



Venus Flooring Limited – Terms and Conditions

Venus Flooring Limited (“Venus”, “we” or “us”) agrees to supply goods (“the Goods”) and services (“the Services”) to you, the Customer, in return for payment of the price for those Goods and Services and according to these Terms and Conditions. Acceptance of delivery or receipt of any Goods or Services will (notwithstanding any statement to the contrary by you or your employees or agents) constitute acceptance of these Terms and Conditions. If there is more than one of you, your liability is joint and several.

1 Price and Payment

- 1.1 All prices exclude GST, any other applicable taxes and duties and insurance/freight/delivery/handling charges not expressly included in the price. You agree to pay these items (as applicable) in addition to the price, whether they are imposed before or after your order.
- 1.2 Payment must be made in cash prior to delivery of your order unless we agree otherwise in writing. If we allow you credit, payment in full is due on the 14th day after the date of our invoice. We can impose a credit limit on you (or refuse to allow you any credit) at any time, and alter it at our sole discretion.
- 1.3 You must not withhold payment or make any deductions of any nature whether by way of set off (legal, equitable or otherwise), counterclaim or otherwise from any amount you owe us. Any default in payment shall make all money payable by you to us immediately due and we may withhold delivery of Goods and/or provision of Services until you provide payment of all money payable by you to us.

2 Delivery and Risk

- 2.1 Risk in Goods sold to you will pass to you on Delivery being the time the Goods are dispatched from our premises to you, whether the Goods are delivered to your address by us or uplifted from us by you or by a carrier arranged by you or us.
- 2.2 If any of the Goods are damaged or destroyed prior to property in them passing to you, we are entitled, without prejudice to any of our other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods whether or not the price has become payable under these terms and conditions. The production of these terms and conditions by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.
- 2.3 Any date or time stated for dispatch is an estimate only and not to be treated as a condition of sale.

3 Security Interest

- 3.1 Ownership of all Goods supplied to you by us will not pass on Delivery, but will remain with us until we have received full payment in clear funds of all moneys you owe us (whether relating to those Goods, the supply of Services, or any other property supplied). We hold a Security Interest in all Goods supplied to you and the proceeds of any resale of the Goods for payment of those moneys.
- 3.2 Until all moneys due to us are paid by you, you agree to act as a fiduciary of us and that you will:
 - (a) Not sell, charge or part with possession of the Goods, otherwise than for their full value in the ordinary course of business;
 - (b) Not alter, obliterate, or deface the Goods and will not alter, obliterate, deface, cover up, or remove any identity mark indicating that the Goods are our property.
 - (c) Store the Goods in such manner that they are clearly identifiable as our property and keep separate records of the Goods;
 - (d) Hold the proceeds of the resale of the Goods in trust for us, in a separate and identifiable manner.
- 3.3 At our request, you will promptly deliver, execute or do (or cause to be executed, delivered or done) any documents, contracts, agreements, deeds or other action that we may require from time to time to give effect to these Terms and Conditions, including without limitation doing all such things as we may require to ensure that the Security Interest created under these Terms and Conditions constitutes a perfected Security Interest over the Goods. This includes, but is not limited to, providing any information we request to complete a financing statement or a financing change statement for the Personal Property Securities Register.
- 3.4 Where you are in default, you agree to Venus entering your premises or any other place where the Goods are located, or where Venus reasonably believes that the Goods are located, and taking possession of and selling the Goods even if Venus does not have priority over other persons having a Security Interest in the Goods. Sections 108, 109 and 120(1) of the Personal Property Securities Act 1999 do not apply to the extent that they are inconsistent with this clause.
- 3.5 You waive any right to receive a verification statement under the PPSA.
- 3.6 Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions. Your rights as a debtor in sections 116, 120(2), 121, 125-127, 129 and 131 of the PPSA shall not apply to these Terms and Conditions.
- 3.7 We are entitled at any stage during the continuance of this Agreement to request such security or additional security as we in our sole discretion think fit and shall be entitled to withhold supply of Goods or Services or credit arrangements until such security or additional security shall be obtained.

- 3.8 We may issue proceedings to recover payment for the Goods notwithstanding that ownership of the Goods may not have passed to you.

4 Exclusion of Warranties

- 4.1 If you are in trade and are acquiring the Goods or Services for business purposes, the guarantees under the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply.
- 4.2 Unless you have rights under the Consumer Guarantees Act 1993 or other legislation, which cannot be excluded or limited, there are no warranties express or implied. This disclaimer includes implied warranties as to merchantability and fitness for a particular purpose. The only applicable warranties will be any warranties expressly given in writing by us.

5 Limitation of Liability

- 5.1 We are not liable to you for any loss or damage arising from delay or failure to perform our obligations due to any matter beyond our reasonable control.
- 5.2 We and our employees and agents shall not be liable to you for any claim for breach of Contract (except as provided in clause 5.3 below) or Statute or breach of duty in Tort (including negligence) or for any claim in Equity or otherwise at law.
- 5.3 Your sole remedy against us shall be limited to breach of contract and the extent of any such liability shall be limited, at our option, to repair or replacement of the Goods, or payment of the cost of repairing or replacing the Goods or acquiring equivalent Goods. If the breach relates to Services the extent of any such liability shall be limited, at our option, to supplying the Services again; or payment of the cost of having the services supplied again. We and our employees and agents will not, in any case, be liable for any other losses or damages whether general, exemplary, punitive, direct, indirect or consequential, including loss of business profits.
- 5.4 No action may be brought against us unless notice of such claim is given to us within one week of delivery of the Goods or provision of the Services. We shall be released from all or any liability unless proceedings are brought in a Court of competent jurisdiction within one year of the date of delivery of the Goods or provision of the Services.

6 Default

- 6.1 If you do not pay any monies owed to us (“the unpaid monies”) within 10 days of the due date, we may charge penalty interest at a rate of 2% per calendar month calculated daily on the unpaid monies from the due date until payment in full is made (including after as well as before any Court judgment).
- 6.2 You indemnify us for and pay, on demand, all costs incurred by us (including legal costs on a solicitor-client basis and debt collection costs) in the recovery or attempted recovery of unpaid moneys and/or the enforcement of these Terms and Conditions or the Security Interest contained in these Terms and Conditions.

7 Construction Contracts Act

- 7.1 The parties acknowledge that all provisions of the Construction Contracts Act 2002 shall apply to this contract except where validly modified by the terms of this contract.
- 7.2 The interval between payment claims and the relevant period that each payment claim covers is at the complete discretion of Venus. Venus may issue a payment claim on the same day or immediately after the issue of the previous payment claim.
- 7.3 The parties agree that all provisions of the said Act, including those sections listed in section 10 of the said Act, shall apply to this contract even if it is a residential construction contract as that term is defined by the said Act.

8 General Provisions

- 8.1 These terms apply to all transactions where we supply Goods or Services to you. If there is any inconsistency between these terms and any order submitted by you or any other arrangement with us, these terms prevail unless otherwise agreed by us in writing.
- 8.2 If any provision of these terms and conditions is held by any court to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining provisions.
- 8.3 This contract and its terms are governed by, and shall be construed in accordance with, the laws of New Zealand. Both parties submit to the exclusive jurisdiction of the New Zealand Courts.
- 8.4 We may review and change these terms and conditions at any time and from time to time. Any such change will take effect from the date on which we notify you of the change.