

# Allsafe Flooring Pty Ltd

## Terms and Conditions of Sale

To the fullest extent legally possible, all contracts and dealings between Allsafe Flooring Pty Ltd (ASF) (ABN 22 136 906 011) (and each subsidiary, affiliate, associated company and related entities and any successors and assignees) and any Customer relating to any goods ("**goods**") or services ("**services**") are subject to the Terms and Conditions of Sale set out below ("**Terms**") unless ASF and the Customer expressly agree otherwise in writing.

1. Definitions: "**Customer**" means the party to whom ASF has supplied its goods and services including but not limited to their subsidiary, affiliates, associated companies, related company successors or assignees.

"**GST**" means any tax or imposition on the supply of goods and services covered by *A new Tax System (Goods and Services Tax) Act 1999* (Cth) (the "**GST Act**") as amended from time to time.

"**Delivery or delivered**" means the time when the goods are transported from the premises of ASF by whatever means or when ASF advised the Customer the goods are available for collection.

2. Payment: Unless agreed to the contrary by ASF and the Customer in writing, payment for the goods must be made by the Customer:
  - a. In the case of goods to be dispatched or delivered to an address in Australia, before the goods leave the premises of ASF.
  - b. In the case of the goods to be delivered to an address in any other part of the world, payment shall be due upon delivery of shipping documents to the Customer, or its agent, or such other arrangement as ASF and the Customer shall agree in writing.
  - c. If payment is not made on the due date, ASF has the right, without prejudice to other rights it may have to suspend delivery of, or at its option, cancel any contract to supply goods to the Customer.
  - d. If the Customer defaults in payment of any moneys payable to ASF:
    - i. ASF may, until payment is made in full and without prejudice to any other rights at law or in equity, require the Customer to pay interest to ASF on the amount outstanding at the rate of 4% per annum higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1830* (Vic) computed upon the period of the default;
    - ii. The Customer cannot make any reduction from the price of the goods or claim any off-set or counter claim against ASF;
    - iii. ASF, its servants and agents, may enter the Customer's premises without liability for trespass, or otherwise repossess goods for which payment has not been made.
3. Interest: Will be charged on overdue accounts at the rate prescribed in the *Penalty Interest Rates Act 1983* (Vic) plus 4%.

4. Risk and Title: Even if ASF grants any credit facility and/or extension of time to pay for goods:
- a. Property in goods shall not pass to the Customer until full payment has been received by ASF of all monies owed and the Customer has met all other obligations in respect of these Terms and all other contracts between ASF and the Customer.
  - b. Until the obligations under clause 4(a) have been satisfied, the Customer acknowledges and agrees that:
    - i. The goods supplied are held by the Customer as bailee for ASF;
    - ii. The Customer must store the goods supplied in such a way that it is clear that they are the property of ASF;
    - iii. The Customer hereby irrevocably gives ASF, its agents and servants, leave and license without the necessity of giving any notice to enter on and into any premises occupied by the Customer to search for and remove any of the goods supplied to or in which ASF has property as aforesaid without in any way being liable to the Customer or any person or company claiming through the Customer and if the goods or any of them are wholly or partially attached to or incorporated in any other goods, ASF may, where practical, perform whatsoever may be necessary to remove the goods;
    - iv. If the goods are sold, the Customer acknowledges that such a sale is by the Customer as bailee for and on behalf of ASF and the Customer must hold the proceeds of such a sale in a separate account on trust for ASF and identified as such in the books of the Customer;
    - v. The Customer must not change the goods in any way while they remain the property of ASF;
    - vi. ASF may issue proceedings to recover all outstanding debts to ASF in respect of the goods or any other amounts owing to ASF notwithstanding that ownership may have passed to the Customer.
  - c. The Customer agrees that a certificate purporting to be signed by an officer of ASF identifying goods as unpaid shall be conclusive evidence that the goods have not been paid for by the Customer and of ACF's title thereto;
  - d. The risk in the goods shall pass to the Customer immediately upon delivery of the goods by ASF;
  - e. For the purposes of this clause 4, the Customer authorizes ASF to register a security interest as defined by the *Personal Properties Securities Act 2009* ("PPSA") in respect of the credit and / or goods supplied pursuant to these Terms or any other contract between ASF and the Customer. The Customer agrees to execute all documents necessary to create a security interest in the PPSA register and to pay all fees associated with such registration.

## 5. Implied Terms

- a. It is acknowledged by ASF that under applicable State, Territory and Commonwealth laws(s) (including, without limitation, the *Competition and Consumer Act 2010* (Cth) ("**CCA**")), certain statutory guarantees and warranties (including, without limitation, the statutory guarantees under the CCA) may be implied into these Terms and cannot be excluded by law ("**Non-Excluded Guarantees**").
- b. ASF further acknowledges that nothing in these terms purports to modify or exclude the Non-Excluded Guarantees.
- c. Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, ASF makes no warranties or representations under any contract with the Customer or these Terms. ASF's liability in respect of these warranties is limited to the fullest extent permitted by law.

## 6. Limitation of liability:

- 6.1 This clause 6 is subject at all times to clause 5 above. Except as required by law, ASF supplies goods without any express or implied representations or warranty, and all implied conditions and warranties relating to the goods are excluded.
- 6.2 Subject to this clause 6 and to the extent permitted by law, the liability of ASF and its employees or agents for a breach of a Non-Excluded Guarantee in relation to the supply of goods or service at the ASF's option, will be limited to:
  - a. in the case of goods
    - i. The replacement or repair of the goods or the supply of equivalent goods; or
    - ii. A refund of the goods, or the payment of the costs of replacing or repairing the goods or of acquiring equivalent goods; and
  - b. In the case of services
    - i. The supplying of the services again; or
    - ii. A refund of the services or the payment of the cost of having the services supplied again.
- 6.3 Subject to clause 5 ("Implied Terms"), the Customer acknowledges that:
  - a. it does not rely upon and it is unreasonable for it to rely upon ASF's skill or judgment as to whether the goods supplied are reasonably fit for any purpose for which they are being acquired.
  - b. the sale of goods or the provision of services is not a sale of goods or provision of services by description or sample; and
  - c. all goods are sold subject to the manufacturers trading terms and conditions and any warranty of the manufacturer.

- 6.4 Subject to clause 5 (“Implied Terms”), the Customer indemnifies ASF from every liability, loss, damage, cost or expense directly or indirectly incurred or suffered by ASF caused by or contributed to by any of the following:
- a. ASF complying with any instruction of the Customer about the goods;
  - b. Any act or omission occurring after the goods have left the control of ASF;
  - c. The Customer’s, or any third party associated with the Customer, failure to:
    - i. Adequately provide or display safety markings or safety information on or with the goods;
    - ii. Comply with any law about the goods or their use (for example, their sale, marketing or labeling);
    - iii. Take any reasonable precaution to bring to the attention of any potential users of the goods any dangers associated with goods;
    - iv. Take any reasonable precaution to detect any matters in relation to which ASF may become liable in any way (for example, under Australian Consumer Law);
    - v. Provide correct information to ASF; and
    - vi. Immediately advise ASF (in writing) of any changes to the information provided to ASF.
  - d. The Customer making any statement about the goods (for example, about their performance or characteristics) without ASF’s consent;
  - e. The use (or misuse) or operation of the goods by the Customer or any third party; and
  - f. Any negligence or breach of duty by the Customer or any third party or any breach by the Customer of these Terms.

- 6.5 Subject to clause 5 (“Implied Terms”) and the remainder of this clause 6, and except to the extent otherwise specified by law, ASF, its employees will not be:
- a. Liable for any loss or liability, however, caused which may be suffered in connection with the supply of Goods under these Terms; and
  - b. Held liable for incidental, indirect or consequential damages of any kind whatsoever, including damages for loss of opportunity, loss of business, loss of revenue or loss of profits, even if due to the negligence of ASF , its employees or agents.

7. Returns:

Subject to clause 5 (“Implied Terms”);

- a. any return of goods must first be approved by ASF;
- b. ASF is under no obligation to provide a refund or provide a credit for goods purchased.
- c. ASF may elect to accept a return of goods where the goods are in the same order and condition as they were in when supplied to the Customer;
- d. The Customer must pay all costs relating to the transport/shipping of the returned goods back to the place of purchase;
- e. Where ASF elects to accept a return of goods, the Customer can either pay ASF a restocking fee of 30% of the invoice value of the goods, or the Customer can have a credit to the value of the invoice value of the goods. This credit can be collected on future orders for up to 12 months after the original purchase date of the returned item.
- f. In the case where an item is found to be faulty, it is ASF’s discretion to either repair or replace the faulty item.

8. Orders:

The Customer agrees that:

- a. Each order it places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due; and
  - b. When the order is placed, the Customer shall inform ASF of any facts which might reasonably affect any decision to accept the order and/or grant credit. Any failure to do so shall be deemed to create or constitute an inequality of bargaining position, the taking of an unfair advantage of ASF and to be unconscionable, misleading and deceptive.
9. Purchase price: The price to be paid by the Customer to ASF for the goods shall be the price provided to the Customer by ASF at the time of ordering the goods, unless otherwise agreed by ASF and the Customer.

10. Delivery

- a. Subject to clause 5 ("Implied Terms"), delivery dates given by ASF are approximate only and ASF accepts no responsibility or duty to deliver. However, ASF may elect to arrange delivery at its discretion at the Customer's cost;
- b. ASF will not be liable for any claim, loss or expense sustained or incurred by any person arising out of or as a consequence of or as a result of any delay, failure or inability to deliver or install the goods.
- c. Delivery discrepancy claims must be notified to ASF within 7 days after receipt of goods;
- d. The Customer will be charged for any frustrated delivery to an amount equal to ASF's costs of attempts to make delivery of the goods; and
- e. The Customer must accept and pay for the goods even if the ASF delivery is late.

11. Entire Agreement: These Terms constitute the entire agreement between ASF and the Customer and supersede all prior representations, contracts, statements and understandings whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Customer may seek to impose.

12. Recovery Costs: The Customer shall pay all costs and expenses incurred by ASF, its legal advisors, mercantile agents and others in respect of anything instituted or being considered against the Customer, whether for debt, possession of any goods or otherwise.

13. Jurisdiction: These Terms and any contracts made between ASF and the Customer are governed by the laws of the State of Victoria. ASF and the Customer agree to submit to the exclusive jurisdiction of the Courts of Victoria.

14. Credit Limit: The grant of any credit facility and/or the nomination of any credit limit is an indication only of ASF's intention at that time and ASF may vary or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other person or entity.

15. Force Majeure: ASF is not liable for any failure to comply with these Terms or any other agreement for the sale of goods or services if the failure to comply (directly or indirectly) arises by virtue of a Force Majeure Event. For the purposes of this clause 15, a "Force Majeure Event" is an event that is to be beyond the reasonable control of ASF including (but without limitation) strikes, lock outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, acts of God or any other direction of any local, state or federal government or government authority. ASF is not obliged to remedy such circumstances in respect of a Force Majeure Event. Nothing in this clause 15 releases the Customer from any obligation to pay ASF in accordance with these Terms, or otherwise comply with these terms.
16. Disputes: The Customer agrees to pay into a trust account (earning market interest) in the joint names of ASF and the Customer any amount claimed by ASF as a condition precedent to disputing any such claim on the basis that upon resolution of the dispute the trust funds and any interest shall be dispersed according to the resolution. This clause shall operate as a bar to any defense and/or counterclaim by the Customer until complied with.
17. Customer Breach of Terms: Upon any default or breach by the Customer of these Terms, ASF may (inter alia) retain all monies paid and/or cease further deliveries and/or recover from the Customer all loss of profits arising and/or at ASF's discretion take immediate possession of any product not paid for, without prejudice to any other of its rights and without being liable in any way to any party.
18. Severability: Any part of these Terms being a whole or part of a clause shall be capable of severance without effecting any other part of these Terms.
19. GST: To the extent that a supply of services provided by ASF, or any other supply, made under or pursuant to this agreement, is a 'taxable supply' as defined in any GST Regulation, ASF will increase its price in respect of that supply it makes by the amount of GST applicable to the supply.
20. Customer Warranty: The Customer warrants to ASF that any patent registered design, trade mark, copyright or other intellectual property right involved in the order placed by the Customer is not and does not infringe any rights of any other party and the Customer hereby indemnifies ASF against all actions, proceedings, claims, demands, damages, costs and expenses which may be brought against ASF or for which ASF may sustain any loss or cost by reason of such infringement.
21. ASF's Rights: Any right that ASF may have under these Terms is in addition to, and does not replace or limit, any other right that ASF may have.
22. Assignment: The Customer must not assign its benefits or obligations under the Terms without the prior written consent of ASF in writing. ASF may assign its rights and obligations under these Terms to another person without the consent of the Customer.
23. Variation: ASF is entitled to vary these Terms at any time by providing the Customer 14 days prior written notice.