

# FULL TERMS & 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 "Floor-Way" means Floor-Way Trading Co Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Floor-Way Trading Co Pty Ltd.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Floor-Way to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by Floor-Way to the Customer at the Customer'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 Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer 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 GST where applicable) for the Goods as agreed between Floor-Way and the Customer in accordance with clause 6 below.
- 1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

## 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer 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 Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Floor-Way 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 Customer's credit limit and/or the account exceeds the payment terms, Floor-Way reserves the right to refuse Delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), the Electronic Communications Act 2000 (SA), the Electronic Transactions (Victoria) Act 2000, section 14 of the Electronic Transactions (Queensland) Act 2001, or any other applicable provisions of that Act or any Regulations referred to in that Act.

## 3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Floor-Way shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- resulting from an inadvertent mistake made by Floor-Way in the formation and/or administration of this Contract; and/or
  - contained in/omitted from any literature (hard copy and/or electronic) supplied by Floor-Way 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 Floor-Way, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

## 4. Authorised Representatives

- 4.1 The Customer acknowledges that Floor-Way shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to Floor-Way, that person shall have the full authority of the Customer to order any Services, Goods and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to Floor-Way for all additional costs incurred by Floor-Way (including Floor-Way's profit margin) in providing any Services, Goods or variation/s requested thereto by the Customer's duly authorised representative.

## 5. Change in Control

- 5.1 The Customer shall give Floor-Way not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Floor-Way as a result of the Customer's failure to comply with this clause.

## 6. Price and Payment

- 6.1 At Floor-Way's sole discretion, the Price shall be either:
- as indicated on any invoice provided by Floor-Way to the Customer; or
  - Floor-Way's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Floor-Way reserves the right to change the Price if a variation to Floor-Way's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed will be charged for on

the basis of Floor-Way's quotation and will be shown as variations on the invoice.

The Customer shall be required to respond to any variation submitted by Floor-Way within ten (10) working days. Failure to do so will entitle Floor-Way 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.

At Floor-Way's sole discretion, a non-refundable deposit may be required. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Floor-Way, which may be:

- on delivery of the Goods;
  - by way of instalments/progress payments in accordance with Floor-Way's payment schedule;
  - the date specified on any invoice or other form as being the date for payment; or
  - failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Floor-Way.
- Payment may be made by cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Floor-Way.

Floor-Way may in its discretion allocate any payment received from the Customer towards any invoice that Floor-Way determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Floor-Way may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Floor-Way, payment will be deemed to be allocated in such manner as preserves the maximum value of Floor-Way's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

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 Floor-Way nor to withhold payment of any invoice because part of that invoice is in dispute.

Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Floor-Way an amount equal to any GST Floor-Way must pay for any supply by Floor-Way under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.

## Delivery of Goods

Delivery ("Delivery") of the Goods is taken to occur at the time that Floor-Way (or Floor-Way's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

At Floor-Way's sole discretion, the cost of delivery is included in the Price. Floor-Way 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.

Any time specified by Floor-Way for delivery of the Goods is an estimate only and Floor-Way will not be liable for any loss or damage incurred by the Customer 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 Floor-Way is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Floor-Way shall be entitled to charge a reasonable fee for redelivery and/or storage.

## Risk

Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

Floor-Way will not accept responsibility for any damage to the floor due to microenvironments caused by air-conditioning, heating or large expanses of glass windows without curtains or blinds.

Whilst Floor-Way will take all due care to avoid contamination of the finished surface, Floor-Way accepts no responsibility for contamination by natural contaminants such as dust or hair which may be present at the worksite.

Floor-Way will only inspect or view a timber floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects.

The Customer acknowledges and accept that:

- whilst carpet manufacturers make every effort to match dye lots, colours or shade may vary between batches of product and/or between sales samples and actual product supplied; and
- carpet manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when installed; and
- the installation process for carpet may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product.

Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst Floor-Way will make every effort to match sales samples to the finished Goods Floor-Way accepts no liability whatsoever where such samples differ to the finished Goods supplied.

Timber is a hygroscopic material subject to expansion and contraction therefore Floor-Way will accept no responsibility for gaps that may appear in the flooring during prolonged dry periods.

The Customer acknowledges and agrees that Floor-Way shall not be liable for any loss, damages or costs however arising in the event that:

- a heavy or sharp object is dropped or falls on the vinyl, as vinyl will show scratches and will get cut as it is a soft and flexible Good; or
- an object is dragged across it as vinyl can rip and tear; or
- the vinyl discolours or bubbles in areas due to exposure to extreme heat (including, but not limited to, conservatories and floor to ceiling windows).

Floor-Way does not recommend vinyl to be installed over a floor that is a combination of wood and concrete, or expansion joints in concrete floors, as any movement, joint, seams in bison board, or thin line board will show through the vinyl.

The Customer acknowledges and agrees that vinyl will not fully seal a floor around the edges particularly around showers or baths; the Customer also agrees water can get underneath and therefore bubble and/or discolour the vinyl. Floor-Way shall not be held liable for any loss, damages or costs however arising due to the same.

Floor-Way hereby requests the Customer to remove all Furniture and appliances in the installation area prior to the commencement of any Services. The Customer acknowledges and agrees that Floor-Way shall not be held liable for any loss, damages or costs arising due to the Customer's failure to comply with this clause.

Floor-Way shall advise the Customer if Floor-Way believes that there are any issues with the sub floor (including, but not limited to, moisture problems which may cause the vinyl to bubble and discolour) however the Customer acknowledges that it is not always possible to identify such problems therefore the Customer agrees that Floor-Way shall not be held liable in any way whatsoever should any such issue go undetected causing damage to the Goods.

The Customer acknowledges that whilst floor levelling compound and floor preparation may help smooth out rough floors; this will not necessarily level a floor.

The Customer acknowledges that Goods supplied may:

- fade or change colour over time; and
  - expand, contract or distort as a result of exposure to heat, cold, weather; and
  - mark or stain if exposed to certain substances; and
  - be damaged or disfigured by impact or scratching.
- The Customer acknowledges that caulking of a floating floor after installation will void ALL warranties of the flooring including installation (and manufacturing). This includes Timber Laminate, Hybrid and Engineered timber.

(a) If a customer or builder caulks flooring after installation all costs to fix issues will fall upon the customer. Floor-Way Trading and the manufacturer will take no further responsibility once the floor has been compromised.

## Blinds

9.10 Installation warranty of 12months on all blinds, shutters, curtains & outdoor blinds/awnings.

9.11 Floor-Way will not be liable for any alterations made after order has been placed such as but not limited to: Change in fabric, measurements or obstructions added in ie. Cabinetry, skirting boards, tiles.

9.12 Floor-Way will not warrant installation into any substrate that is deemed unsuitable.

9.13 Any electrical work required for blind motorisation will fall on the responsibility of the customer to organise. Floor-Way does not warrant any electrical work involved in motorisation.

9.14 It is the customer's responsibility to provide adequate and safe scaffolding/height access equipment

9.15 The customer understands:

- Curtain drop variances may occur to floor or substrates being uneven
- Over-sized curtains may be subject to gravity affected movement  
Resulting in fabric to drop after installation. A 3% drop is considered within tolerance

- Fabrics can discolour over time (Blinds and Curtains)
- Damage to outdoor blinds due to excessive wind will not be covered by Floor-Way.

## Customer's Responsibilities

9.1 It is the Customer's responsibility to:

- have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and
- remove all existing floor coverings, tacks and staples; and
- fully disclose any information that may affect Floor-Way's installation procedures (including, but not limited to, disclosing known breaks or tears in the membrane, extensions of existing slabs, thickened beams, curing compounds that may have been used, or the use of concrete over 25mpa); and
- ensure the sub-floor is adequately ventilated and is structurally sound; and
- ensure that the levels of the sub-floor are satisfactory as the floor coverings can only follow the contours of the sub-floor and will not correct unevenness; and
- remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Customer. All care taken but no responsibility accepted by Floor-Way in this regard; and
- provide adequate dust sheets to protect the Customer's furniture and décor. Floor-Way will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbling walls should be temporarily covered by the Customer, until the coatings are dry; and
- extinguish all naked flames prior to coating including, but not limited to, pilot lights, heaters etc.; and
- supply power to within eight (8) metres of the project; and
- ensure that full and final lighting as designed for the completed project is fully operational prior to sanding work commencing, and are made available for use at no cost for the duration of the project. Any costs incurred by Floor-Way will be invoiced to the Customer should this requirement not be met; and
- make the premises available on the agreed date and time. If installation is interrupted by the failure of the Customer to adhere to the installation schedule agreed to between Floor-Way and the Customer, any additional costs will be invoiced to the Customer as an extra.

9.2 Floor-Way is not insured to remove furniture or fittings and will not do so, nor is Floor-Way licensed to move gas or electrical appliances.

## Access

10.1 The Customer shall ensure that Floor-Way has clear and free access to the worksite at all times to enable them to undertake the Services. Floor-Way shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Floor-Way.

## Compliance With Laws

11.1 The Customer and Floor-Way shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the services.

11.3 The Customer agrees that the site will comply with any occupational health and safety (OHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

## Title

12.1 Floor-Way and the Customer agree that ownership of the Goods shall not pass until:

- the Customer has paid Floor-Way all amounts owing to Floor-Way; and
- the Customer has met all of its other obligations to Floor-Way.

12.2 Receipt by Floor-Way 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.

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- 12.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 12.1:
- The Customer is only a bailee of the Goods and must return the Goods to Floor-Way on request;
  - The Customer holds the benefit of the Customer's insurance of the Goods on trust for Floor-Way and must pay to Floor-Way the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - The Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Floor-Way and must pay or deliver the proceeds to Floor-Way on demand;
  - The Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Floor-Way and must sell, dispose of or return the resulting product to Floor-Way as it so directs;
  - The Customer irrevocably authorises Floor-Way to enter any premises where Floor-Way believes the Goods are kept and recover possession of the Goods;
  - Floor-Way may recover possession of any Goods in transit whether or not Delivery has occurred;
  - The Customer 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 Floor-Way;
  - Floor-Way may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
13. **Personal Property Securities Act 2009 ("PPSA")**
- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 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 and/or collateral (account) – being a monetary obligation of the Customer to Floor-Way for Services – that have previously been supplied and that will be supplied in the future by Floor-Way to the Customer.
- 13.3 The Customer undertakes to:
- 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 Floor-Way may reasonably require to;
    - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - register any other document required to be registered by the PPSA; or
    - correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
  - indemnify, and upon demand reimburse, Floor-Way 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;
  - not register a financing change statement in respect of a security interest without the prior written consent of Floor-Way;
  - 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 Floor-Way;
  - immediately advise Floor-Way 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.
- 13.4 Floor-Way 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.
- 13.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by Floor-Way, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Customer must unconditionally ratify any actions taken by Floor-Way under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
14. **Security and Charge**
- 14.1 In consideration of Floor-Way agreeing to supply the Goods, 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 secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies Floor-Way from and against all Floor-Way's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Floor-Way's rights under this clause.
- 14.3 The Customer irrevocably appoints Floor-Way and each director of Floor-Way as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
15. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Floor-Way in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Floor-Way to inspect the Goods.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 Floor-Way acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Floor-Way makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Floor-Way's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Customer is a consumer within the meaning of the CCA, Floor-Way's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If Floor-Way is required to replace the Goods under this clause or the CCA, but is unable to do so, Floor-Way may refund any money the Customer has paid for the Goods.
- 15.7 If the Customer is not a consumer within the meaning of the CCA, Floor-Way's liability for any defect or damage in the Goods is:
- limited to the value of any express warranty or warranty card provided to the Customer by Floor-Way at Floor-Way's sole discretion;
  - limited to any warranty to which Floor-Way is entitled, if Floor-Way did not manufacture the Goods;
  - otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- The Customer has complied with the provisions of clause 15.1; and
  - Floor-Way has agreed that the Goods are defective; and
  - The Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - The Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, Floor-Way shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- The Customer failing to properly maintain or store any Goods;
  - The Customer using the Goods for any purpose other than that for which they were designed;
  - 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;
  - The Customer failing to follow any instructions or guidelines provided by Floor-Way;
  - fair wear and tear, any accident, or act of God.
- 15.10 Floor-Way may in its absolute discretion accept non-defective Goods for return in which case Floor-Way may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 15.11 Notwithstanding anything contained in this clause if Floor-Way is required by a law to accept a return then Floor-Way will only accept a return on the conditions imposed by that law.
16. **Intellectual Property**
- 16.1 The Customer warrants that all designs, specifications or instructions given to Floor-Way will not cause Floor-Way to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Floor-Way against any action taken by a third party against Floor-Way in respect of any such infringement.
- 16.2 The Customer agrees that Floor-Way may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Floor-Way has created for the Customer.
17. **Default and Consequences of Default**
- 17.1 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 Floor-Way's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes Floor-Way any money the Customer shall indemnify Floor-Way from and against all costs and disbursements incurred by Floor-Way in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Floor-Way's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies Floor-Way may have under this Contract, if a Customer has made payment to Floor-Way, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Floor-Way under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 17.4 Without prejudice to Floor-Way's other remedies at law Floor-Way shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Floor-Way shall, whether or not due for payment, become immediately payable if:
- any money payable to Floor-Way becomes overdue, or in Floor-Way's opinion the Customer will be unable to make a payment when it falls due;
  - the Customer has exceeded any applicable credit limit provided by Floor-Way;
  - 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 (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
18. **Cancellation**
- 18.1 Without prejudice to any other remedies Floor-Way may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Floor-Way may suspend or terminate the supply of Goods to the Customer. Floor-Way will not be liable to the Customer for any loss or damage the Customer suffers because Floor-Way has exercised its rights under this clause.
- 18.2 Floor-Way 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 Floor-Way shall repay to the Customer any money paid by the Customer for the Goods. Floor-Way shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Floor-Way as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
19. **Privacy Policy**
- 19.1 All emails, documents, images or other recorded information held or used by Floor-Way is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. Floor-Way acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Floor-Way acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Floor-Way that may result in serious harm to the Customer, Floor-Way will notify the Customer 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 Customer by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to Floor-Way in respect of Cookies where transactions for purchases/orders transpire directly from Floor-Way's website. Floor-Way 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 Customer's:
- IP address, browser, email client type and other similar details;
  - tracking website usage and traffic; and
  - reports are available to Floor-Way when Floor-Way sends an email to the Customer, so Floor-Way may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer 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 Floor-Way's website.
- 19.3 The Customer agrees for Floor-Way to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. 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) about the Customer in relation to credit provided by Floor-Way.
- 19.4 The Customer agrees that Floor-Way may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Customer; and/or
  - to notify other credit providers of a default by the Customer; and/or
  - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 19.5 The Customer consents to Floor-Way being given a consumer credit report to collect overdue payment on commercial credit.
- 19.6 The Customer agrees that personal credit information provided may be used and retained by Floor-Way for the following purposes (and for other agreed purposes or required by):
- the provision of Goods; and/or
  - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - enabling the collection of amounts outstanding in relation to the Goods.
- 19.7 Floor-Way may give information about the Customer to a CRB for the following purposes:
- to obtain a consumer credit report;
  - allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 19.8 The information given to the CRB may include:
- Personal Information as outlined in 19.3 above;
  - name of the credit provider and that Floor-Way is a current credit provider to the Customer;
  - whether the credit provider is a licensee;
  - type of consumer credit;
  - details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Floor-Way has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - information that, in the opinion of Floor-Way, the Customer has committed a serious credit infringement;
  - advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.9 The Customer shall have the right to request (by e-mail) from Floor-Way:
- a copy of the Personal Information about the Customer retained by Floor-Way; and the right to request that Floor-Way correct any incorrect Personal Information; and
  - that Floor-Way does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 19.10 Floor-Way will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 19.11 The Customer can make a privacy complaint by contacting Floor-Way via e-mail. Floor-Way will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
20. **Other Applicable Legislation**
- 20.1 At Floor-Way's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), and Building and Construction Industry Security of Payments Act 2009 (South Australia) may apply.
- 20.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 20.1 (each as applicable), except to the extent permitted by the Act where applicable.
21. **Dispute Resolution**
- 21.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and



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providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

### 22. Service of Notices

- 22.1 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.
- 22.2 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.

### 23. Trusts

- 23.1 If the Customer 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 Floor-Way may have notice of the Trust, the Customer covenants with Floor-Way as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of Floor-Way (Floor-Way will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer 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.

### 24. General

- 24.1 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.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of either Queensland, South Australia, New South Wales or Victoria in which state the Goods and/or Services were provided by Floor-Way to the Customer however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the courts in the state of Victoria in which Floor-Way has its principal place of business.
- 24.3 Subject to clause 15, Floor-Way shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Floor-Way of these terms and conditions (alternatively Floor-Way's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 Floor-Way may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 24.5 The Customer cannot licence or assign without the written approval of Floor-Way.
- 24.6 Floor-Way 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 Customer agrees and understands that they have no authority to give any instruction to any of Floor-Way's sub-contractors without the authority of Floor-Way.
- 24.7 The Customer agrees that Floor-Way may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Floor-Way to provide Goods to the Customer.
- 24.8 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.
- 24.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.