

EngineeredFlooring.com.au (Milton Lane) referred to in these terms of trade as “The Company”

## 1. GENERAL

(a) The Company accepts the customer's order on these terms and the entire agreement between the Company and the customer is comprised in these terms and conditions, (except to the extent that they are modified in writing and signed by both parties), the completed credit application and the guarantee (if any) and it is expressly agreed that there are no other understandings, representations or warranties of any kind, (express or implied) forming part of this contract.

(i) Any condition contrary to these conditions shall be of no effect unless that condition is in writing by the Company.

(ii) Any variation, waiver or cancellation of the customer's order shall be of no effect unless accepted in writing by the Company. Where the Company accepts cancellation, the Company levies a handling/restocking and subsequent storage charge of 30% of the price.

(iii) Under no circumstances are custom orders refundable as these cannot be resold and are not listed on our website for sale in our typical product line. It is accepted that timber is a natural product which entails some variations in colour / texture / grade from batch to batch and cannot be tightly controlled like an unnatural, faux timber product (aka Laminate, Vinyl, Tile).

(iv) Returns of unused boxes are not accepted for refund. These are to be kept for future needs/repair if ever required.

(b) Placement by the customer of any order with the Company constitutes an acknowledgement by the customer that the contract between the customer and the Company shall be governed by these terms of trade.

(c) If any terms or conditions or part thereof contained in these terms of trade are held to be invalid, illegal, unenforceable, or void for any reason or reasons, all the remaining terms and conditions (or part thereof) shall remain in full force and effect.

(d) The customer agrees that in the event of default of the settlement of any amount due, the customer shall pay upon demand, all reasonable costs, charges and legal expenses (including costs between solicitor, and own client) including any collection costs incurred by the Company in recovering the outstanding amount from the customer.

(e) To the extent a supply is to a customer identified and disclosed as a consumer as defined in the Consumer Act 2010, the provisions of that Act shall have effect notwithstanding any provisions to the contrary in this contract. Otherwise the customer acknowledges that all goods acquired from the Company are required for business purposes.

## 2. PRICE AND TERMS OF PAYMENT

(a) The Company's prices are subject to alteration without notice (unless a deposit has been paid). The price payable by the customer for the goods ordered shall be the price ruling at the date the goods have a deposit paid. Prices will fluctuate (up and down) with changes in exchange rates and inflationary conditions and may be higher or lower after you have paid your deposit. Prices going down due to exchange rate improvements will not translate to your quoted price as this is the price paid at the time of order of your materials and hence the real cost at the time the commitment was made.

(b) The Company's prices referred to in this contract and in any quotation, which may have formed the basis of this contract or marketing material (website/brochure/advertising) are inclusive of Goods and Services Tax (GST). The customer shall pay Goods and Services Tax on the goods or services the subject of this contract and the amount of each payment payable under this contract shall be included in the listed price.

(c) The customer shall pay any deposit required with the customer's order or by the due date if there is agreement otherwise. Deposits paid are binding and non-refundable.

(i) Payment of deposits for standard line items is required before orders will be placed for production.

(ii) 100% payment is required for custom orders outside our standard line of products. These include but are not exclusive to, custom grade, specification, colour, timber species, edge bevel, etc.

(iii) We do not allow on credit customers; balance payments must be clear in our account before dispatch.

(h) If the Company allows payment of customer's accounts by credit card or other means of money transfer or electronic payment the customer will comply with the Company's procedures and charges for doing so and will not withdraw any authority for charging, transferring or debiting.

### 3. DELIVERY

(a) The Company may withhold delivery where the customer is in breach of any obligations under clause 2.

(b) If the customer fails or refuses or indicates to the Company that the customer will fail or refuse to take or accept delivery, then the goods shall be deemed to have been delivered when the courier was willing to deliver them.

(c) The Company reserves the right to dispatch the customer's order in one delivery or by instalments. Where the Company acknowledges an order, which provides for delivery by instalments the Company shall be entitled to payment for each instalment delivered (as if it were a separate contract) but failure to deliver any instalment shall not entitle the customer to cancel the contract as to any remaining instalments.

(d) Any quotations of delivery times by the Company are made in good faith but as estimates and not commitments. The Company shall not be bound by such estimates.

(e) Where the customer requests a method of delivery and the Company agrees in writing then the customer shall cover the cost of delivery by that method from the point of dispatch of the goods by the Company. Otherwise the Company will select the method of delivery.

(f) Pick up / viewing is allowed on site between agreed times. Site visits are not permitted without prior appointment.

### 4. SHORTAGES

(a) The Company's liability for shortages in the quantity of the goods supplied is limited to making up the shortages. No claim for shortages in quantity will be allowed unless the customer gives written notification of the shortage in writing within 3 days of delivery and provides a reasonable opportunity for the Company to take all necessary steps to investigate the claim.

(b) Photos are taken immediately prior to dispatch to confirm the items sent are in fact accurate to the ordered quantities.

### 5. RISK AND LOSS IN TRANSIT

(a) Risk (including, without limitation, insurance responsibility) of any loss, damage or deterioration of or to the goods shall pass to the customer on collection of the goods by the customer or the customer's agent or the passing of the goods to a carrier (without limitation, the Company's own delivery vehicles) for delivery.

(b) Insurance of 2% is offered to cover losses / damages in transit. This must be purchased prior to dispatch; the customer is liable for any potential losses / damage if not paid. Payment of insurance in retrospect of any issue is not valid.

(c) Goods leaving the Company's premises are deemed to be adequately packed. Claims made for damage or loss in transit must be made against the carrier in the prescribed manner below:

(i) Prior to acknowledging delivery to the carrier, the customer must ensure that the complete consignment as per the carrier's note has been received.

(ii) Should there be a shortage or visible damage to outer packaging the carrier's note must be endorsed with photographic evidence on the date of delivery.

(iii) Within 3 days of receipt of consignment the customer must ensure that all product received is in good order and condition. This is to ensure insurance claims are made inside the allowable timeframe of the courier.

(d) No insurance claims will be considered after 3 days of receipt of goods.

### 7. DISPUTES

If any part of the invoice is disputed the amount not under question shall be paid promptly according to, applicable payment terms. Any claim or dispute arising hereunder shall, be subject to arbitration in accordance with the Arbitration Act in your state.

## 8. OWNERSHIP / STORAGE

(a) Ownership of all goods sold by the Company is retained by the Company until full payment is received for all amounts. This provision is intended to protect the Company in respect of any event where the customer defaults in payment of the goods or any other goods sold by the Company to the customer or any event occurs which could cause the customer to become insolvent, bankrupt or be liquidated or in the event of the insolvency, bankruptcy or liquidation of the customer or any approaches are made by the customer to creditors to extend time for or otherwise compromise payment of the customer's debts.

(b) The Company will hold goods for a maximum of 3 weeks after the arrival of 'pre-ordered' products in our warehouse free of charge. Storage of \$50 per week will be applied per pallet (approximately 70m<sup>2</sup> per pallet) beyond this time, to a maximum storage time of 8 weeks in total after arrival in our warehouse.

After this time, you must take delivery and store in house / locally due to our limited warehouse space.

Items that are in stock can be reserved with a deposit and also will be held for a maximum of 3 weeks free of charge, with \$50 per pallet applied for every week after this (max total of 8 weeks storage, inclusive of the 3 week free storage period).

(c) Storage costs will be invoiced prior to the confirmed dispatch date and must be paid prior to dispatch. Storage will be charged a daily rate based on the \$50 per pallet per week weekly charge (ie. stored for 6 weeks and 3 days).

(d) At 8 weeks, if the customer has not indicated they can take delivery. The Company has the right to withhold the 30% deposit and cancel the order. This is to cover storage and future costs involved in attempting to re-sell these goods, often at a discounted rate to move the items.

## 9. COMPANY'S LIABILITY AND MAINTENANCE GUARANTEE

(a) The customer shall ensure that the goods ordered are fit and suitable for the purpose for which they are required prior to paying a deposit / balance. The Company is under no liability if they are ordered by mistake in any way shape or form. The items ordered are the possession of the customers upon dispatch and change of mind colour / specification selections are not accepted.

(b) In lieu of any warranty, condition or liability implied by law, the Company's liability in respect of any defect in or failure of the goods supplied or for any loss, injury or damage attributable thereto is limited to making good the replacement or repair of defects arising under normal proper use and maintenance arising solely, from faulty design, materials or workmanship within the guarantee period if stated or otherwise within 12 months of the date of supply provided always that such defective parts are promptly returned to the Company. At the termination of the appropriate period all liability on the Company's part ceases.

(c) Warranties implied on invoices will override the above 12-month standard warranty (ie. long term structural floor warranties).

(d) This warranty does not cover damage from misuse, accident, neglect, installation, modification, adjustment or improper operation or maintenance.

(e) The Company's liability under this contract and the warranty in this clause is confined to the customer named in the contract agreed upon sale that the Company has no liability to any other purchaser of the goods and are not re-assignable without the prior written consent of the Company.

## 10. ERRORS OR OMISSIONS

Clerical errors or omissions, whether in computation or otherwise in any quotation, acknowledgement or invoice, shall be subject to correction.

## 11. FORCE MAJEURE

The Company shall not be liable to the customer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods or failure to perform any term of this contract where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a Government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of or delay in transportation or any other cause beyond the Company's control.

## 12. COMPLIANCE WITH REGULATIONS

The customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the goods.

## 13. PROPER LAW

The contract and these terms of trade shall be governed by Australian Law and the Australian courts shall have exclusive jurisdiction in connection herewith.

## 14. PRIVACY ACT

The customer hereby acknowledges that the following condition forms part of this contract:

The customer irrevocably authorizes any person or company to provide the Company with such information as it may require in response to its credit inquiries. The customer further authorizes the Company to collect and hold such information and to furnish such information to any third party together with details of any credit application form completed and any transactions that the customer may have with the Company.

## 15. ACCEPTANCE

(a) The customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the customer places a paid order (deposit or balance) for or accepts delivery of the goods.

(b) These terms and conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the customer and the Company.

## 17. SECURITY AND CHARGE

(a) In consideration of the Company agreeing to supply the goods, the customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the customer either now or in the future, to secure the performance by the customer of its obligations under this contract (including, but not limited to, the payment of any money).

(b) The customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.

(c) The customer irrevocably appoints the Company and each director of the Company as the customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause including, but not limited to, signing any document on the customer's behalf or agreeing through web form that the terms are accepted (at checkout).