

- 1. GENERAL**
  - 1.1. Any defined terms within these Terms and Conditions may have their definitions, unless otherwise defined herein, given to them within the Supply Agreement.
  - 1.2. These Terms and Conditions and any special conditions as agreed between the Customer and the Company will form part of the Supply Agreement as defined.
  - 1.3. For the avoidance of doubt, all Goods orders and any future Goods order between the Customer and the Company will also be governed by these Terms and Conditions.
  - 1.4. These Terms and Conditions will override any and all previous arrangements and agreements between the Customer and the Company.
  - 1.5. In the event that an inconsistency exists and/or arises between these Terms and Conditions and any previous agreements between the Company and the Customer or a Credit Application form, these Terms and Conditions will prevail.
  - 1.6. The Supply Agreement is binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
  - 1.7. If the Customer acts in the capacity as Trustee of any Trust, the Customer acknowledges and agrees that it enters into this Supply Agreement in its own right and in its capacity as trustee of any such trust and that the rights of indemnity available to the trustee will not be abrogated.
  - 1.8. Where more than one Customer executes this Supply Agreement, each party shall be liable jointly and severally.
  - 1.9. Customer orders will only be accepted and fulfilled by the Company, upon the Customer providing a signed and dated copy of this Supply Agreement.
  - 1.10. The Customer agrees that if it is a subsidiary of another company ("Parent Company"), that the Parent Company guarantees its obligations under this Supply Agreement.
  - 1.11. The Customer agrees that any correspondence and or prior agreements (written or verbal) outside of this Supply Agreement is to have no force or effect in respect to the terms of this Supply Agreement.
  - 1.12. To the extent of any inconsistency between the terms of this Supply Agreement and terms of any credit agreement or any other agreement between the Customer and the Company, the terms of this Supply Agreement will take precedence.
- 2. PAYMENT TERMS**
  - Credit account customers**
    - 2.1. The Company reserves the right to withdraw any credit facility in the event of any breach by the Customer of, including but not limited to, this Supply Agreement and/or the Customer committing an act of insolvency.
    - 2.2. The Customer agrees that upon the termination of any credit facility between the Customer and the Company in accordance with clause 2.1, any and all monies owing on the account shall become immediately due and payable.
  - Pricing**
    - 2.3. The Price of the Goods are based on the USD/AUD exchange rates, current taxes and statutory charges as at the date of this Supply Agreement. Should any of the prices vary by more than 3% during the period from the date of the Supply Agreement to the date payment is due under this Supply Agreement, the Company will be entitled to pass these and any additional costs to the Customer and the Customer is deemed to accept the variation.
  - Default**
    - 2.4. Should the Customer fail to pay the Contract Sum per delivery as set out under the Delivery Schedule, or any other fees due and payable to the Company by the Customer, within the Due Date for payment (as defined under 'Delivery and Payment Terms of the Supply Agreement), interest will be charged at a rate of 12% compounding daily until such time the unpaid Contract Sums are paid.
    - 2.5. Should the Customer fail to pay the Contract Sum for each delivery in the Delivery Schedule and any accrued interest, within 30 calendar days of the Due Date (as defined under 'Delivery and Payment Terms of the Supply Agreement), the Customer will be deemed as the Company's election to have forfeited its right to receiving any further Goods under this Supply Agreement.
    - 2.6. If the Customer has failed to make payment in accordance with the terms of this Supply Agreement, the Company has the right, at its sole discretion, to cancel part or all of the balance of the order on foot and retain any moneys which they may have already received from the Customer.
    - 2.7. Notwithstanding clause 2.6, the Company retains all its rights pursuant to this Supply Agreement, to seek recovery from the Customer of any losses, fees and charges (including but not limited to loss of profit) it may incur as a result of the Customers failure to make payment.
- 3. DELIVERY OF GOODS**
  - 3.1. The Company provides no warranty or indemnity in respect of the provision of the Goods as set out by the Company under the Delivery Schedule or as otherwise agreed between the parties.
  - 3.2. The Customer is responsible for unloading the Goods.
  - 3.3. The Company reserves the right to charge an additional fee to the Customer, if the time taken by the Customer to unload the Goods exceeds thirty (30) minutes ("**Unloading Fee**"). Payment of the Unloading Fee will be governed by the same payment terms as set out herein.
  - 3.4. The Customer accepts that the delivery dates as set-out under the Delivery Schedule are estimates only and will apply from the date the order for Goods is accepted by the Company, (ie the date the Customer provides a signed and dated copy of this Supply Agreement to the Company and which is accepted by the Company in writing or otherwise as per the Order Activation Date as defined under the Delivery and Payment Terms of the Supply Agreement.
  - 3.5. The Customer accepts that the Company cannot guarantee delivery timeframes as set out in the Delivery Schedule or otherwise agreed on between the Customer and the Company and for the avoidance of doubt, the Customer's obligations to pay remains as set-out in this Supply Agreement, whether the Goods arrive earlier or later than the estimated dates for delivery. For the avoidance of doubt, the Goods will be shipped via sea freight and arrive in the Port of Melbourne.
  - 3.6. The Customer agrees that there will be no split deliveries, save and except for the number of deliveries as described under Delivery Schedule.
  - 3.7. The Customer agrees and acknowledges, that the delivery of Goods, can only occur on Monday to Friday between business hours and are limited to delivery within metropolitan Melbourne. For the avoidance of doubt, the Company accepts no liability associated with the late delivery of any Goods.
  - 3.8. The Customer accepts that deliveries will be on a flatbed truck.
  - 3.9. The Customer accepts responsibility for unloading the Goods from the truck at the delivery address as provided by the Customer, with the use of a pallet forklift which must be supplied and or arranged by the Customer. Failure to do so by the Customer will result in any additional costs incurred by Pacific Floors being passed on to the Customer for reimbursement. For the avoidance of doubt, the Company accepts no liability and the Customer fully indemnifies and releases, the Company and any of the Company's officers and representatives, from all liability relating to the Customer and any representatives or officers of the Customer unloading the Goods at all times.
  - 3.10. In the event that the Customer does not accept delivery of the Goods as required by the terms of this Supply Agreement, or otherwise where delivery of the Goods is denied to the Customer, due to a breach of any other term of this Supply Agreement, the Customer agrees and acknowledges that it will be invoiced all storage fees at the rate of \$100 + GST per pallet per day, until such time as the breach is remedied and the Goods are delivered to and accepted by the Customer. Any storage fees incurred by the Customer must be paid in full as precondition of any further Goods being delivered.
  - 3.11. The Customer acknowledges and confirms that it has no right of action against the Company and cannot cancel any orders that are on foot, for any losses that are incurred due to any delay in delivery of the Goods or in the event that the Goods are damaged during the course of freight transport into the Port of Melbourne and during the course of the Goods being held in the Port of Melbourne until the Customer collects the Goods from the Company. The parties agree to act in good faith for the purpose of resolving matters arising under this clause.

#### **4. CANCELLATION AND VARIATION POLICY**

##### **Cancellation or Variation by Supplier**

- 4.1. Without prejudice to any other remedy at law or otherwise available to the Company, the Company will be entitled to cancel all or any part of any order for the Goods, of the Customer which remains unfulfilled in the event that:
  - 4.1.1. Any money payable to the Company will become overdue; or
  - 4.1.2. 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
  - 4.1.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 4.2. The Company will not be liable for any loss or damage or consequential loss or damage whatsoever arising from such cancellation as set out herein.

##### **Cancellation or Variation by Customer**

- 4.3. The Customer agrees that upon signing this Supply Agreement, the order for the Goods, cannot be stopped, cancelled and/or varied in terms of quantities and/or delivery timeframes by the Customer.

#### **5. LIABILITY**

- 5.1. The Company takes no responsibility if the specifications in relation to the order of Goods provided by the Customer are wrong or inaccurate.
- 5.2. The Company assumes no liability whatsoever for any consequential loss, including damage or loss arising from or as a consequence of either late delivery, mis-delivery or non-delivery of goods or any other act or default on the part of the Company or of any servant, agent or contractor of the Company in relation to this Supply Agreement unless the same occurs because of the wilful act or default or negligence of the Company, its servants, agents or contractors in which case liability is limited to the payment of the cost of having the Goods or any services supplied again.
- 5.3. To the extent that Goods supplied by the Company are not consumer goods and the Customer is deemed to be a consumer pursuant to Australian Consumer Law, the Customer agrees that the Company's liability for failure to comply with any consumer guarantee (other than title, quiet possession or undisclosed securities) is limited to the replacement or resupply of equivalent goods, repair of goods or the cost of replacing or acquiring replacement goods or the cost of repair of the goods.
- 5.4. The Customer acknowledges that the Company shall not be liable for and the Customer fully releases and indemnifies the Company from any loss incurred as a result of delay or failure to provide the Goods or to observe any of the terms of this Supply Agreement due to an event of force majeure, being any cause or circumstance beyond the Company's reasonable control.
- 5.5. All conditions and warranties expressed or implied by law are expressly excluded to the fullest extent permitted by law and the liability of the Company for a breach of an implied warranty that cannot be excluded is limited, at the Company's option, to supplying the Goods again or the cost of the supply of the Goods; and
- 5.6. The Company's liability is limited to the re-supply of the services (if any) as performed by the Company or the cost of replacing or acquiring replacement Goods to a maximum value not exceeding the Contract Sum or the cost of repair of the goods forming part of the Consignment to a maximum value of 30% of the Contract Sum.

#### **6. PRODUCT VARIANCES**

- 6.1. The Customer acknowledges and agrees that:
  - 6.1.1. Due to the individualised nature of samples and materials supplied by the Company, there may be substantial variations in size, shape, colour, texture and thickness of the Goods.
  - 6.1.2. Variations in the Goods are not a product fault but an inherent feature of natural wood and cannot and will not be deemed as a defect.
  - 6.1.3. Samples are given as an indication of a particular product and are for reference only.
  - 6.1.4. Timber is often accompanied by shrinking and swelling (movement), and any changes to the floor caused as a result of natural and expected shrinking and swelling do not constitute a defect.
- 6.2. The Customer agrees that the Goods will be manufactured in one continuous production run and that split manufacturing is not permitted.
- 6.3. The Customer accepts that the Goods are a natural product and will have variances in colour and surface finish.
- 6.4. The Customer accepts that by selecting Goods with multiple grading (ie,

ABCD Grade or similar), the surface finish of the boards will vary across orders.

- 6.5. The Customer also acknowledges that in respect to B, C and D grade timbers, putty\*\* will be used to fill cracks and or open knots.
- 6.6. The Customer specifically agrees and understands that variation of the product is not a product fault but an inherent feature of natural wood and cannot be deemed as a defect. Samples are given as an indication of a particular product and are for reference only. Due to the inherent variations, timber is often accompanied by shrinking and swelling (movement). The Customer acknowledges and agrees that that any changes to the floor caused as a result of natural and expected shrinking and swelling does not constitute a fault or defect.
- 6.7. The Company will not and the Customer agrees, that the Company is not liable and is fully released and indemnified for and against, any and all matters relating to the installation of the Goods that have not been installed in accordance with the Company's Installation and Maintenance Instructions. A copy can be viewed at the Pacific Flooring website – [www.pacificfloors.com.au](http://www.pacificfloors.com.au)

#### **7. ORDERS**

- 7.1. Order Activation Dates are the dates upon which a Customer's order is formally acknowledged and registered by the Company. The Order Activation Dates are defined under the Delivery and Payment Terms in the Supply Agreement between the Customer and the Company.
- 7.2. The Customer acknowledges and agrees that they have determined the quantities of Goods to be ordered and made appropriate allowances for wastage and or Customer rejected planks.
- 7.3. The Customer also agrees that the Company makes no representations and accepts no liability, as to the quantities that are required to be ordered.

#### **8. INSTALLATION AND MAINTENANCE**

- 8.1. The Customer agrees to use the Goods and or advise the end user to use the Goods in accordance with the Company's Installation and Maintenance instructions. A copy can be viewed at [www.pacificflooring.com.au](http://www.pacificflooring.com.au).
- 8.2. The Customer acknowledges that it will forfeit any rights (if any), they may have against the Company, if the Goods are applied for any other purpose to which the Goods are not intended for and/or not in accordance with any applicable instructions by / from the Company. To this extent the Customer releases and indemnifies the Company.
- 8.3. The Customer acknowledges and agrees that it has sole responsibility for any damage or injury to property or person caused by using the Goods in any way and shall fully release and indemnify the Company, its servants and/or agents in relation to all such claims.

#### **9. RISK AND TITLE**

- 9.1. The Company retains ownership of, or title in, all Goods and any future goods supplied by it and reserves the right to dispose of the Goods until such time as payment in full is made for all amounts owing by the Customer to the Company under this Supply Agreement, is discharged.
- 9.2. The risk in all Goods sold or supplied under this Supply Agreement passes to the Customer on delivery to the Customer or collection by the Customer's agent or to a carrier commissioned by the Customer.
- 9.3. Upon receipt or delivery of the Goods, the Customer must ensure that the Goods are insured and noting the Company's interest until the Company has been paid in full under this Supply Agreement (and provide proof of such insurance cover immediately upon request by the Company to do so).
- 9.4. The Customer agrees that it will inspect the goods within 7 business days of delivery and must advise the Company if it believes there are issues and or concerns with the Goods that have been delivered.
- 9.5. The Company will be under no liability in relation to any complaint, defect, damage or non-compliance with any order in relation to Goods delivered and accepted by the Customer provided that written notice (“Defect Notice”) to the Company of such complaint, is provided within 7 business days of the Goods being received by the Customer and full payment to the Company being made.
- 9.6. The Customer agrees that a Defect Notice must include sufficient detail of the alleged defect so the Company has an opportunity to remedy such defect.
- 9.7. In the event of the Customer providing a Defect Notice to the Company, the Customer will facilitate an inspection by the Company or its representatives of the Goods in question, prior to the Company providing the Customer with a response to their Defect Notice.
- 9.8. The Customer agrees and acknowledges that an inspection of the Goods subject of a Defect Notice is not an admission of the Company's liability and does not bind the Company to rectify the alleged defect.

**10. SECURITY INTEREST**

- 10.1. For the purposes of this clause:  
(a) Act means the Personal Property Securities Act 2009 (Cth);  
(b) Account, financing statement, financing change statement, inventory, proceeds, purchase money security interest, register, security interest and verification statement have the meanings given to them in the Act.
- 10.2. The parties agree:
- 10.2.1. For value received or to be received, the Customer grants to the Company, a security interest in all goods supplied or any after-acquired goods (inventory) and their proceeds.
- 10.2.2. The security interest secures the due and punctual payment of any amounts owed by the Customer to the Company.
- 10.2.3. The security interest secures the due and punctual payment of all moneys payable under this Supply Agreement. Any account arising by virtue of a sale of any goods supplied takes effect as a transfer.
- 10.2.4. The security interest created by this Supply Agreement is a continuing security and is a first ranking purchase money security interest in respect of the goods as inventory.
- 10.2.5. The Customer agrees that the Company may register a financing statement including any financing change statement on the register.
- 10.2.6. The Customer waives its rights to receive a copy of any verification statement in respect of the security interest provided for by this Supply Agreement.
- 10.2.7. The Customer agrees to immediately reimburse the Company for all costs (including legal costs), expenses and other charges incurred, expended or payable by the Company in relation to the filing of a financing statement, or a financing change statement or releasing the security interest created by these Terms and Conditions.
- 10.2.8. The Customer acknowledges that it is not the owner of the Goods and as such if chapter 4 of the Act applies to this Supply Agreement, the Company and the Customer contract out of the enforcement provisions in section 115(1) of the Act.
- 10.3. The Customer irrevocably authorises the Company and any of its lawful agents, at any reasonable time, to enter into its premises or any premises occupied by the Customer and re-take any goods sold supplied under this Supply Agreement and then re-sell those goods and retain the proceeds of the sale without prejudice to its rights to claim the balance of all moneys due under this Supply Agreement. The Customer indemnifies and agrees to keep the Company indemnified in respect of any such entry.
- 10.4. The provisions of this clause survive the termination of this Supply Agreement and shall carry on for the benefit of the Company.
- 10.5. Despite clause 10.2, the Customer may sell the Goods to a third party in the ordinary course of its business of selling goods of the kind supplied by the Company and deliver them to that party provided that:
- 10.5.1. Where the Customer is paid by the third party and the Company has not been paid by the Customer for the Goods pursuant to this Supply Agreement, the Customer holds the whole of the proceeds of sale on trust for the Company and must pay such proceeds into a special bank account into which no other moneys other than proceeds of sale by the Customer of the Company goods are deposited and which shall incorporate as part of the title of the account "Proceeds of sale of Pacific Floor goods";
- 10.5.2. Where the Customer is not paid by that third party, and the Company has not been paid by the Customer for those goods the Customer agrees, at the option of the Company, that the Company may collect that account on giving the Customer notice in writing to that effect. The Company shall be entitled to issue proceedings in the name of the Customer against the third party for recovery of that account for the benefit of the Company; and
- 10.5.3. The Customer shall keep full and complete records of goods it has purchased from the Company including details of the date, price and identity of the goods.

**11. ATTORNEY**

- 11.1. For the purpose of giving effect to clause 10, the Customer irrevocably appoints the Company as its attorney to act and sign any necessary documentation.

**12. GUARANTEE**

- 12.1. Where the Customer is a corporation, it must ensure that all directors named in this Application or any person who is or becomes a director of the Customer signs a personal guarantee of the Customer's obligations under this Supply Agreement. The failure of any director to sign a guarantee will not operate as a release of any director who signs a guarantee.
- 12.2. A director of the Customer that is a guarantor under the supply agreement between the Customer and the Company, will be jointly and severally responsible for all obligations of the Customer under these Terms and Conditions.
- 12.3. This guarantee provision is a continuing guarantee and is not discharged by any one payment and does not merge on termination of the Supply Agreement between the Customer and the Company.

**13. WAIVER**

- 13.1. Subject to any express consent in writing of the parties, no waiver, delay, omission, relaxation, indulgence or forbearance on the part of any party in respect of any right or power conferred upon such party by this Supply Agreement shall operate as a waiver of such power or right, nor shall any single or partial exercise of any such power or right preclude such party or future exercise of such power or right, or the exercise of any other power or right under this Supply Agreement.

**14. DISPUTE RESOLUTION**

- 14.1. The parties will seek to resolve any dispute in accordance with this clause and will not start court or arbitration proceedings except as allowed under this clause or to seek urgent interlocutory relief.
- 14.2. The following procedure must be applied for resolving a dispute:
- (a) A party must give notice to the other party about the nature of the dispute ("Dispute Notice") and the parties will seek to negotiate a settlement within 10 Business Days of receipt of the Dispute Notice ("Negotiation Period").
- (b) If negotiations fail to settle the matter within the Negotiation Period, the parties will seek agreement on:
1. A non-litigation, non-arbitration procedure for resolving the dispute ("Dispute Resolution");
  2. The steps to be taken and when; and
  3. the identity of any independent person who will assist the parties and the terms upon which that person is to be retained;
- (c) If the parties are unable to reach agreement under clause (a) and (b) per above, within the require timeframe or they do reach an agreement and the agreed procedure does not result in a settlement of the entire dispute within 30 Business Days of the date of the Dispute Notice or such further time as agreed in writing, either party may commence court proceedings or arbitration to resolve remaining issues.
- 14.3. For the avoidance of doubt, the parties agree that unless the dispute relates to non-payment for Goods, all orders on foot placed by the Customer, will be fulfilled by the Company and must be paid for by the Customer in accordance with these Terms and Conditions and any other terms comprised under the Supply Agreement.

**15. SET-OFF**

The Customer must make all payments under the terms of this Supply Agreement without set off, counter claim or other deduction (except any compulsory deduction for taxation).

**16. CLERICAL ERRORS**

Clerical errors are subject to correction without notification.

**17. SEVERANCE**

Any provision of the Supply Agreement that is prohibited, void, voidable or unenforceable in any jurisdiction for any reason does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction. Any provision that is prohibited is only ineffective to the extent of that prohibition.

**18. ASSIGNMENT**

The conditions of this Supply Agreement are personal to the Customer and the Customer must not assign or transfer any of its rights or sub contract any of its obligations under them.

**19. JURISDICTION**

This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.

**20. SURVIVAL OF INDEMNITIES**

- 20.1. Each indemnity, reimbursement or similar obligation in this Supply Agreement:
- 20.1.1. is a continuing, separate and independent obligation;
  - 20.1.2. is payable on demand; and
  - 20.1.3. Survives termination or discharge of this Supply Agreement.

**21. EXCLUSION OF IMPLIED TERMS**

The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. To the extent permissible by law, all terms, conditions and warranties that would have been, or may in the future be, implied into the Company's Supply Agreement or in connection with the supply of any goods or services by the Company by law, custom or convention are hereby excluded.