

TERMS AND CONDITIONS OF SALE

The Company shall supply to the Buyer all goods, which for the purposes of the Personal Property Securities Act 1999 ("the PPSA") are described in the attached Schedule ("the Goods") to the Buyer despite anything that may be stated to the contrary in the Buyer's enquiries or on the Buyer's orders, subject to the following terms and conditions:

1. Definitions

- 1.1 In these terms and conditions, unless the context otherwise requires:
- a. "the Buyer" means the person buying the Goods from the Company.
 - b. "the Company" means James Halstead Flooring New Zealand Ltd and its assigns.
 - c. "the Due Date" means the date upon which all accounts are payable pursuant to clause 4 hereof.
 - d. A reference to a "person" includes any individual, firm, company, corporation, government, or local or other legal entity.

2. Application of these Terms and Conditions

- 2.1 These terms and conditions shall be deemed incorporated into and shall form part of all contracts involving Goods supplied by the Company to the Buyer.
- 2.2 No variation or modification of or substitution for these terms and conditions shall be binding on the Company unless specifically agreed to by the Company in writing and where an order has been accepted, a contract for supply will be deemed to exist.
- 2.3 Where:
- a. A contract for the supply of Goods by the Company to the Buyer is comprised in a number of documents including these terms and conditions ; and
 - b. There is a conflict between these terms and conditions and any one or more of the other documents that comprise the contract, then, in that circumstance the provision of these terms and conditions shall prevail.

3. Price

- 3.1 The Buyer shall pay the price indicated on the invoice for the Goods issued by the Company
- 3.2 Except where the Company has given a firm quotation for the Goods and has agreed in such quotation not to vary the price for the Goods, the Company reserves the right to vary the price of the Goods. The price payable by the Buyer for the Goods ordered shall be the price ruling at the date the Goods are dispatched for delivery to the Buyer.
- 3.3 The Buyer expressly acknowledges that where any component of the Goods constitutes an overseas import and the cost thereof increases for any reason including but not by way of limitation any increase in rates of duty and/or exchange between the date of order and the date of delivery of the Goods, any such increase shall be added to the price quoted for the Goods.
- 3.4 Unless expressly included in the price, Goods and Services Tax and other duties included in the price shall be the responsibility of the Buyer or, where the payment of such taxes or duties is the responsibility of the Company at law, the price shall be increased by the amount of such taxes or duties. Where Goods and Services Tax, other taxes or duties are expressly included in the price, any increase in the amount of such Goods and Services Tax or other taxes and duties between the date of order and the date of delivery of the Goods shall be the responsibility of the Buyer and the price shall be increased accordingly.

4. Payment

- 4.1 All accounts are payable by the 20th of the month following delivery or upon such other date which has been expressly agreed upon in writing between the Buyer and the Company ("the Due Date").
- 4.2 Failure to pay any account by the Due Date shall be a breach of the Buyer's obligations under these terms and conditions and without prejudice to any other rights or remedies the Company may have, the Buyer shall be liable to compensate the Company by paying as liquidation damages (in addition to the amount due) interest on the amount due from the due date until the date of payment at a rate equal to the overdraft rate charged from time to time by the Company's bank, plus a margin of 5%.
- 4.3 If a dispute arises in relation to any account, the Buyer shall within 48 hours (time being of the essence) advise the Company by notice in writing containing full particulars of such dispute. The undisputed portion of the account shall be payable upon the Due Date. The disputed portion of such account shall be paid into an independent account pending resolution of the dispute. Forthwith upon resolution of the dispute, which the Company and the Buyer acknowledge will be effected with all due expedition, such portion shall be paid to the Buyer or the Company as the case may be.
- 4.4 Receipt by the Company of any cheque or other bill of exchange or any promissory note shall not be deemed to be payment or conditional payment until the same has been honoured or cleared and until such time shall not prejudice or affect the Company's rights, powers or remedies against the Buyer and/or the Goods.
- 4.5 The Company may apportion payments made by the Buyer to outstanding accounts in such amounts and in such order as the Company may determine in its sole discretion.

5. Description

- 5.1 Information regarding specifications, description, weights, measurements, powers, capacities, performance and other information generally relating to the Goods contained in any advertisement, catalogue, price list, illustration or similar device is acknowledged by the Buyer as representative only and intended to present to the Customer a general guide.
- 5.2 Where Goods have been ordered by the Buyer pursuant to such description or a sample of Goods has been exhibited to and inspected by the Buyer to enable the Buyer to submit an order thereof the Company will use its best endeavours where practicable to enable the Buyer to compare the Goods with the sample to enable the Buyer to satisfy itself that the Goods comply with either description or sample as the case may be prior to payment being made thereof by the Buyer to the Company.

6. Property

- 6.1 Subject to hereinafter appearing legal and beneficial ownership of the Goods the subject of any invoice shall remain with the Company until payment in full is made for them.
- 6.2 Until payment in full has been made the Buyer acknowledges and agrees as follows:
- a. That where the Buyer is in the business of supplying the Goods to third parties, the Goods supplied (whether or not intermingled with other goods by the Buyer) are held by the Buyer as bailee to be sold by it as agent for and on behalf of the Company.
All products derived from any such sale shall be deposited by the Buyer in a separated account so as to clearly identify them as the property of the Company.
 - b. That the Buyer shall store the Goods separately from its other goods and in a manner that clearly identifies the Goods as the property of the Company. The Company's right of entry under clause 12.2 (a) shall apply to such Goods.
 - c. The authority to sell the Goods under clause 6.2(a) shall be immediately revoked if the Buyer:
 - i. Breaches any term of these terms and conditions;
 - ii. Enters into any composition or arrangement with creditors;
 - iii. (Being a company) has a receiver appointed in respect of any of its assets, a resolution passed or an order filed for its winding up, or the company goes into "Voluntary Administration", or if the Company is placed in statutory management or declared to be "at risk" pursuant to the Corporations (Investigation and Management) Act 1989;
 - iv. (Being an individual) commits any act of bankruptcy or is declared bankrupt, or is accepted into the No Asset Procedure.
- 6.3 The Buyer specifically acknowledges that it has received a copy of these terms and conditions of sale and in particular acknowledges that these terms and conditions of sale constitute an "agreement for supply" for the purpose of s.5 (1)(ii)(B) of the Consumer Guarantees Act 1993 ("CGA").

7. Patents and Designs

- 7.1 The Company shall not be liable in respect of any claim which may be made against the Company for infringement of any trademark, patent, or registered design which may arise as a result of the Company carrying out instructions given by the Buyer and the buyer agrees to indemnify and keep indemnified the Company from and against all and any such claims and against all costs, damages and expenses incurred by or recovered against the Company in respect of any such claims.

8. Risk and Delivery

- 8.1 The risk of any loss, or damage to, the Goods due to any cause whatsoever shall be borne by the Buyer from the time of delivery of the Goods. In the absence of any contrary agreement delivery occurs in accordance with clause 8.7.
- 8.2 The Buyer acknowledges that any period or date quoted for delivery of the Goods are approximate only. The Company will use its best endeavours to comply with such period or date but accepts no responsibility for any loss, injury, damage or expense consequent upon any delay in delivery.
- 8.3 Where delay is due to "force majeure" or other circumstances outside the direct control of the Company, such delay shall not entitle the Customer to cancel any order or to refuse to accept delivery.
- 8.4 When the Company is required to procure overseas goods to fulfil an order, the order is entirely subject to confirmation by the Company that such goods are available. If an import license and finance permit, or any other license permit or consent is required, then such order is further entirely conditional upon the availability or satisfaction thereof. In the event that such conditions cannot be met, the Company reserves the right to cancel the order provided that the Company shall if requested so to do the Buyer, use its best endeavours to fulfil such order by incorporating therein substitute products and components of a cost, and quality equating to that of the overseas goods.
- 8.5 The Customer shall arrange and keep in place its own insurance at its own expense unless the Company is specifically instructed in writing that such is not the case.
- 8.6 In the event that the Company agrees in its acceptance of the Buyer's order to sell "free into the Buyers Store", delivery shall be deemed complete when the Goods are transported to the Buyer's premises or to the place agreed by the Company in acceptance of order.
- 8.7 In the event that the Company agrees in its acceptance of the Buyer's order to sell "ex-works of the Company", delivery shall be deemed complete when the Company has placed the Goods at the disposal of the Buyer, or delivered the Goods into the possession of the freight company transporting the Goods on behalf of the Buyer.

9. Damage or Loss in Transit

- 9.1 No claim for damage in transit or shortage in delivery will be entertained unless a notice in writing specifying such damage or shortage is given to the carrier concerned and the Company within 48 hours or receipt of the Goods.

10. Force Majeure

- 10.1 The Company shall not be deemed to be in breach hereof or otherwise be liable for delay or non performance of any of its obligations hereunder to the extent that such delay or non-performance is due to any Force Majeure.
- 10.2 For the purpose of the Supply Contract, "Force Majeure" means an event or circumstances beyond the reasonable control of the Company which causes a failure by the Company in the performance of any obligations imposed on it, hereunder such that, by the exercise of reasonable diligence the Company could not have prevented or corrected such failure.
- 10.3 The events or circumstances included within the expression "Force Majeure" shall include but not be limited to acts of God, acts of War, sabotage, landslides, lightning, earthquakes, floods, storms, fires, washouts, civil disturbances, explosions, industrial actions, strikes, lockouts and the order of any Court or competent governmental authority.
- 10.4 If the event or circumstance of Force Majeure is of such magnitude or is likely to be of such duration that is either impracticable or unreasonable for the Company to perform or comply with or observe the provisions hereof, the Company may on not less than fourteen (14) days prior written notice terminate the contract between it and the Buyer.

11. Return of Goods

- 11.1 The Company reserves the right in its absolute discretion to accept a return of the Goods or to credit the Buyer with the cost thereof in the event of acceptance of such a return.

12. Default

- 12.1 If the Buyer:
- a. Fails to pay for the Goods on the Due Date for payment; or
 - b. Defaults in the due performance of its obligations to the Company, whether under these terms and conditions or otherwise; or
 - c. Commits any of the acts specified in clause 6.2(c) hereof;
- The Company may, without prejudice to any other right or remedy, suspend or terminate any credit arrangements then in force and all other monies payable by the Buyer to the Company shall immediately become due and payable.
- 12.2 If any of the circumstances referred to in clause 12.1 shall arise, the Company may then:
- a. Despite s109 of the PPSA and in addition to the rights contained in that section, enter upon the premises where the Goods for which the Company has not been paid are situated, or believed by the Company to be situated, for the purposes of searching for, inspecting and taking possession of and removing those Goods, without being responsible for any damage caused in so doing, and
 - b. Resell those Goods and apply the proceeds towards the payment of all monies owing to the Company from the Buyer and all costs incurred by the Company as a result of such action shall be immediately payable by the Buyer upon written demand from the Company; or
 - c. Appoint a receiver in respect of the Goods (including the proceeds of the same) supplied to the Buyer, under these terms and conditions. Any receiver so appointed may take possession of the Goods and resell it and otherwise exercise all rights and powers conferred on a receiver by law.
- 12.3 The Buyer shall be responsible for all costs and/or expenses incurred by the Company in instructing a solicitor and/or debt collecting agency to recover any amount overdue for payment and such costs and expenses shall bear interest from the date upon which they are paid or incurred by the Company to and including the date upon which they Buyers shall pay or reimburse the Company.

13. Warranties, Conditions and Limitation of Liability, Including under the Consumer Guarantee Act (CGA)

- 13.1 Where the Buyer enters into this agreement with the Company for the purpose of acquiring the Goods for the purposes of a business and where the agreement would otherwise be subject to the provisions of the CGA, the Buyer and the Company agree that the Goods are supplied to the Buyer for business purposes in terms of section 2 and 43 of the CGA and that the provisions of the CGA do not apply.
- 13.2 Save as imposed upon it by any statutes or regulation the Company shall not be bound by any statement, representation, warranty, condition or contractual obligation which is not expressly set forth in these terms and conditions or recorded in a written instrument signed by the Company; and
- 13.3 No claim for damage direct or indirect against the Company in respect of any Goods (or in respect of any services such as installation or maintenance supplied in relation to the Goods) shall in any case exceed the contract price of the goods in respect of which such damage shall arise. The Company hereby expressly excludes to the extent permitted by Law any liability for:
- i) Consequential loss or damage including loss of profits, loss of business revenue, added costs or working caused by or arising out of use of the Goods or occurring in respect of the Goods;
 - ii) Loss or damage due to fair wear and tear, negligence or improper use, operation, storage or handling of the Goods.

14. Personal Property Securities Act 1999

- 14.1 The Buyer grants to the Company a security interest in all present and after acquired Goods and their proceeds.
- 14.2 On the Company's request the Buyer shall promptly execute any documents and do anything else required by the Company to ensure that the security interest created under these terms and conditions constitutes a first ranking perfected security interest over the Goods. The Buyer shall also provide the Company with any information the Company reasonably requires to complete a financing statement or financing change statement.
- 14.3 The Buyer shall immediately notify the Company in writing of any change in the Buyer's name.
- 14.4 The Buyer waives any right to receive a copy of a verification statement under the PPSA.
- 14.5 The Buyer will pay all costs, expenses and any other charges incurred, expended or payable by the Company in relation to the filing of a financing statement or financing change statement.
- 14.6 The Buyer agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these terms and conditions of sale.
- 14.7 The Buyer agrees that its rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these terms and conditions.
- 14.8 The Buyer will not allow a security interest to be created or registered over the Goods in priority to the security interest held by the Company.

15. Interpretation

- 15.1 The terms and conditions herein shall be construed and shall take effect in all respects with New Zealand law.

16. Acknowledgement

- 16.1 The Buyer acknowledges that it has received a copy of these terms and conditions and in particular that these terms and conditions constitute a "security agreement" for the purposes of the PPSA and the Company may register a financing statement in respect of these terms and conditions.