

## Commercial Term and conditions

### 1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Seller" means Floorco Trading Limited T/A Floorco, its successors and assigns or any person acting on behalf of and with the authority of Floorco Trading Limited T/A Floorco.
- 1.3 "Client" refers to any non-individual commercial entity engaging with the Seller for goods or services, including but not limited to partnerships, trusts, successors, administrators, and permitted assigns acting on behalf of the Commercial Client. This definition applies regardless of whether the Commercial Client explicitly signs the Contract; any engagement with the Seller, such as requesting quotations, placing orders, or accepting delivery of goods or services, constitutes acceptance of these terms and conditions.
- 1.4 "Goods" means all Goods or Services supplied by the Seller to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.
- 1.7 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Seller and the Client in accordance with clause 5 below.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
  - 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
  - 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
  - 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with the Seller and it has been approved with a credit limit established for the account.
  - 2.5 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse delivery.
  - 2.6 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith, is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
  - 2.7 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Seller reserves the right to vary the Price with alternative Goods as per clause 5.2. In all such cases the Seller will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Services on hold, as per clause 6.2 until such time as the Seller and the Client agree to such changes.
  - 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- ### 3. Errors and Omissions
- 3.1 The Client acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
    - (a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this Contract; and/or
    - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Services.

- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4. Change in Control**
- 4.1 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address and contact phone reported within 14 or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to the Seller's current price list; or
  - (c) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Seller reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, safety considerations, availability of machinery, prerequisite work by any third party not being completed, preparation of the floor, rotten floor boards, cleaning, extra rooms, additional Goods required, take-up and disposal of old floor coverings etc.) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to the Seller in the cost of labour or materials (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to the Seller in the cost of taxes, levies, freight and insurance charges etc.) which are beyond the Seller's control.
- 5.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Client shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price.
- Payment for all variations must be made in full at the time of their completion.
- 5.4 At the Seller's sole discretion, a non-refundable deposit of thirty percent (30%) may be required upon ordering the Goods. The remaining balance must be paid in full prior to the collection of the Goods by the Commercial Client or their authorized representative, or before the commencement of installation services if the Seller is responsible for such services.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
- (a) before delivery of the Goods and or Services;
  - (b) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Seller.
- 5.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Seller.
- 5.7 The Seller may in its discretion allocate any payment received from the Client towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Seller may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Seller, payment will be deemed to be allocated in such manner as preserves the maximum value of the Seller's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Provision of the Services**

- 6.1 Subject to clause 6.2 it is the Seller's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify the Seller that the site is ready.
- 6.3 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Seller's address; or
  - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.4 At the Seller's sole discretion the cost of delivery is in addition to the Price.
- 6.5 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.6 Any time specified by the Seller for delivery of the Goods is an estimate only and the Seller will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Risk**
- 7.1 The Client acknowledges that:
- (a) prolonged exposure to direct sunlight must be avoided as such exposure can cause excessive drying, splitting, moving and warping of the Goods and will void any warranty provided to the Client.
  - (b) the Goods must be acclimatised on the site where they are to be installed, prior to their installation, as per the manufacturer's recommendations; Failure to do so can void any warranty provided to the Client; and
  - (c) the laminate flooring and wood flooring are manufactured from quality kiln dried materials and will react adversely to moisture exposure; therefore, no warranty is provided to the Client for any laminate flooring and wood flooring which are exposed to moisture; and
- (d) the Goods, may contain the following characteristics: variations in colour, shade and texture are inherent quality occurs; it is susceptible to exposure to elements (e.g. rain, sun temperature, etc.), and to damage and size variations which may be caused by relative humidity, moisture content, etc. Variations of colour and grain within a Goods species is normal and therefore samples of the Goods can only be indicative of the range of characteristics within the species nominated.
  - (e) Damage caused by humans or pets: This includes, but is not limited to, scratches, dents, or other damages resulting from human activity or pet behaviour.
  - (f) Failure to adhere to Floorco's installation guidelines: Any damage arising from improper installation practices, such as not acclimating the Goods on-site prior to installation as per the manufacturer's recommendations, will void the warranty.
  - (g) Improper cleaning methods: Use of inappropriate cleaning tools or substances, including steam mops, incorrect cleaning agents, or neglecting to promptly clean spills, can cause damage not covered by this warranty.
  - (h) That floating floor installations may produce footfall and cracking noises. These sounds are common and can result from environmental factors such as temperature and humidity fluctuations. While proper installation and the use of quality underlayment can minimize these noises, they may not be entirely eliminated. Consequently, the Seller cannot be held responsible for such inherent characteristics of floating floor systems.
  - (i) Accept that goods from different production batches may exhibit variations in aspects such as color, texture, and dimensions. These differences arise due to factors including, but not limited to, the inherent characteristics of raw materials, manufacturing processes, and environmental conditions. Such variations are considered normal and do not affect the overall quality or functionality of the goods. Therefore, the Seller shall not be held liable for any disputes or claims arising from these batch-to-batch differences.
  - (j) that before installing the flooring, an application should be submitted to the local council (if necessary, for new construction only), the product should be incorporated into the design phase drawings, or professional advice should be obtained from council inspectors prior to installation. The Client also understands that variations in the interpretation of regulations by councils may

render the Seller's submitted documents invalid, for which FLOORCO accepts no responsibility. Furthermore, to ensure compliance with the performance requirements for wet areas, the Client agrees to follow the Seller's installation guidelines during the installation process.

7.2 The Client is responsible for maintaining the Goods once they are installed. As Goods is a floorcovering, it is subject to change due to environmental or climatic conditions, and fair wear and tear once installed. As such, the Client acknowledges and agrees that the Seller shall not be responsible for any deterioration in the Goods caused by prolonged exposure to sunlight, heat, wind, air-conditioning, excess water, movement of furniture, appliance or other heavy items, fair wear and tear and failure on the part of the Client to exercise reasonable care.

7.3 The use of floor protection materials or decorative rugs may result in uneven oxidation of the Goods, leading to regular and distinct edge discoloration. Such changes are typically observed within one to three weeks of use. To mitigate this risk, it is move that coverings be periodically repositioned. The Seller shall not be held liable for any discoloration arising from the Client's failure to adhere to this recommendation.

7.4 The Buyer agrees and acknowledges that the council may require specific certificates, certifications, test reports, approvals, or similar documentation to satisfy building conditions and regulatory requirements. While the Seller will make all reasonable efforts to provide the necessary documentation and assistance, the complex nature of construction projects, potential variances in council requirements, and differing interpretations of such documentation may result in delays, rejections, or additional conditions imposed by the council. To mitigate these risks, it is strongly recommended that the Buyer applies for and verifies all required documentation and approvals with the council prior to the commencement of work. The Seller shall not be held liable for delays, additional costs, or non-compliance caused by factors outside the Seller's reasonable control, including but not limited to delays in council review processes, changes in regulatory requirements, or actions/inactions of third parties.

## 8. Installation of the Goods

8.1 Where the Seller is to both provide and install Goods:

- (a) the Seller shall maintain a contract works insurance policy until the installation has been completed, upon which all risk for the Goods shall immediately pass to the Client; and
- (b) the Seller shall not be responsible for any pre-existing or latent defect in the site that may affect the Goods, or the installation

procedure thereof (including rotten floorboards or skirting boards, uneven floor levels, damp proofing on concrete floors or any other defect). The installation of the Goods is subject to the sub-floor being level. If levelling is required, such will be charged to the Client additionally in accordance with clause 5.2; and

(c) during installation, it is the Client's responsibility to shield windows with protective covering to prevent and protect the Goods from sunlight. The effect of sunlight, heating or other heat generating appliances are to be taken into consideration, and if determined that they have contributed to the higher rate of shrinkage, then such shall not be considered a defect in the Goods; and

(d) it shall be the Client's responsibility to:

(i) select the Goods (including colour, and finish of any stain, lacquer or other coatings used for, or on, the Goods). These selections must be specified by the Client in writing before the installation commences. The Seller shall not be responsible for the final appearance of the Goods once the installation has been completed, provided it has complied with the terms of the Contract and the Client's selection of Goods and coatings; and

(ii) unless otherwise agreed, remove any carpets or tiles, and store any articles that may be damaged during installation of the Goods or that may obstruct the Seller during the installation, including furniture, furnishings, paintings, crockery and other personal effects. The Seller shall not be liable for any damage caused to those items through the Client's failure to comply with this sub-clause; and

(iii) supply the Seller access to water, toilet and power (electricity) facilities.

(e) the Client and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation; and

(f) the Client shall obtain (at the expense of the Client) all licenses and approvals that may be required.

## 9. Title

9.1 The Seller and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid the Seller all amounts owing to the Seller; and
- (b) the Client has met all of its other obligations to the Seller.

- 9.2 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.
- 9.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 9.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Seller on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
  - (e) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;
  - (f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred;
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller;
  - (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
10. **Personal Property Securities Act 1999 ("PPSA")**
- 10.1 Upon assenting to these terms and conditions in writing the Client 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 and/or collateral (account) – being a monetary obligation of the Client to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Client.
- 10.2 The Client 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 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, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party 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.
- 10.3 The Seller and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Client shall unconditionally ratify any actions taken by the Seller under clauses 10.1 to 10.5.
- 10.7 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
11. **Security and Charge**
- 11.1 In consideration of the Seller agreeing to supply the Goods, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 11.3 The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

## 12. Defects

12.1 The Client shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client 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 Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

12.2 Goods will not be accepted for return other than in accordance with 12.1 above, and provided that:

- (a) the Seller has agreed in writing to accept the return of the unopened Goods; and
- (b) the unopened Goods are returned at the Client's cost within thirty (30) days of the delivery date; and
- (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

12.3 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (15%) of the value of the returned Goods plus any freight.

## 13. Warranty

13.1 Subject to the conditions of warranty set out in clause 13.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within twelve (12) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship. The workmanship warranty outlined in this contract applies exclusively to installation and related services provided directly by the Seller (refer to Clause 13.1).

13.2 The conditions applicable to the warranty given by clause 13.1 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 Client to properly maintain any Goods; or
  - (ii) failure on the part of the Client 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.

- (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 Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

13.3 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 be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

13.4 The warranty periods specified on product packaging and within product warranty cards do not apply to commercial clients. For commercial clients, warranty terms are exclusively governed by Floorco's commercial terms and conditions. Commercial clients are advised to review these terms to understand the specific warranty provisions applicable to their purchases.

## 14. Consumer Guarantees Act 1993

14.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Client.

## 15. Default and Consequences of Default

15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

15.2 If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).

15.3 Further to any other rights or remedies the Seller may have under this Contract, if a Client has made payment to the Seller, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs

incurred by the Seller under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

15.4 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 Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by the Seller;
- (c) the Client 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

#### 16. Cancellation

16.1 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.

16.2 The Seller 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 Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).

#### 17. Privacy Policy

17.1 All emails, documents, images or other recorded information held or used by the Seller is Personal Information as defined and referred to in clause 17.3 and therefore considered confidential. The Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory

requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Seller that may result in serious harm to the Client, the Seller will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

17.2 Notwithstanding clause 17.1, privacy limitations will extend to the Seller in respect of Cookies where transactions for purchases/orders transpire directly from the Seller's website. The Seller agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Seller when the Seller sends an email to the Client, so the Seller may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Seller's website.

17.3 The Client authorises the Seller or the Seller's agent to:

- (a) access, collect, retain and use any information about the Client;
  - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Client.
- (b) disclose information about the Client, whether collected by the Seller from the Client 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 Client.

17.4 Where the Client is an individual the authorities under clause 17.3 are authorities or consents for the purposes of the Privacy Act 1993.

17.5 The Client shall have the right to request the Seller for a copy of the Personal Information about the Client retained by the Seller and the right to request the Seller to correct any incorrect Personal Information about the Client held by the Seller.

#### 18. Service of Notices

18.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

#### 19. Trusts

19.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Seller may have notice of the Trust, the Client covenants with the Seller as follows:

- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Client will not without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
  - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;

(iii) any advancement or distribution of capital of the Trust; or

(iv) any resettlement of the trust property.

#### 20. Dispute Resolution

20.1 All disputes and differences between the Client and the Seller touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

#### 21. General

21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.

21.2 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 Auckland Courts of New Zealand.

21.3 The Seller shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

21.4 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

21.5 The Client cannot licence or assign without the written approval of the Seller.

21.6 The Seller may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.

21.7 The Client agrees that the Seller may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Seller to provide Goods to the Client.



- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.