

# Terms and Conditions of Purchase

Australia and New Zealand  
v0823



## Terms apply to purchases of Goods and Services by Godfrey Hirst and Feltex

These terms and conditions apply to the purchase from a supplier (**Supplier, you or your**) of goods and/or services (**Goods and/or Services**) by members of the Mohawk Flooring Oceania group of companies, including Godfrey Hirst Australia Pty Ltd and Feltex Carpets Pty Ltd in Australia, and Godfrey Hirst NZ Limited in New Zealand.

## Agreement formed by Purchase Order

An agreement is made between the relevant Mohawk Flooring Oceania purchasing entity (**Purchaser, we or us**) and the Supplier when we issue an order (**Purchase Order**) with you for the supply of Goods and/or Services which you either confirm (or have already confirmed) that you accept or that you accept by supplying the Goods and/or Services to us.

## Entire agreement and precedence

These terms and conditions, together with those in the Purchase Order and any specifications for the Goods and Services specified by us or provided by you with your quote/proposal (**Specifications**), contain the entire agreement between you and us for the supply of the Goods and/or Services specified in the Purchase Order. They supersede all prior discussions and replace in full any Supplier terms and conditions contained or referred to in any acceptance or quote/proposal.

To the extent a Purchase Order contains or incorporates terms which are inconsistent with these terms and conditions, the terms in the Purchase Order shall prevail.

## Price and payment

In consideration of the due and proper performance of the Purchase Order by the Supplier, the Purchaser will pay to the Supplier the Price.

The Price shall be the total price specified in the Purchase Order. The price is inclusive of all (i) taxes and duties; (ii) costs incurred by the Supplier in the supply of the Goods and/or Services including labour, equipment, PPE/safety equipment, packaging, insurance and delivery; and (iii) all intellectual property rights necessary to enjoy the benefit of the Goods and/or Services.

Except where otherwise agreed in writing, the Supplier shall invoice the Purchaser on or after the supply of the Goods and/or Services in full; and the Purchaser will pay for the Goods and/or Services within 30 days of the end of the month in which the Supplier provides a valid tax invoice.

## Delivery

Delivery shall be made to the place (**Delivery Address**) specified in the Purchase Order. The Supplier must deliver the Goods to the Delivery Address during business hours on or before the delivery date specified in the Purchase Order (**Delivery Date**).

The Supplier is responsible for labelling and packing the Goods in a manner which meets all legal requirements and any Purchaser or carrier requirements, and in a manner which ensures the Goods reach the Delivery Address safely and in an undamaged condition.

## Risk and title in goods

Risk in the Goods shall pass to the Purchaser on acceptance by the Purchaser at the Delivery Address.

Title in the Goods shall pass on payment in full. Unless otherwise agreed, the Supplier shall not be entitled to lodge any security interest within the meaning of the *Personal Property Securities Act 2009* (Cth) or *Personal Property Securities Act 1999* (NZ).

## Provision of Services, including installation

The Supplier must perform all work comprising Services, including installation of equipment comprising Goods, as specified in the Purchase Order.

Where the Purchase Order does not specify a time or schedule for completion of the Services, the Supplier must perform the Services within a time and schedule as reasonably directed by the Purchaser.

The Purchaser shall grant the Supplier access to site to the extent necessary to perform the Services, subject always to the Supplier and its personnel meeting all site access requirements including in relation to health and safety and insurance. In performing work on site, the Supplier must comply with all applicable laws and reasonable directions of the Purchaser, and not interfere with the other operations or works at the site.

We may suspend or terminate your access to site where you fail to strictly comply with site access requirements.

## Delay

The Supplier must promptly notify the Purchaser of any delay or potential delay in the provision of Goods and/or Services. The Purchaser may, in the case of a material delay (other than delay caused by the Purchaser), terminate a Purchase Order contract including for the purpose of procuring the relevant Goods and/or Services from a third party.

Without prejudice to any other rights we may have, where a Purchase Order contract is terminated for delay and the Goods and/or Services have been partly delivered or performed (as applicable), we agree to

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either (i) pay for the part of the Goods and/or Services which have been delivered or completed; or (ii) in the case of Goods, return the part of the Goods already delivered subject to you providing a refund of the Price.

## Warranties

The Supplier warrants and represents to the Purchaser that:

- (a) it has good title to the Goods and the use of the Goods and/or Services will not infringe any intellectual property or other third party rights;
- (b) the Goods and/or Services will comply with any Specifications, be fit for the purpose those Goods and/or Services are ordinarily acquired and be suitable for any proposed use communicated to the Supplier by the Purchaser;
- (c) the provision of the Goods and/or Services will be in accordance with all applicable laws and Australian/New Zealand standards; and
- (d) the Supplier has the requisite capacity, skill and experience to provide the Goods and/or Services in accordance with these terms and conditions.

## Intellectual property rights

Where you make custom Goods or provide consulting, design or creative Services to us you agree that we shall own the intellectual property rights in any work product created by you in delivering those Goods or Services and you agree to do all things required to transfer ownership to us. In all other circumstances we agree that you shall own the intellectual property rights in the Goods and/or Services subject to a licence to us as is necessary for us to enjoy the full benefit of the Goods and/or Services.

## Default and remedies

If we consider that you have breached these terms and conditions, including warranties, we will notify you and you agree to respond promptly.

Without prejudice to any other rights we may have, in the case of breach of warranty, we may at our election require that you either (i) replace or reperform (as applicable) the Goods and/or Services at no charge to us; (ii) pay our costs of replacing or repairing the relevant Goods and/or Services; or (iii) in the case of Goods, retake the Goods at no cost to us and refund the Price.

## Insurance

The Supplier must, at its expense, maintain and provide evidence of adequate insurances with reputable insurers in amounts as reasonably required by the Purchaser.

## Privacy

We are committed to meeting the requirements of all applicable privacy laws. Our Privacy Policy can be found via the "Privacy" link in the footer of our website.

## Compliance with laws and business ethics

We are committed to conducting our business in compliance with all applicable laws and in an ethical and responsible manner. Our commitment in this respect is set out in the Mohawk Flooring Oceania Standards of Conduct and Business Ethics available via the "Legal" link in the footer of our website. We ask that you report any violations of this policy by our personnel to us.

Consistent with this commitment we require, in addition to complying with all applicable laws, that you comply with our "Supplier Code of Conduct" which is available via the "Legal" link in the footer of our website. If you breach the Supplier Code of Conduct, and your breach creates a genuine risk of damage to our reputation, harm to our staff or customers, or making us legally liable for your conduct, this shall constitute a material breach of these terms.

The Supplier represents and warrants that neither the Supplier nor any director, officer, agent, employee or affiliate of the Supplier has violated or is in violation of any anti-corruption law, and will not take or omit to take any action which may breach such laws in connection with this agreement.

The Supplier represents and warrants that it is not designated on, owned by or associated with, any party designated on any U.S., E.U., Australia or New Zealand restricted parties or sanctions lists.

## General

You may not transfer or otherwise deal with your rights or obligations under this agreement without the prior written consent of the Purchaser.

If any part of this agreement is void or unenforceable, that part shall be deleted and the remainder shall remain effective, provided such deletion does not materially alter the nature and effect of the agreement.

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

Where the Purchaser entity is located in New Zealand, this agreement shall be governed by the laws in force in New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts located there. Where the Purchaser is located in Australia, this agreement shall be governed by the laws in force in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts located there.