier and the Customer 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 Customer 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 Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Customer must unconditionally ratify any actions taken by the Supplier 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**

- 9.1 In consideration of the Supplier agreeing to supply the Goods and/or Services to the Customer, the Customer 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 Customer either now or in the future, to the Supplier to secure the performance by the Customer of its obligations under these terms and conditions including, but not limited to, the payment of any money.
- 9.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause 9.
- 9.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer'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 Customer's behalf.

## **10 Indemnity and liability**

- 10.1 The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any loss arising from or incidental to the provision of Goods and/or Services, any Order or the subject matter of these terms and conditions including, but not

limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand. This provision remains in force after the termination of these terms and conditions.

- 10.2 The Customer acknowledges and understands that there may be colour variations in flooring products ("shading"), which is inherent in flooring products (including but not limited to ceramic tiles, carpeting, and wooden boards), from the sample to the delivered product and the sample is indicative only of the shade and finish. The Customer also acknowledges that shading is not a manufacturing fault and that neither the manufacturer nor the Supplier will accept liability for any flooring products which may be affected by shading.
- 10.3 The Customer acknowledges and understands that there may be crazing which is inherent in some ceramic wall tiles. Crazing is a fine crack in the glaze generated during the firing process. The Customer also acknowledges that crazing is not a manufacturing fault and that neither the manufacturer nor the Supplier will accept liability for any tiles which may be affected by crazing.
- 10.4 The Supplier is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
- 10.5 In relation to the supply of Goods, the Supplier's liability is limited to:
- (a) Replacing the Goods or supplying similar goods;
  - (b) Repairing the Goods;
  - (c) Providing the cost for replacing the Goods or for acquiring equivalent Goods; and/or
  - (d) Providing the cost for having the Goods repaired.
- 10.6 in relation to the supply of Services, the Supplier's liability is limited to:
- (a) supplying the Services again; or
  - (b) providing for the cost of having the Services supplied again.
- 10.7 The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer.
- 10.8 Every exemption from liability to which the Supplier is entitled under these terms and conditions will extend to protect any subcontractor, employee or agent of the Supplier and for the benefit of such persons they shall be deemed to be parties to the contract between the Customer and the Supplier.
- 10.9 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.10 Notwithstanding clauses 10.5 to 10.6 but subject to the CCA, the Supplier 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 Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer 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 Customer failing to follow any instructions or guidelines provided by the Supplier;
  - (e) fair wear and tear, any accident, or act of God or anything contained in clause 10.4.
- 10.11 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.

## **11 Capacity**

- 11.1 If the Customer is a corporation, the Customer warrants that all of its directors have signed this agreement or that the director who has signed this agreement has authority to sign on behalf of the Customer pursuant to a minute of the corporation, and that all of

its directors will enter into a guarantee and indemnity with the Supplier in relation to the Customer's obligations to the Supplier.

11.2 If the Customer is the trustee of a trust (whether disclosed to the Supplier or not), the Customer warrants to the Supplier that:

- (a) The Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) The Customer has the right to be indemnified out of the trust assets;
- (c) The Customer has the power under the trust deed to sign this agreement; and
- (d) The Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.

11.3 The Customer must give the Supplier a copy of the trust deed upon request.

11.4 If the Customer enters into this agreement as a partnership or as partners, the Customer warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Customer's obligations to the Supplier.

11.5 If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for the new partners to sign a guarantee and indemnity as guarantor.

## **12 Waiver**

12.1 A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. Any waiver that has not been made by the Supplier in writing shall not constitute a waiver of the Supplier's rights under these terms and conditions.

## **13 Cancellation and termination**

13.1 The Supplier reserves the right to withdraw credit at any time, whether the Customer is in default under the terms of this agreement or not.

13.2 Upon cancellation with or without notice, all liabilities incurred by the Customer become immediately due and payable to the Supplier.

13.3 In addition to the express rights of termination provided in these terms and conditions, a party may terminate this agreement by giving 30 days written notice to the other party.

## **14 Taxes**

14.1 The Customer must pay GST on any taxable supply made by the Supplier to the Customer under this agreement. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.

14.2 If, as a result of:

- (a) Any legislation becoming applicable to the subject matter of this agreement; or
- (b) Any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

The Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay the Supplier these additional amounts on demand.

## **15 Jurisdiction**

15.1 The Customer acknowledges and agrees that this agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.

15.2 The Customer acknowledges and agrees that any contract for the supply of Goods and/or Services between the Supplier and the Customer is formed at the address of the Supplier.

15.3 The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

## **16 Miscellaneous**

16.1 No retention is applicable to this agreement.

16.2 If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

16.3 If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

16.4 The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Customer.

16.5 Any proposed variation to these terms and conditions by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

16.6 If there is more than one Customer, then the liability of each Customer under these terms and conditions will be joint and several.

16.7 These terms and conditions apply to all transactions between the Customer and the Supplier relating to the provision of Goods and/or Services, including all quotations, contracts and variations. These terms and conditions take precedence over any terms and conditions contained in any document of the Customer or elsewhere.

16.8 This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding, except as provided for in clause 2.2.

16.9 The Supplier's Privacy Policy is available on its website and is to be read in conjunction with these terms and conditions.