



## GENERAL TERMS AND CONDITIONS OF SALE

DMS Floors Pty Ltd ACN 680 090 500

### Definitions

- 1. Agreement** means these terms and conditions the Application for Credit Account and Customer Quote (collectively 'Key Documents') as amended from time to time.
- 2. DMS Floors** means DMS Floors Pty Ltd ACN 680 090 500 and each of its divisions, representatives, related and associated entities and their successors and assigns. DMS Floors may subcontract any of its obligations under this Agreement to a third party.
- 3. Customer** means any person, trader, business or company that orders Products or Services from DMS Floors.
- 4. Supplier** means any person, subcontractor, trader, business or company that sells Products or Services to DMS Floors.
- 5. Product** means any product offered for general sales by DMS Floors, including but not limited to floor and wall coverings.
- 6. Services** means any services provided by DMS Floors including but not limited to floor and wall coverings, delivery and installation.

### Operative Clauses

**7. Agreement:** The Customer and Supplier commit to acquiring or selling the Products and Services under the stipulations of this Agreement. In the event of any disparity among the Key Documents, these terms and conditions shall take precedence. The Customer agrees that acceptance of quotation is an acceptance of the Terms and Conditions.

**8. Payment:** For all approved residential job quotations, a 50% deposit is obligatory, with the remaining balance due upon the completion of installation. Payment options include direct deposit into the specified bank account, credit card (accepting Visa, Mastercard, and Amex with an applicable surcharge), and cheque.

For all approved Commercial quotations, the determination of deposit requirement rests solely with DMS Floors on a project-by-project basis. The standard settlement term is 30 days. End of Month from the date of the invoice.

**9. Offset Provision:** Defects or deficiencies may lead to a dispute between DMS Floors and a supplier. DMS Floors reserves the right to withhold monies owed to the applicable supplier during such disputes.

Withheld amounts are typically equivalent to the potential rectification cost of correcting any defects or deficiencies in the Product or Services supplied.

The rectification cost is determined through a fair and impartial process involving one or more third-party inspections conducted by independent experts who can assess defects and deficiencies accurately and calculating rectification costs accordingly.

Monies withheld are not permanent measures. If a defect or deficiency in a Product and/or Service is not found through a third-party inspection, withheld amounts will be promptly released.

If a defect or deficiency in a Product and/or Service is found through a third-party inspection, it will be corrected at the expense of the supplier with whom it applies. After rectification is paid, any residual amount will be promptly released to the applicable supplier.

It is possible for DMS Floors to seek further damages from the applicable supplier if the amount withheld does not cover the rectification costs.

**10. Interest:** Interest will accrue on overdue amounts and will be charged at the discretion of DMS Floors, adhering to the Penalty Interest Rates Act 1983 (VIC) rate (10%), plus an additional 5%.

**11. Exclusions:**

(a) No dealings in respect of Products between DMS Floors and the Customer shall be or be deemed to be a sale by sample.

(b) Subject to clause 32

(i) If DMS Floors publishes materials concerning its products and prices anything so published which is incompatible with this Agreement is expressly excluded;

(ii) The Customer agrees that it relies on its own knowledge and expertise in selecting any Products for any purpose and any advice or assistance given is only seen as that and therefore will be accepted solely at the Customer's risk and shall not be deemed given by an expert or advisor nor to have been relied upon by the Customer or anyone claiming through the Customer;

(iii) If DMS Floors sells any Products made or processed by a third party, it shall not be liable for any damage, claim or loss arising in relation thereto; and

(iv) custom made or custom Products supplied by DMS Floors specifically for the Customer will not be refundable.

**12. Returns:** If DMS Floors opts to retrieve any Products due to a change of mind, Products must be in a condition as close to new and saleable as possible, in accordance with mutually agreed-upon terms. A restocking fee equivalent to 20% of the total invoice (excluding GST) or \$500, whichever is greater, will be applicable.

**13. Placement of Orders**

**The Customer hereby agrees:**

(a) In any dispute arising concerning an order, including questions of identity or authority, or any telephone, facsimile, email, or computer-generated order, the internal records of DMS Floors shall serve as conclusive evidence of the details of the order in all respects.

(b) Each order placed is considered a representation by the Customer, made at the time when the Customer is solvent and capable of paying all debts as they become due.

(c) Upon placing any order, the Customer shall promptly disclose to DMS Floors any material facts that could reasonably impact the commercial decisions of DMS Floors regarding the acceptance of the order and/or the extension of credit in connection therewith.

**14. Purchase Price**

(a) All transactions conducted by DMS Floors shall adhere to the terms outlined in the Customer Quote, unless mutually agreed upon otherwise in writing or explicitly indicated on the Customer Quote that the price is subject to modification.

(b) Unless otherwise specified, all prices, price lists, Customer Quotes, invoices, and statements are exclusive of sales tax, GST, and government imposts, unless expressly mentioned on the respective document.

**15. Delivery** Subject to clause 32 the Customer acknowledge and agrees that:

(a) DMS Floors accepts no responsibility or duty to deliver, but may elect to arrange delivery at its discretion and at the Customer's cost;

- (b) DMS Floors reserves the right to charge for any delivery.
- (c) the Customer shall be deemed to have accepted delivery and liability for the Products immediately after DMS Floors notifies the Customer that they are ready for collection or they are delivered to a carrier or to the Customer's business premises or sites whether attended or not;
- (d) a certificate purporting to be signed by an officer of DMS Floors confirming delivery or a signed delivery docket, shall be conclusive evidence of delivery;
- (e) subject to clause 32, DMS Floors will not be liable for delay, failure, or inability to deliver any Products; and
- (f) once the Customer has been notified that any Products are ready for collection or delivery, the Customer agrees to pay all costs of holding those Products.
- (g) the Customer shall be responsible for ensuring clear and suitable access to the delivery address. Decision to deliver is made purely by DMS Floors and if deemed unsafe and/or limited access redelivery costs will be incurred before next attempt.
- (h) Handling and holding/storage fees will continue to accrue until such times Products are redelivered

## **16. Products**

- (a) Subject to clause 32, the Customer acknowledges that DMS Floors may, from time to time, update, modify, substitute, and/or alter any of its Products or any component, program, or raw material incorporated in or used in any way to form any part of any Products. The Customer agrees to accept current Products as substitutions, provided they are not materially different.
- (b) The Customer undertakes to verify all Products for compliance with relevant applicable standards, laws, and regulatory requirements before use, sale, or application. Furthermore, the Customer commits to utilising, applying, and reselling Products in accordance with all applicable standards, laws, regulations, and guidelines, as well as adhering to any recommendations and directions provided by DMS Floors.

**17. Timber:** The Customer acknowledges that DMS Floors' timber and timber-related Products possess, among other characteristics, the following attributes:

- (a) Being a natural product, it exhibits variations in colour, texture, and inherent quality.
  - (b) It is susceptible to exposure to the elements, including sunlight, rain, and temperature fluctuations.
  - (c) Improper storage and usage may render it susceptible to bending, warping, crushing, swelling, and fungal growth.
  - (d) Relative humidity and/or moisture content may cause damage and size variations.
  - (e) It may contain or be treated with poisons and/or potentially toxic chemicals (such as formaldehyde, preservatives, etc.), necessitating storage and work in well-ventilated areas. Burning should only be done in a safe manner.
  - (f) Inherent dangers are associated with inhaling product-related dust and sawdust.
- Installation Warranty Noted: The Customer acknowledges and understands that caulking the perimeter of a floating floor Post Installation will Void the Warranty of both the Product and the Installation.

(Floating means any type of flooring that isn't adhered to the subfloor and can be laminate, hybrid or engineered flooring).

**18. Carpets and Pile Reversal Shading:** The Customer acknowledges:

- (a) DMS Floors' carpet Products may comprise all or part natural and/or synthetic materials, possessing, among other characteristics: (i) potential variations in colour, texture, and inherent quality, both generally and with different dye lots;(ii) susceptibility to exposure to environmental

elements such as sun, rain, and temperatures; (iii) vulnerability to fungal growth, rodent and/or insect infestation, and discoloration if not stored or used properly; (iv) possible treatment with poisons and/or potentially toxic chemicals, including preservatives; and (v) the necessity for storage and work in well-ventilated areas, with installation carried out only by suitable, qualified, and supervised tradesmen.

(b) Pile reversal shading constitutes an optical effect, a perceived colour difference resulting from light reflection or absorption from disturbed carpet pile. When caused by foot marking and vacuuming, pile reversal shading is temporary and can be remedied by vacuuming or brushing the carpet in the normal direction of the pile lay. On the other hand, Permanent Pile Reversal

Shading (PPRS), also known as watermarking, pooling, and puddling, manifests as irregularly shaped light and dark patches in cut-pile carpet. It is not a change in colour but a change in pile direction that may appear randomly after use. The cause remains unknown, and the

phenomenon is unpredictable. Carpets prone to PPRS should carry a manufacturer's label pointing out this phenomenon. Further information on PPRS is available from the Carpet Institute of Australia through their brochure.

## **19. Vinyl**

The Customer accepts and acknowledges Products including residential and commercial vinyl are a soft and flexible product susceptible to damage from impact, abrasion, or scratching. If exposed to extreme heat or moisture it may bubble or discolour. DMS Floors accepts no liability for damage, disfiguration, deterioration (including fading or discolouration), or loss to Products made of vinyl caused by and not limited to; exposure to liquids or damaging substances, exposure to sunlight or the elements, extreme heat or moisture and damage caused by impact, abrasion, or scratching.

DMS Floors accepts no liability for any loss of or damage to any installed Products not limited to timber, carpet and vinyl caused by or contributed to by exposure to extreme heat, moisture, rising dampness, failure of any existing structures or concrete slabs, movement in any construction joints or any movement and/or warping of floors after the Product has been installed.

**20. Recovery Costs:** Subject to clause 32, the Customer undertakes to cover the costs and expenses, upon demand, incurred by DMS Floors or its solicitors, legal advisers, mercantile agents, and other parties acting on its behalf. These costs relate to anything instituted or under consideration against the Customer, whether for debt, possession of any Products, breach of this Agreement, or any other matter.

**21. GST:** The Customer is responsible for paying all sales tax and other government imposts related to the supply of Products or Services by DMS Floors. The Customer agrees to pay for any taxable supply at prices and/or consideration adjusted to account for GST.

**22. Defaults:** Subject to Clause 32, in the event of any default or breach of this Agreement by the Customer, DMS Floors reserves the right to retain all monies paid and/or suspend further deliveries. Additionally, DMS Floors may recover from the Customer any loss of profits incurred. At its discretion, DMS Floors may take immediate possession of any unpaid-for Product or Service, without prejudice to its other rights and without being liable for any damage, claim, cost, loss, or expense to any party.

The Customer acknowledges, upon accepting a quote, that in the event of payment default or insolvency, DMS Floors is granted full access to the site address, administrator, liquidator, receiver, or manager's office to inspect goods and repossess any unpaid goods in their possession.

**23. Severability:** Any part of this Agreement, being a distinct portion of a clause, is capable of severance without affecting the validity of any other part of this Agreement.

**24. Customer Restructure:** The Customer commits to informing DMS Floors in writing of any changes in its structure or management, including but not limited to alterations in directors, shareholders, or modifications in partnership or trusteeship, within seven days of the occurrence of such changes.

**25. Assignment:**

(a) DMS Floors reserves the right to assign this Agreement to any party by providing written notice to the Customer.

(b) The Customer may not assign this Agreement to any party without the prior written consent of DMS Floors, which consent may be withheld at its absolute discretion.

**26. Jurisdiction:** The Customer agrees that all transactions between DMS Floors and the Customer shall be governed by the laws of the State of Victoria, and the Customer consents to the jurisdiction of Victoria.

**27. Successors and Assigns:** This agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

**28. Waiver:** The decision of DMS Floors not to exercise any rights arising from a breach of this Agreement shall not be construed as a waiver of any rights pertaining to that breach or any subsequent or other breaches.

**29. Insurance:** Upon request, the Customer agrees to obtain insurance covering DMS Floors from liability arising directly or indirectly from any part of the Competition and Consumer Act 2010 (Cth) or otherwise. This insurance shall duly acknowledge the insured interests of both the Customer and DMS Floors.

**30. Security For Payment:** Upon request, the Customer agrees to charge in favour of DMS Floors all its estate and/or interest in any land and in any other assets, whether tangible or intangible, in which it currently holds any legal or beneficial interest or in which it may acquire such interest in the future, for the purpose of securing payment of all monies owed by the Customer. The Customer acknowledges that DMS Floors may lodge a caveat at any time over any estate and/or interest in any land of the Customer to indicate DMS Floors' interest in such land.

**31. Insolvency:** If the Customer engages in or is party to any act of insolvency, such action will be considered a default under this Agreement.

**32. Limitations and Exclusions of Liability and Consumer Guarantees:**

(a) In this clause 32 and this Agreement generally:

**Australian Consumer Law** means schedule 2 of the Competition and Consumer Act 2010 (Cth) and any equivalent state and territory legislation;

**Consumer Guarantee** means a right or guarantee the Customer may have under the Australian Consumer Law or other rights in relation to the supply of goods or services (such as terms implied into a contract) that cannot lawfully be excluded; and

**Consequential Loss** means any loss, damage, or costs incurred by a party or any other person that is indirect or consequential. This includes, but is not limited to, loss of revenue, loss of income, loss of business, loss of profits, loss of production, loss of or damage to goodwill or credit, loss of business reputation, future reputation, or publicity, loss of use, loss of interest, losses arising from claims by third parties, loss of or damage to credit rating, loss of anticipated savings, and/or loss or denial of opportunity.

(b) Subject to clause 32(c) below, DMS Floors excludes:

(i) All conditions, warranties, and implied terms, whether statutory or otherwise, in relation to these terms and conditions.

(ii) Any liability for loss or damage incurred by the Customer as a result of or in connection with these terms and conditions or the negligence of DMS Floors.

(iii) Any liability for legal costs and disbursements and, without limitation, any Consequential Loss suffered by the Customer under or in connection with these terms and conditions.

(c) The Australian Consumer Law provides consumers (as defined in the Australian Consumer

Law) with various protections and Consumer Guarantees that cannot be excluded or limited. These terms and conditions, especially the limitations of liability, are subject to and will not apply to the extent that they limit or exclude such protections and Consumer Guarantees applicable to consumers. However, where the Australian Consumer Law allows DMS Floors to limit remedies available to it for a breach of a Consumer Guarantee, DMS Floors hereby limits its remedies to the Consumer, at DMS Floors' option, in the case of goods, to the repair or replacement of the goods, the supply of equivalent goods, or the payment of the cost of having the goods repaired or replaced or having equivalent goods supplied. In the case of services, the remedy is limited to supplying the services again or paying the cost of having the services supplied again.

### **33. Indemnity:**

- (a) Upon delivery, the Customer accepts liability for the safe custody of the Products and indemnifies DMS Floors for any losses related thereto.
- (b) The Customer indemnifies DMS Floors against any claim for any cost, loss, Consequential Loss, or damage arising from any breach of these Terms by the Customer.

### **34. Title and Risk:**

- (a) DMS Floors' rights under this clause 34 secure its right to receive all amounts owed under these Terms or any other agreement between the parties.
- (b) Payments received from the Customer may be applied by DMS Floors in a manner determined by DMS Floors in its absolute discretion.
- (c) Until full payment in cleared funds is received by DMS Floors for the supplied Products and all other amounts owed by the Customer under these Terms or any other agreement:
  - (i) Legal title and property in all Products supplied remain vested in DMS Floors and do not pass to the Customer.
  - (ii) The Customer must store the Products separately, maintain any labelling and packaging of DMS Floors, and ensure the lot is clearly identifiable as the property of DMS Floors.
  - (iii) Products are deemed, at all times, to be dealt with by the Customer on a "first in, first out" basis for all transactions between the Customer and DMS Floors.
  - (iv) The Customer agrees that the proceeds of any sale, lease, or other dealing with the Products will be held for DMS Floors in a separate bank account with a bank that does not provide finance to the Customer.
  - (v) Upon sale or disposition of any Products, the Customer agrees to account to DMS Floors, notwithstanding any granted credit facility or time to pay:
    - (A) to keep all unpaid-for Products as fiduciary for DMS Floors and store them as the owner.
    - (B) to sell Products only in the usual course of business.
    - (C) that sale on terms or for less than cost shall not be considered "in the usual course."
  - (vi) In addition to any rights DMS Floors may have under Chapter 4 of the Personal Property Securities Act 2009 (Cth), DMS Floors may, at any time, demand the return of the Products. DMS Floors is entitled, without notice to the Customer and without liability to the Customer, to enter any premises where it suspects the Products may be located.

DMS Floors may search for and remove the Products without committing trespass, even if they have attached or annexed to other goods or land not owned by DMS Floors. For this purpose, the Customer irrevocably licenses DMS Floors to enter such premises, undertakes to procure any necessary authority to enter from any relevant person, and indemnifies DMS Floors against all loss suffered or incurred by DMS Floors as a result of exercising its rights under this clause 34(c)(vi). If there is any inconsistency between DMS Floors' rights under this clause 34(c)(vi) and its rights under Chapter 4 of the Personal Property Securities Act 2009 (Cth), this clause 34(c)(vi) prevails;
  - (vii) The Customer acknowledges and warrants that DMS Floors has a security interest (for the

purpose of the Personal Property Securities Act 2009 (Cth)) in the Products and any proceeds described in clause 34(c).

(vii). The Customer must do anything reasonably required by DMS Floors to ensure that such security interest is enforceable, perfected, and otherwise effective. The security interest has the priority required by DMS Floors, which, unless DMS Floors agrees otherwise in writing, is the first priority; and

(viii) The security interest arising under this clause 34(c)(vii) attaches to the Products when the Customer obtains possession of the Products. The parties confirm that they have not agreed that such security interest attaches at any later time.

(d) The Customer agrees that a certificate signed by an officer of DMS Floors identifying Products as unpaid for shall be conclusive evidence that the Products have not been paid for and of DMS Floors' title thereto.

**35. Changes to Terms:** DMS Floors reserves the right to modify these terms and conditions in writing as necessary. Efforts will be made to provide reasonable notice to Customers.

**36. Personal Property Securities Act 2009 (Cth):**

(a) Unless a contrary intention appears, words or expressions used in this clause 36 that are defined in the Personal Property Security Act 2009 (Cth) have the same meaning as given to them in the Act.

(b) If at any time DMS Floors determines that this Agreement (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, DMS Floors may apply for any registration or give any notification in connection with that security interest. The Customer must promptly, upon DMS Floors' request, do anything to:

(i) Provide more effective security over the relevant personal property;

(ii) Ensure that any such security interest in favour of DMS Floors is enforceable, perfected, and otherwise effective. This includes, where applicable, by control as well as by registration, and has the first priority;

(iii) Enable DMS Floors to prepare and register a financing statement or a financing change or give any notification in connection with that security interest;

(iv) Enable DMS Floors to exercise any of its rights or perform any of its obligations under the Personal Property Securities Act 2009 (Cth) in connection with any such security interest or under this Agreement.

(c) All costs and expenses arising as a result of actions taken by either party pursuant to this clause 36 will be for the account of the Customer. Within 14 days of a written request, the Customer must pay DMS Floors any costs or expenses incurred or to be incurred in connection with this clause 36.

(d) If Chapter 4 of the Personal Property Securities Act 2009 (Cth) would otherwise apply to the enforcement of the security interest created under these Terms, the Customer agrees that the following provisions of the Act will not apply:

(i) Section 95 (notice of removal of accession), to the extent that it requires DMS Floors to give notice to the Customer;

(ii) Section 121(4) (enforcement of security interests in liquid assets – notice to grantor);

(iii) Section 125 (obligation to dispose of or retain collateral);

(iv) Section 130 (notice of disposal), to the extent that it requires DMS Floors to give notice to the Customer;

(v) Paragraph 132(3)(d) (contents of the statement of account after disposal);

(vi) Subsection 132(4) (statement of account if no disposal);

(vii) Section 142 (redemption of collateral); and

(viii) Section 143 (reinstatement of security agreement).

(e) Pursuant to section 125(3) of the Personal Property Securities Act 2009 (Cth), DMS Floors may delay disposing of, or taking action to retain, the whole or part of the collateral that it seizes.