
King Flooring Limited – Terms and Conditions of Trade

All goods and services supplied by King Flooring Limited (“the Company”) to you (“the Customer”) shall be on these terms.

Price and Payment

- 1 At the Company’s sole discretion the Price shall be either:
 - a. as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
 - b. the Company’s quoted Price (subject to clause 2) which shall be binding upon the Company provided that the Customer shall accept the Company’s quotation in writing within thirty (30) days.
- 2 The Company reserves the right to change the Price in the event of a variation to the Company’s quotation.
- 3 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 Payment is required as follows:
 - a. At the Company’s sole discretion a deposit may be required, which will be applied to the invoice.
 - b. Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms.
 - c. If no time is stated then payment shall be due twenty (20) days after the end of the month following invoice date.
 - d. Payment for Goods on a supply only basis is due before delivery or collection by the Customer.
 - e. Payment is to be made by way of cash or any other cleared funds, or by any other method as agreed to between the Customer and the Company.
- 5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company.

Delivery of Goods

- 6 Delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer’s nominated address (in the event that the Goods are delivered by the Company or the Company’s nominated carrier).
- 7 Unless otherwise agreed to in writing, the costs of delivery will be in addition to the Price.
- 8 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 9 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these terms and conditions.
- 10 The Company may deliver the Goods by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 11 Any stated time for delivery is an estimate only and the Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.

Site

- 12 The Company reserves the right to determine whether the site is ready for installation. The Company reserves the right to refuse to install while other contractors are working in the same area on the site.
- 13 The Customer acknowledges that due to floor preparation costs being an unknown quantity, any floor preparation cost quotations given by the Company are estimates only and may be subject to variation.
- 14 The Customer will ensure the site is ready for installation, including the removal of all furniture, chattels and electronic appliance. Where the Company is required to remove any such items prior to installation, it will charge the Customer extra for doing so, and whilst the Company will use all due care in removing the items, the Company will accept no liability for any damage to such items during their removal.

Risk

- 15 All risk for the Goods passes to the Customer on delivery, notwithstanding if the Company retains ownership of the Goods.
- 16 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

Title

- 17 The Company and Customer agree that ownership of the Goods shall not pass until:
 - a. the Customer has paid the Company all amounts owing for the particular Goods; and
 - b. the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the

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Company and the Customer.

- 18 Receipt by the Company 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 recognized and until then the Company's ownership or rights in respect of the Goods shall continue.
- 19 It is further agreed that:
- a. where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Customer are met; and
 - b. until such time as ownership of the Goods shall pass from the Company to the Customer, the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - c. the Customer is only a bailee of the Goods and until such time as the Company 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 Company; and
 - d. until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products the parties agree that the Company will be the owner of the end products; and
 - e. if the Customer fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and the Company will not be liable for any reasonable loss or damage suffered as a result of any action by the Company under this clause.

Personal Property Securities Act 1999 ("PPSA")

- 20 Upon assenting to these terms and conditions in writing the Customer 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 Company to the Customer (if any) and all Goods that will be supplied in the future by the Company to the Customer.
- 21 The Customer undertakes to:
- a. 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 Company 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 Company 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; and
 - c. not register a financing change statement or a change demand without the prior written consent of the Company.
- 22 The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 23 The Customer waives its rights as a debtor under sections 115, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA.
- 24 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 25 The Customer shall unconditionally ratify any actions taken by the Company under clause 21.

Customer's Disclaimer

- 26 The Customer hereby disclaims any right to rescind, or cancel any contract with the Company or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Company and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

Defects

- 27 The Customer shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer 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 Company has agreed in writing that the Customer is entitled to reject the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods.

Returns

- 28 Returns will only be accepted provided that:
- a. the Customer has complied with the provisions of clause 27; and
 - b. the Company has agreed in writing to accept the return of the Goods; and
 - c. the Goods are returned at the Customer's cost within five (5) days of the delivery date; and
 - d. the Company will not be liable for Goods which have not been stored or used in a proper manner; and

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- e. the Goods are returned in the condition in which they were delivered.
- 29 The Company may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty five percent (25%) of the value of the returned Goods plus any freight.

Warranty

- 30 The warranty for the Goods shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 31 To the extent permitted by statute, no warranty is given by the Company as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 32 In the case of second hand Goods, the Customer acknowledges that it has had full opportunity to inspect the same and that it accepts the same with all faults and that no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

Consumer Guarantee Act 1993

- 33 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Company to the Customer.

Default & Consequences of Default

- 34 Interest on overdue amounts 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 judgment.
- 35 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 36 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 37 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 minimum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 38 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment become immediately payable in the event that:
- any money payable to the Company becomes overdue or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
 - the Customer 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
 - a receiver, manager, liquidator or similar person is appointed in respect of the Customer or any asset of the Customer.

Guarantee, Security and Charge

- 39 The party who accepts the quotation agrees that where the Customer is a company, trust, partnership or other entity (an "Entity") then in the event that such Entity does not meet payment of the Price then the individual(s) signing the quotation for and on behalf of such Entity (the "Guarantor") agrees to meet the Price personally and irrevocably guarantees the due and punctual payment of the Price and all monies owing by the Customer to the Company (such guarantee enforceable on demand).
- 40 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- where the Customer and/or the Guarantor (if any) is the owner of land, realty or other asset capable of being charged, both the Customer 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 Company to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met;
 - should the Company elect to proceed in any manner in accordance with this clause, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis;
 - the Customer and/or the Guarantor agree to irrevocably nominate, constitute and appoint the Company as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

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Cancellation

- 41 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 42 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Company (including but not limited to, any loss of profits) up to the time of cancellation.

Privacy Act 1993

- 43 The Customer and the Guarantor/s (if separate to the Customer) authorises the Company to:
- a. collect retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
 - b. disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company 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 Customer.
- 44 Where the Customer and/or Guarantors are an individual the authorities under clause 43 are authorities or consents for the purposes of the Privacy Act 1993.
- 45 The Customer and/or Guarantors shall have the right to request the Company for a copy of the information about the Customer and/or Guarantors retained by the Company and the right to request the Company to correct any incorrect information about the Customer and/or Guarantors held by the Company.

General

- 46 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.
- 47 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.
- 48 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 49 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 50 The Company 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 Company notifies the Customer of such change.
- 51 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.
- 52 The failure by the Company to enforce any provisions of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.