

TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale shall apply to the sale of goods and services ("goods") by the Supplier to the customer ("agreement"). These terms and conditions of sale replace any previous terms and conditions of sale.

1. Sale and Purchase of Goods

- 1.1** Placement of an order, either verbally or in writing, shall imply acceptance of the terms by the customer. Upon the acceptance of the customer's order by the Supplier, the Supplier agrees to supply and the customer agrees to purchase the goods on the terms.
- 1.2** Where this sale relates to goods the subject of a written contract between the Supplier and the customer, the terms of that contract apply and prevail to the extent of any inconsistency with these terms. Otherwise, the Supplier and customer agree the terms contain the entire agreement and understanding of the customer and the Supplier in respect of the sale and purchase of the goods and supersede all prior discussions and replace in total any terms and conditions contained in or referred to in the customer's order. These terms can only be amended, varied or waived in writing signed by the customer and an authorised officer of the Supplier. The only other terms and conditions which are incorporated in this agreement are those terms and conditions incorporated by law (including any consumer legislation) in an agreement of this nature and which cannot be excluded. Nothing in this agreement whether express or implied, will be taken to exclude, restrict or modify any such non-excludable conditions, warranties or rights.
- 1.3** The Supplier may vary these terms and conditions by notice in writing to the customer. The customer agrees that the purchase of any goods after the date of notice of variation will be deemed to be acceptance of such varied terms and conditions.
- 1.4** A quotation given by the Supplier shall not constitute an offer to sell goods to the customer. The Supplier reserves the right in its absolute discretion to accept or reject any offer made by the customer on the basis of any quotation or otherwise, without providing any reason.
- 1.5** The Supplier reserves the right to cancel any customer order wholly or partially and the Supplier shall not be responsible for any loss or damage thereby suffered by the customer.
- 1.6** The customer acknowledges that any request by the customer for a cancellation of an order for goods may be accepted or declined by the Supplier at the Supplier's sole discretion for any reason whatsoever and without assigning the reasons therefore.

2. Payment

- 2.1** Unless otherwise agreed, payment for goods and any other costs and expenses payable by the customer under the terms will be paid to the Supplier at or prior to delivery of the goods to the customer in accordance with clause 5.
- 2.2** Credit facilities are available and will be negotiated on a confidential basis. Credit terms will not automatically be granted.
- 2.3** The Supplier may, at its sole discretion and without notice, grant or withdraw the customer's credit facilities at any time, alter the customer's credit limit or require security for payment for any reason (including to meet the customer's then buying needs). If the Supplier, at any time, deems the customer's credit worthiness to be unsatisfactory, the Supplier may suspend performance of the Supplier's obligations under these terms until the provision of sufficient security. All costs and expenses of, or incurred by, the Supplier as a result of such suspension and any recommencement shall be payable by the customer on demand.
- 2.4** Should there be any variation to any of the information supplied by the customer to the Supplier or in the structure or nature of the customer's business (including without limitation conversion to or from a company or trust, any recapitalisation, reorganisation, consolidation, merger or sale or disposition of all or substantially all of the customer's assets or change of control of the customer or similar change or event) the customer shall forthwith notify the Supplier in writing.

3. Price

- 3.1** Unless expressly stipulated by the Supplier to be a firm price, the prices charged by and payable to the Supplier for the purchase of goods shall be those prices charged by the Supplier at the date upon which the goods are delivered to the customer.
- 3.2** Prices and service fees (including, without limitation, cancellation, return, cut length, packing, storage and delivery fees) are subject to alteration without notice, however, prior notice will be given wherever possible.
- 3.3** It is agreed that should the customer fail for any reason to acquire the total quantity of goods ordered then without limiting the other rights and remedies of the Supplier the unit price charged for the goods may be amended to take into account any variation in the total quantity purchased.
- 3.4** The customer shall pay to the Supplier in addition to the purchase price any tax, including GST, excise or other government charges imposed upon the importation, production, sale or transportation of any goods which the Supplier may be required to pay other than any tax payable under Income Tax 2007 (NZ).
- 3.5** Unless otherwise agreed to by the Supplier, the only accepted means of paying accounts will be by cash, bank cheque, COD, electronic funds transfer, or subject to payment of such additional charges as may be advised from time to time, by mastercard, visa or American Express credit cards, such additional charges being payable at the same time as the account to which it relates is due. Receipt of a cheque or other negotiable instrument by the Supplier shall not constitute payment and the customer shall remain liable for the price, service fees and any tax, until such cheque or negotiable instrument is paid in full.
- 3.6** The customer shall make all payments due to the Supplier under this agreement without any deduction whether by way of set-off, counter claim, discount, abatement or otherwise unless the customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the customer.

4. Customer Acknowledgements

- 4.1** The customer acknowledges and agrees that:
- (a) The description of the goods shall be as set out in the Supplier's order confirmation. All drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods described in them. They will not form part of this agreement
- (b) Variations consequent upon review of specifications, materials and/or source of goods may occur from time to time and the customer waives any right to receive details or information concerning the reviews or the implementation of those reviews or both and agrees to accept the goods subject to the varied specifications, material and/or source of goods
- (c) The customer has not, in acquiring the goods for any particular purpose, relied upon the skill, judgment or recommendation of the Supplier or any of its employees or agents
- (d) For goods being carpet, roll sizes as stated on price lists and other information are average sizes only and variations will occur from time to time. Unless the customer specifically requests more than one roll from the same dye lot, both at the time of ordering and at the time when the order is confirmed, and marks their requirement as "all same dye lot", the Supplier will use reasonable endeavours to accommodate the customer request but the Supplier is under no obligations to ensure that the goods are from the same dye lot and shall not be liable to the customer where it does not secure this
- (e) All goods sold as budget items or as seconds quality, specials, mill ends, unwarranted products, remnants or on an "as is" basis or invoiced as Budget or Merchandise, are sold without warranty and all defects (if any) in such products shall, by the customer, be brought to the attention of any third party purchasers of such goods
- (f) The customer will not tamper with any of the Supplier's labelling on samples, or, without the prior consent of the Supplier, sell goods under brands or product names other than the brand/name under which the goods are sold to the customer by the Supplier
- (g) Any goods being display units, stands and samples and associated point of sale/promotional material are supplied on the basis that such goods remain the property of the Supplier and upon the payment of any contribution (which is non-refundable) the Supplier grants a licence to use such goods in accordance with the Supplier's guidelines/instructions from time to time or as set out in any specific licence/use agreement applicable to the goods.
- 4.2** If the goods are supplied to the customer's design, the customer warrants that the manufacture and supply of such goods by the Supplier will not infringe any patent, copyright, registered design or other rights of any person.
- 4.3** The customer will provide to the purchaser at the time of sale a copy of the most up to date version of the relevant Supplier care and maintenance instructions and warranties applicable to the goods.
- 4.4** All samples, plans, drawings, data, descriptions or other specifications (together with any copyright, design rights or any other intellectual property rights in them) or any other confidential information (including, without limitation, sales and market information and business strategies) supplied by the Supplier or any associated entity of the Supplier to the customer in connection with the order of the goods, are the exclusive property of that supplying entity and shall be held in strict confidence by the customer and are to be used solely for the purposes originally intended in connection with the sale and purchase of the goods. The customer must keep confidential and not use or disclose to any third party the information contained in those documents except to the extent required for the purpose of the sale and purchase of the goods or as required by law, and must treat such data, information and resulting work product with the same degree of care and confidence that the customer uses to protect its own proprietary or confidential information (but not less than a reasonable standard of care) and shall ensure that each of its employees to whom such data, information or work product is known are held to a similar standard.

- 4.5** The customer shall not use the Supplier's name in advertising or publicity of any kind without the Supplier's prior express written consent. The parties agree that nothing in these terms is intended to transfer ownership of any confidential information or intellectual property of the Supplier and the customer shall have no ownership interest in any such information.

- 4.6** The Supplier grants and licences to the customer the non-exclusive, non-transferable right to use the trademarks and copyrights designated by the Supplier in conjunction with its marketing and sale of the goods. The customer shall adhere to the Supplier's rules regarding the use of trademarks, copyrights and other intellectual property rights. It is expressly understood that the customer may use such trademarks only for marketing and selling the goods in accordance with these limitations and shall refrain from using such trademarks or any marks, names or signs resembling such trademarks in any other context or capacity and shall not market or sell the goods under any logo, trademark or brand name other than as designated by the Supplier. The customer agrees that it has no right, title or interest in the trademarks of the Supplier except to use the same as set out in these terms.

5. Delivery

- 5.1** Delivery shall be made at the place indicated in the order or, if no place is indicated in the order, delivery shall be made at the Supplier's premises.
- 5.2** The Supplier will use reasonable endeavours to deliver the goods to the customer or have the goods available for collection by the customer on or before the delivery date specified on the order (if any), but otherwise as notified by the Supplier to the customer (the "Delivery Date"). However, any Delivery Dates are an estimate only and time for delivery shall not be of the essence. The customer acknowledges the Supplier will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss) costs, damages, charges or expenses caused directly or indirectly by any failure to deliver the goods on the Delivery Date (even if caused by the Supplier's negligence). Late delivery of the goods will not entitle the customer to rescind or repudiate any agreement.
- 5.3** Where the customer seeks the goods to be delivered or available for delivery on a specified date, the customer must both at the time of ordering and on the customer's confirmation order clearly specify the proposed date. The Supplier shall where possible try to meet such dates but shall not be obliged to do so.
- 5.4** The Supplier may at its option, unless the Supplier and customer specifically agree to the contrary, deliver the goods by instalments. If the goods are delivered by instalments then:
- (a) Each delivery shall constitute a separate agreement and failure by the Supplier to deliver one or more of the instalments in accordance with this agreement or any claim by the customer in respect of any one or more instalments shall not entitle the customer to treat this agreement as a whole as repudiated; and
- (b) The Supplier is entitled to complete delivery of the goods by instalment despite any delay or failure by the Supplier to deliver any instalment.
- 5.5** In respect of goods to be delivered to the customer, the customer agrees to accept delivery of the goods at any time during normal business hours and shall provide all necessary assistance and facilities for off-loading at its own cost, using only certified materials, handling equipment and work practices within occupational health and safety guidelines. Should the customer fail to accept delivery of the goods as provided in this clause; or the Supplier defers delivery either when specifically requested by the customer or due to the failure of the customer to comply with the terms (including where the customer fails to accept the goods for any reason on or after the due date of delivery); or the customer requests delivery of the goods be at a specified time or upon a time to be advised being after the date of invoice - the goods will be deemed to have been delivered on the date so notified and without prejudice to all other rights and remedies which the Supplier has under this agreement or at law or in equity, the Supplier may arrange storage of the goods at its warehouse or some other place it considers reasonable. The customer will be liable for all extra charges, losses or expenses incurred by the Supplier including, in respect of any unsuccessful deliveries, all delivery and handling charges associated with goods being returned and redelivered. If the goods are stored at the Supplier's warehouse, the Supplier will be entitled to storage charges at the rate then prevailing in the Supplier's price lists.

6. Title and Risk

- 6.1** The goods shall be at the customer's risk (including for loss or damage caused by the Supplier's negligence) at the earlier of:
- (a) delivery to the customer or the customer's agent or designated carrier; or
- (b) should the customer or the customer's agent or designated carrier fail to accept delivery of the goods when they are delivered to the customer or the customer's agent, unless otherwise determined by the Supplier, upon the failure to accept delivery by the customer or the customer's agent (as the case may be). In such event the Supplier shall be entitled to payment for the goods as if they were delivered and the Supplier may at its discretion store the goods at the risk and cost of the customer and all costs of storage and insurance shall be fully recoverable from the customer.
- 6.2** Upon the passing of the risk under clause 6.1, until title in the goods passes to the customer, the customer will keep the goods insured in the names of the customer and the Supplier for their respective rights and interests and will upon demand produce to the Supplier such evidence as the Supplier may require to confirm the existence of such insurance.
- 6.3** Subject to clause 4.1(g), until the customer has met its obligations and paid all that is owed to the Supplier on any account whatsoever and the goods have been physically delivered to the customer, the customer agrees that the property and title in the goods shall not pass to the customer and the Supplier retains the legal and equitable title to the goods not yet sold and/or goods not yet physically delivered to the customer under clause 5.5.
- 6.4** Subject to clause 4.1(g), until payment in full has been made to the Supplier, the customer:
- (a) will hold goods supplied in a fiduciary capacity for the Supplier;
- (b) shall store the goods in such a manner that they can be identified as the property of the Supplier, and not mix the goods with other similar goods; and
- (c) agrees the Supplier has the right, with or without prior notice to the customer, to enter upon any premises owned or occupied by the customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the customer) where the Supplier reasonably believes the customer may be storing unpaid goods supplied by the Supplier (either directly to the customer or through any intermediary) and repossess such goods without being liable for any damage caused; in that regard the customer grants the Supplier, its agents and employees an irrevocable mandate and licence at any time to enter any premises where the goods are sold and/or stored. The customer will indemnify the Supplier from and against, and will pay on demand to the Supplier all loss, damage, costs or expenses incurred by the Supplier in respect of any repossession and/or resale of the goods or any part of them and agrees the Supplier has the absolute right to sell or deal with the goods.
- 6.5** Subject to clause 4.1(g), the customer shall be entitled to resell goods in the possession of the customer before ownership has passed to it solely on the following conditions:
- (a) any sale may only be made by a bona fide sale to consumers at full market value in the ordinary course of business of the customer. Sale of the goods to a third party for further resale is not permitted other than with prior written consent of the Supplier;
- (b) any sale will be effected as bailee for the Supplier and the customer must make this fact expressly known to any buyer from it by including an express statement to that effect in any sale contract; and
- (c) the proceeds of sale shall be held by the customer on trust for the Supplier absolutely.
- 6.6** The customer's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 6.5 unless and until the funds held on trust are remitted to the Supplier.
- 6.7** The provisions of this clause 6 apply despite any provision of credit to the customer by the Supplier.
- 6.8** The customer acknowledges and agrees that, by accepting these terms, the customer grants the Supplier a security interest over the goods, any other goods of which the goods may form a component and their proceeds (by virtue of the retention of title in this clause) and consents to the Supplier recording the details of this agreement on the Personal Property Securities Register. The customer must sign all documents and take all steps as the Supplier may reasonably require in connection with the registration, perfection and enforcement of this purchase money security. The customer waives its right to be provided with verification statements pursuant to section 148 of the PPSA and, the parties agree to contract out of the PPSA in accordance with section 107 of the PPSA to the extent that section 107 applies for the benefit of, and does not impose a burden on the Supplier. It is further agreed that where the Supplier has rights in addition to those in part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA. The customer must pay (a) the costs, charges and expenses of and incidental to the need for or desirability of registration of a financing statement or financing change statement or any action taken by the Supplier to comply with the PPSA or to protect its position under the PPSA; and (b) any costs incurred by the Supplier including all reasonable legal costs arising from any disputes or negotiations with third parties claiming an interest in any goods supplied to the customer. Unless the context requires otherwise, the terms and expressions used in this clause have the meanings given to them in, or by virtue of, the PPSA.

7. Default and Remedies

7.1 Without prejudice to any of its other rights and remedies if the customer, or any related company of the customer as defined in section 2(3) of the Companies Act 1993 (NZ) (read as if the expression "company" in that section included any body corporate, wherever incorporated or established):

- (a) commits any breach of this or any other agreement with the Supplier including and without limitation, failing to pay any moneys when due; or
- (b) being a natural person, dies or commits an act of bankruptcy; or
- (c) being a company, has an application or an order made, proceedings commenced, a resolution passed or proposed in a notice of meeting or an application to a court or other steps taken for the winding up, dissolution, official management or administration of that company; or
- (d) enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of its creditors; or
- (e) ceases, suspends or threatens to cease or suspend the conduct of its business or disposes or threatens to dispose of its assets other than in the ordinary course of business;
- (f) is, or is deemed under any applicable legislation to be, or admits in writing that it is, unable to pay its debts as and when they fall due or stops or suspends or threatens to stop or suspend the payment of all or any class of its debts; or has a receiver, receiver and manager, administrator, provisional liquidator or liquidator or similar official appointed to it or over its assets, or any part of its assets, or permits a judgement against the customer to be unsatisfied for 7 days or a distress, attachment or other execution is levied or enforced against the customer or its assets;

7.2 If the customer becomes insolvent, the customer remains liable under this agreement for payment of all moneys due, even if the Supplier receives a dividend or payment as a result of the customer being insolvent.

7.3 In the event of termination, the Supplier shall, after taking into account any payments made by the customer to the Supplier, be entitled to be paid by the customer for work done and expenditure made under this agreement up to and including the date of termination and any direct and indirect loss suffered by the Supplier including, without limitation, the Supplier's loss of profit of such order and the legal costs of the Supplier (on a full indemnity basis) incurred in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any prior breach. Termination of the order shall be without prejudice to the rights of the Supplier accruing up to the date of termination.

7.4 Without prejudice to any other rights, the Supplier may charge interest on any overdue payment. Interest shall accrue daily from the due date for payment at the rate of 12% per annum until receipt of payment whether or not judgement is obtained.

7.5 Time is of the essence in the performance of the customer's obligations under this agreement

8. Returns

8.1 Unless the Supplier has previously agreed in writing by issue of a permission to return (which may be such terms as the Supplier may in its sole discretion prescribe) and the goods are returned in good and marketable condition in the same condition as despatched from the Supplier (eg not cut and/or boxes unopened), the Supplier will not accept any return of the goods sold by it. Consequently, no credit or other notes will be issued for any goods returned without such agreement.

8.2 All authorised returns shall be packaged in a manner which will ensure that the goods are not damaged in transit and shall clearly be labelled with the addresses of the customer and the Supplier and the relevant permission or return number provided by the Supplier. All goods shall until collected by or delivered to the Supplier be at the customer's risk.

8.3 Should any permission to return be issued on the basis of a representation by the customer as to any fault in the goods or error by the Supplier and, upon inspection by the Supplier upon the return of the goods, such representation is not substantiated, the customer will pay and the Supplier will be entitled to fees as if the order were a cancelled order together with the inspection costs and transportation expenses associated with the return of the goods to the Supplier's warehouse and redelivery of the goods and/or delivery of any replacement goods.

9. Warranties and Indemnities

9.1 The customer agrees that it will make no representation whatsoever or give any warranty to any subsequent customer of the goods that the goods may be used for any purpose other than that stated on the label.

9.2 To the fullest extent permitted by law, liability for breach of any condition or warranty implied by any consumer legislation is limited to any one of the following as determined by the Supplier:

- (a) the replacement of the goods or the supply of equivalent goods, or
- (b) the repair or restoration of the goods, or
- (c) the payment of up to the value of the goods or the costs of replacing, repairing or restoring the goods, or of acquiring the equivalent goods

The Supplier will not, unless otherwise required by consumer legislation, be liable or otherwise responsible for the cost of furniture and fittings removal.

9.3 Subject to clause 9.1, the customer acknowledges and agrees with the Supplier that:

- (a) the customer is satisfied the goods are fit for the purpose for which they were purchased; and
- (b) any implied warranty or condition, whether statutory or otherwise, and whether as to quality, capability, condition or fitness for any particular purpose is expressly excluded from the terms to the fullest extent permitted by law.

9.4 The provisions of the Consumer Guarantees Act 1993 shall not apply when the customer acquires the goods or holds itself out as acquiring the goods under this agreement for the purposes of a business. The customer shall contract out of the Consumer Guarantees Act 1993 on behalf of the Supplier when any purchaser of the goods acquires the goods, or holds himself, herself or itself out as acquiring the goods from the customer for the purposes of a business.

9.5 The customer agrees and acknowledges that the Supplier, to the fullest extent permitted by law, accepts no liability or responsibility for any loss of profit, loss of revenue, loss of production, business interruption loss, loss of data or special, incidental or consequential damages or expenses of any kind, whether resulting from the Supplier's willful negligence or not and even if the Supplier has been advised of the possibility of such actual or potential loss or damage and forever releases and discharges the Supplier from all such responsibilities and liabilities and any claims, demands or causes of action in respect thereof.

9.6 The customer will, to the fullest extent permitted by law, indemnify and keep indemnified the Supplier, its officers, employees or agents against:

- (a) all reasonable costs, loss or expenses incurred by the Supplier, its officers, employees or agents as a result of any breach by the customer of its obligations under this agreement and exercise of the Supplier's rights under this agreement, including legal costs on a full indemnity basis;
- (b) all actions, proceedings, claims or demands for loss or damage of whatsoever nature made or threatened against the Supplier by any third party or by any of the customer's employees, agents or contractors arising directly or indirectly out of or in respect of the use, custody or purchase and supply or otherwise incidental to such purchase or supply of the goods;
- (c) any and all claims, loss or expense that may be incurred by the Supplier, its officers, employees or agents which relate to or are incidental to the performance of its duties as described in these terms including all costs of defending itself against a claim by any other person and/or as a result of the customer taking any action or refraining from taking any action or instituting or defending any action or legal proceeding; and
- (d) any claim made by any third party due to or arising out of the purchase or supply of the goods, the customer's violation of these terms, or the customer's infringement of any intellectual property or other right of any person or entity.

9.7 The customer acknowledges and agrees payments by the customer will be applied by the Supplier first in payment of any costs or other moneys due under clause 9.67, then in payment of any interest due under clause 7.4, then allocation payments against any invoice that is outstanding or to allocate any payment between several outstanding invoices as the Supplier shall see fit.

10. Claims

Unless otherwise inconsistent with the terms, the customer agrees, should it be alleged by the customer that the goods are defective or fail for any reason to be in accordance with this agreement or if there are any complaints raised by any person concerning the goods, to follow and comply with the merchandise/claim procedures adopted from time to time by the Supplier (which procedures it is specifically agreed that the Supplier may change from time to time without notice to the customer) and otherwise as follows:

10.1 The customer shall inspect the goods immediately on arrival and shall within 2 business days after arrival and prior to the goods being modified (e.g. rolls cut or boxes opened) or installed give written notice to the Supplier of any claim that (1) the goods do not conform with the terms of the order or (2) the goods are defective, provided a visual inspection should have revealed such defect. The customer shall check all invoices upon receipt and shall within 2 business days after receipt give written notice to the Supplier of any claim that the price invoiced or any other detail contained in the invoice was incorrect. If the customer fails to give such notice, then to the extent permitted by law the goods shall be deemed to conform with the terms of the order and the invoice shall be deemed to be correct, and the customer shall be deemed to have accepted and shall pay for the goods in accordance with the order and these terms and the customer forever releases and discharges the Supplier from all claims and demands related to the matters set out in this clause.

10.2 Notwithstanding any provisions to the contrary, the customer agrees to bring all other claims or disputes against the Supplier within one year of the occurrence of the event giving rise to such dispute and waive such claim, and if not so brought, other than as provided to the contrary by law, the customer forever releases and discharges the Supplier from all claims and demands related to the such event giving rise to the dispute/claim.

10.3 Claims may only be brought by a party in its individual capacity and not as a plaintiff or class member in any purported class or representative proceeding.

10.4 In the case of any claim, the Supplier's representatives and/or agents are to be granted full access to any site where goods subject to the claim may be stored or installed and/or, if required, be provided with the goods and/or materials subject to the claim, equipment or installation technique for consideration and review.

10.5 Where a third party has purchased the goods from the customer and the purchaser and/or any regulatory authority contacts the customer alleging any fault or defect in the goods, the customer shall within 5 business days inform the Supplier in writing of such allegation and use its best endeavours to inspect the goods and provide to the Supplier a report (containing such details as the Supplier reasonably requires) as to the state and condition of the goods, whether the allegation is in the opinion of the customer justified and the reasons for the conclusion reached by the customer.

11. Force Majeure

11.1 To the fullest extent permissible at law, the Supplier will not accept any liability whatsoever in respect to delay or damage to goods by reason wholly or in part of industrial dispute, shortages of materials or labour, shipping delays, accident (whether occasioned by the negligence of the Supplier or its servants or agents or otherwise howsoever), war (declared or undeclared), blockade, riot, act of terrorism, fire, explosion, government or quasi-governmental restraints, any Act of God or any other cause whatsoever beyond the reasonable control of the Supplier or which by the exercise of reasonable diligence it is unable to prevent. In any such case, the Supplier shall be entitled to suspend either totally or in part delivery of the goods, and the operation of this agreement, so far as necessary, shall be suspended without liability for damage against the Supplier.

12. General

12.1 The customer agrees to refrain from taking any action that may cause an employee of the Supplier to violate the Mohawk Flooring Oceania Standards of Conduct and Business Ethics available at the "Legal" page of the Supplier's website. The customer should report any alleged violations as set out in the Mohawk Flooring Oceania Whistleblowers Policy available at the "Legal" page of the Supplier's website.

12.2 The customer represents and warrants that neither the customer nor any director, officer, agent, employee or affiliate of the customer has violated or is in violation of any anti-corruption law, rule or regulation applicable to the customer, including the U.S. Foreign Corrupt Practices Act, the Australian Commonwealth Criminal Code Act, Crimes Act (Victoria) and anti-bribery legislation of all other Australian States, the New Zealand Crimes Act and Secret Commissions Act or the laws of any country in which the customer does business. Without limiting the foregoing, in connection with the performance of this Agreement, neither the customer nor any person acting on its behalf shall: (i) take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any government official for the purpose of obtaining or retaining business for or with, or directing business to, the Supplier or the customer; (ii) make any bribe, rebate, payoff, influence payment, kickback or other unlawful payment; or (iii) use any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity.

12.3 The customer represents and warrants that it is not designated on, owned by or associated with, any party designated on any U.S., E.U., Australia, New Zealand or other government restricted parties lists, including without limitation, the U.S. Treasury Department Office of Foreign Assets Control's (OFAC's) Specially Designated Nationals and Blocked Persons List, and the customer agrees that it will not sell or transfer any goods to, and it will not purchase or acquire any goods from such persons. The customer agrees to comply with all applicable U.S., E.U., Australia, New Zealand or other applicable economic sanctions and export control laws and regulations, including without limitation, the regulations administered by OFAC, Department of Foreign Affairs & Trade (Australia) and/or Ministry of Foreign Affairs & Trade (NZ).

12.4 It is agreed that the Supplier may assign or transfer any part of this agreement to any other person or corporation and the Supplier may subcontract the manufacture and/or supply for any part of the goods or any material services to be supplied. The rights, obligations and other interests of the customer shall not be assigned or transferred by the customer, in whole or in part, without the prior written consent of the Supplier and any purported assignment of the same shall be void and ineffective.

12.5 In the interpretation and construction of these terms, the parties acknowledge that the terms reflect fair negotiations between the parties and these terms shall not be deemed, for the purpose of construction and interpretation, to have been drafted by either party hereto.

12.6 No failure by the Supplier to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, remedy, power or privilege under this agreement shall operate as a waiver and shall not in any way preclude any further exercise or enforcement of this agreement or the exercise or enforcement of any other right, remedy, power or privilege under this agreement or provided by law.

12.7 It is agreed the contract for the purchase and supply of the goods under this agreement is formed at the registered office of the Supplier, and this agreement shall be governed by and construed in accordance with the law in force at the registered office of the Supplier. The customer hereby submits to the non-exclusive jurisdiction of the courts located within the jurisdiction of the registered office of the Supplier. Notwithstanding any provision to the contrary, any claim or dispute by the customer shall be brought against the Supplier within one year after the occurrence of the event giving rise to such dispute otherwise, the customer forever releases and discharges the Supplier from all actions, suits, charges, claims demands or any liability whatsoever in any way arising out of or in connection with such event.

12.8 If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

12.9 The Supplier is committed to the privacy of all individuals with whom it deals. The Supplier is bound by the Privacy Act 1993 (NZ) and has chosen to comply with the Information Privacy Principles. Full information in respect to the Supplier's policies on handling the personal information of its customers, being individuals as set out on its web page, or can be obtained by contacting its head office on 0800 500 210.

12.10 Where the customer is a trustee of a trust (whether disclosed to the Supplier or not) the customer warrants to the Supplier that the customer enters into this agreement both in its capacity as trustee and in its personal capacity and the customer has the right to be indemnified out of trust assets.

13. Definitions and Interpretation

13.1 In these terms and conditions of sale, any credit application form or any other associated or collateral documents (unless a contrary intention is stated):

"consumer legislation" means the Consumer Guarantees Act 1993 (NZ), Fair Trading Act 1986 (NZ), Contract and Commercial Law Act 2017 (NZ) or any New Zealand legislation or regulations relating to the sale or supply of goods;

"customer" means the person or entity whose order for the purchase of the goods is accepted by the Supplier;

"PPSA" means the Personal Property Securities Act 1999 (NZ);

"Supplier" means the legal entity (being a subsidiary of Mohawk Industries Inc) supplying the goods;

"terms" means these terms and conditions of sale or any one or more of them;

13.2 In the interpretation of these terms, words importing the singular include the plural (and vice versa) and words denoting a given gender shall include all other genders; a reference to a person, individual, corporation, trust, partnership, joint venture, statutory or other authority, association (incorporated or unincorporated), state or government includes any of the foregoing; a reference to any legislation or a provision thereof or schedule thereto includes any statutory modification or re-enactment or any legislative provision substituted therefor and all ordinances, by-laws, regulations and other statutory instruments issued thereunder; and if more than one person is named and described as the customer the obligations of those persons under these terms will be joint and several. The headings used do not form part of these terms and are for convenience only.