

TERMS AND CONDITIONS OF TRADE OF CREATIVE FLOORING LIMITED (THE "COMPANY")

1. The persons signing this Credit Application and Terms and Conditions of Trade on behalf of the Customer, and the Guarantor(s) declare that to the best of their knowledge and belief, the information contained in this application and any additional material is true and correct in all respects.
2. The Customer confirms and accepts that any supplies made by the Company to the Customer shall be made upon the Terms and Conditions of Trade contained herein, as may be amended by notice in writing from time to time by the Company, and that those Terms and Conditions of Trade have been read and understood by or for and on behalf of the Customer.
3. The Customer agrees that pending payment in full for all and any goods supplied to the Customer pursuant to these Terms and Conditions of Trade (the "Goods"), the Customer holds the Goods as fiduciary bailee and agent for the Company, and the Company shall retain ownership of the Goods or any proceeds of on-sale of the Goods.
- 4.1 The Customer will grant a security interest in the Goods supplied, in respect of which the Company may register a financing statement pursuant to the Personal Property Securities Act 1999 (the "PPSA"). In the event that payment for the Goods is not made on time, the Company may repossess and sell such Goods and/or any other goods which have been made by using the Goods supplied, in order to satisfy any outstanding liability.
- 4.2 The Customer will, upon request by the Company, execute all documents and do all things necessary to enable the Company to create the security interest pursuant hereto.
- 4.3 The Customer/the Guarantor(s) shall:
 - (a) Immediately notify the Company in writing of any change in name;
 - (b) Provide any information the Company reasonably requires to complete a financing change statement;
 - (c) Waive any right to receive a copy of a verification statement under the PPSA.
- 4.4 The Customer and the Guarantor(s) agree that these Terms and Conditions of Trade constitute a Security Agreement for the purposes of the PPSA, and that they have received a copy of these Terms and Conditions of Trade at the time that the Customer executed a Credit Application with the Company.
- 4.5 The Customer agrees:
 - (a) that if, at any relevant time, the Company did not have priority over all other secured parties in relation to the Goods or any other personal property relating to this Agreement, then the Company shall, for the purposes of Section 109(1) of the PPSA be deemed to have contracted out of that Section;
 - (b) that nothing in Sections 114(1)(a) (to receive notice of sale of goods), 116 (to receive a statement of account), 119 (to recover any surplus), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate Security Agreement) and 134 (limit on reinstatement) of the PPSA will apply to this Agreement or the Company's security interest;
 - (c) to waive all its rights under Sections 121 (to object to proposal), 125 (damage to goods on removing accession), 129 (notice of removal of accession), 131 (court order preventing removal of accession) and 132 (redemption of collateral) of the PPSA; and
 - (d) to waive its right to receive a copy of the Verification Statement confirming registration of a Financing Statement or Financing Change Statement relating to the Company's security interest.
- 4.6 The Customer shall not permit any security interest (other than the Company's security interest) to attach to the Goods.
- 5.1 The provisions of the Consumer Guarantees Act 1993 shall not apply to any supply of Goods by the Company to the Customer for business purposes in terms of Section 2 and/or Section 43 of the Consumer Guarantees Act 1993.
- 5.2 The Company does not provide any guarantees or warranties in respect of the Goods EXCEPT as expressly confirmed by the Company in writing or on the Company's website from time to time, specific to each product category or class.
- 6.1 Personal information of whatsoever nature and in respect of whomsoever collected by or held by the Company (whether by virtue of this application or otherwise) is provided and may be held, used and disclosed to enable the Company to process this or any other application, to ascertain at any time the credit worthiness of the Customer, and to obtain (at any time) credit reports, character references or credit statements to administer the Customer's trade account with the Company, to enable the Company to notify and credit or reference agent of applications for credit, or in the event of any default on the part of the Customer, to enable the Company, to provide to the Customer information concerning products and services, to enable the Company to sell or assign for any purposes any obligation/debt the Customer has to the Company, and to enable the Company to communicate with the Customer/the Guarantor(s).
- 6.2 The Customer, and the Guarantor(s), authorise the Company to obtain, at any time from any person or entity, whatsoever any information the Company may require to process and/or accept and/or maintain any credit application or trade account which the Customer may make or have with the Company or to perform or complete any of the other purposes for which information has been provided to the Company by the Customer/the Guarantor(s). The Customer and/or the Guarantor(s) hereby authorise any such person to release to the Company any information which that person holds concerning the Customer/the Guarantor(s).
7. For the purposes of this application and these Terms and Conditions of Trade, the "Goods" shall include any goods, services, information, designs, printed or electronic material provided to the Customer by the Company of whatsoever nature.
8. All prices quoted are exclusive of, but subject to, Goods and Services Tax ("GST"). Goods supplied will be charged at the prices applicable at the time of dispatch of Goods. Prices quoted in the Company's price list are the latest available prices at the time of printing of the price list, but are subject to amendment without prior notice by the Company, and at the Company's sole discretion. Unless otherwise agreed, prices are exclusive of freight, taxes, insurance or duties, which, if chargeable, are payable by the Customer.
- 9.1
 - (a) The Company shall not be obliged to accept any Order from the Customer. The Company may, in its sole discretion, require the Customer to pay a deposit prior to the Customer taking possession of the Goods, if the Company so requires. Likewise, the Company shall not be obliged to accept any variation to the quantity of the Goods ordered by the Customer. The Customer agrees that if such variation is consented to by the Company, the Company has the right to vary the per-unit charge for the Goods, and may request a further deposit at the aforementioned rate.
 - (b) The Customer shall make payment of the Purchase Price, plus GST, and any charges for freight, taxes, insurance or duties indicated on any invoice, order form, or other similar documentation issued by the Company:
 - (i) on Date of Delivery if the Customer is a COD Customer;
 - (ii) on or before the 7th day following the Date of Delivery if the Customer is a 7 Day Customer; or
 - (iii) on or before the 20th day of the month immediately following the Date of Delivery if the Customer is a 20 Day Customer.
 - (c) The Customer shall have no right to set-off against the Purchase Price any claims which the Customer might have against the Company.
 - (d) Orders may be varied only if written consent to the variation has been given by the Company.
 - (e) Orders may be cancelled only if written consent to the variation has been given by the Company (in its sole discretion). If the Company agrees to any Order being cancelled, the Company shall be entitled to charge a handling fee for Goods that are produced by the Company equivalent to a percentage of the full price of the Goods (that the Company considers reasonable, given the stage of production reached), that the Customer would have otherwise paid for the Goods.
- 9.2 Where the Customer wishes to return any Goods for any reason, the Customer must apply in writing to the Company within 14 days from the Date of Delivery, for the Company's written consent to the return of the Goods, failing which, the Customer shall be conclusively deemed to have accepted the Goods and the Company shall not incur any subsequent liability whatsoever.
- 9.3 If the Company gives its written consent for the return of Goods, the Goods shall be returned **TOGETHER WITH** a credit claim, which quotes: the Company's invoice number, the Date of Delivery of those Goods, the name of the Company representative who approved the return and the reason for the return. The Company reserves the right to charge a fee of 15% of the Purchase Price plus the cost of freight (if any) for restocking the Goods. The Customer is responsible for paying for the costs associated with returning the Goods to the Company.
- 9.4 The Company may, at its own discretion entirely:
 - (a) Give credit for Goods which have been correctly returned, in the same condition and packaging in which they were dispatched (subject to a charge for reasonable costs where Goods were ordered incorrectly).
 - (b) Subject to any express warranty given by the Company, repair any damaged or defective Goods or make a reasonable allowance on the purchase of replacement Goods.
- 9.5 In the event that the above provisions are not strictly complied with, the Company will return such Goods to the Customer at the Customer's expense.

- 10.1 In the event that payment of the Purchase Price is not made, in full, in accordance with the provisions of clause 9.1, interest shall accrue from the date that payment of the Purchase Price fell due and be payable by the Customer to the Company at a rate equivalent to the Company's bank's unsecured commercial overdraft facility base lending rate PLUS a margin of 5% per annum (or a rate equivalent to the rate payable on Judgments obtained in the District Courts of New Zealand as may from time to time be provided for by statute), such interest accruing at a daily rate from and including the date immediately following the due date for payment, until and including the date upon which all outstanding amounts are paid (including interest). The charging of interest by the Company does not extend the time for payment of the Purchase Price (plus interest) nor imply any forbearance to recover overdue moneys. For as long as any payment is overdue to the Company by the Customer, the Company is entitled to suspend or terminate the supply of Goods to the Customer, and the Company shall not be responsible for any loss or damage suffered by the Customer as a result of the exercise of such rights.
- 10.2 Payments by the Customer shall be apportioned by the Company to outstanding accounts in such amounts and in such order as the Company may determine in its sole discretion.
- 10.3 In the event that the above provisions are not strictly complied with, the Company will return such Goods to the Customer at the Customer's expense.
- 11.1 Notwithstanding any other provision of these Terms and Conditions of Trade, or the law, risk in the Goods shall pass from the Company to the Customer when the Goods leave the Company's premises.
- 11.2 Property and title in the Goods (including where the Goods have been incorporated into other goods but remain distinct and separately identifiable) shall remain with the Company and shall only pass from the Company to the Customer when the Customer / the Guarantor(s) have discharged all outstanding indebtedness to the Company.
- 11.3 If the Customer fails or refuses to take delivery of the Goods (except for refusal of damaged shipments from any carrier), then the Goods shall be deemed to have been delivered to the Customer.
- 11.4 Any estimate of time of delivery given by the Company to the Customer is an estimate only, and the Company shall not be bound by such estimates.
- 11.5 The Company shall be entitled to select their own mode of delivery for the Goods. If the Customer requests a specific mode of delivery and the Company consents to delivery in this manner, the Customer shall pay for the cost of such delivery.
- 11.6 The Customer must check all goods on receipt for compliance with quoted quantity, damage or failure to comply with any quotation or description agreed in writing by the Company. The Customer must refuse visibly damaged packaging and any shortages must be endorsed on the Carrier's note. The Customer must report in writing to the Company and the relevant Carrier, the shortage or defect of the goods within 7 days from the Date of Delivery (or expected date of arrival if goods are not received) and provide reasonable opportunity to take all necessary steps to investigate the claim. If the Customer fails to notify the Company of any issue within 7 days of the Date of Delivery, the Company may reject any subsequent claims in respect of such Goods. If the Customer receives Goods which do not conform to any description or quotation, the Customer must contact the Company within 7 days of the Date of Delivery of the Goods and complete the required return request. The Company's liability for any claim is limited to providing enough Goods to make up for the shortfall/replacement or issuing a refund or credit for the shortfall.
- 11.7 If the Customer sells Goods before discharging its indebtedness to the Company, the Customer will be deemed to have done so as agent for the Company and the proceeds of such sale shall be the property of the Company. The Customer shall hold the proceeds on Trust for the Company in a separate account and repay such amount immediately if required by the Company.
- 12.1 In the event of any default by the Customer of these Terms and Conditions of Trade, in addition to any other right or remedy available to the Company pursuant to these Terms and Conditions of Trade, or at general law, the Company shall be entitled to enter on and into any premises or property occupied by the Customer or any property on which the Goods are stored or held, to inspect, search for, and remove the Goods supplied, and the Company shall not be liable to the Customer or any third party for any damage of any kind whatsoever which may result from the exercise of its rights under this clause. The Company shall be entitled (but not obliged) to resell the Goods on commercially reasonable terms and apply the proceeds derived in or towards the payment of any amount due and payable by the Customer to the Company, and all costs and expenses of or incurred by the Company as a result of and incidental to such action.
- 12.2 Where the Customer is in default, the Company may, in addition to any other rights contained in these Terms and Conditions of Trade or at general law, appoint a receiver in respect of the Goods.
- 12.3 The Customer shall pay to the Company all and any costs incurred by the Company in the actual or attempted enforcement of these Terms and Conditions of Trade (including but not limited to debt collection costs and legal costs and disbursements on a solicitor/client basis).
- 12.4 In the event that the Customer becomes insolvent, commits an act of bankruptcy, goes into liquidation, or enters into a compromise with its creditors, or has its credit standing impaired in any other way, the Company shall be entitled to cancel all or any part of any order of the Customer that remains unperformed and all amounts owing to the Company shall, whether or not due for payment, become immediately payable.
13. The liability of the Company to the Customer in respect of the Goods shall be limited, at all times, to the Purchase Price of the Goods in respect of which such liability arises and no warranty or condition shall be implied against the Company by any statute, at common law, or otherwise.
14. The Company shall not be liable for any delay in production or delivery of Goods directly or indirectly caused by acts of God, fire, riot, war, acts of terrorism, embargo, strike, labour dispute, theft, delays in delivery by sub-supplier, action or interference by any government or other authority or any other occurrence beyond the reasonable control of the Company.
15. These terms and conditions of trade shall be governed by and construed in all respects in accordance with New Zealand Law.
16. If any provision hereof is held to be invalid or unenforceable, the invalidity or unenforceability shall be deemed eliminated or modified to the minimum possible extent to make the remainder of these Terms and Conditions of Trade enforceable.
17. Failure by the Company to insist upon strict performance by the Customer of any of these Terms and Conditions of Trade shall not be a waiver of any rights of the Company on any subsequent occasion.
18. The Guarantor(s) hereby acknowledge that:
- To the greatest extent possible, they hereby guarantee to the Company the due performance of the Customer pursuant to these Terms and Conditions of Trade, and indemnify the Company against any loss the Company may suffer as a result of the default of the Customer.
 - No release, delay or other indulgence given by the Company to the Customer or to the Customer's successors or assigns or any other thing whereby the Guarantor(s) would have been released had the Guarantor(s) been merely a surety, shall release prejudice or affect the liability of the Guarantor(s) as a Guarantor or as indemnifier.
 - As between the Guarantor(s) and the Company, the Guarantor(s) may for all purposes be treated as the Customer and the Company shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor(s).
 - The Guarantee herein is for the benefit of and may be enforced by any person entitled for the time being to receive or act on the part of the Company.
 - Should there be more than one Guarantor, their liability under this Guarantee shall be joint and several.
19. These defined terms shall have the following meanings:
- "7 Day Customer"** shall mean a Customer with whom the Company has agreed to deliver Goods on the basis that payment will be made on or before the 7th day following Date of Delivery, if the Credit Application accompanying these Terms and Conditions indicates that the Customer is a 7 Day Customer
- "20 Day Customer"** shall mean a Customer with whom the Company has agreed to deliver Goods on the basis that payment will be made on or before the 20th day of the month following Date of Delivery, if the Credit Application accompanying these Terms and Conditions indicates that the Customer is a 20 Day Customer
- "COD Customer"** shall mean a Customer with whom the Company has agreed to deliver Goods on the basis that payment will be made on the Date of Delivery, if the Credit Application accompanying these Terms and Conditions indicates that the Customer is a COD Customer
- "Company"** shall mean Creative Flooring Limited, a company incorporated under number 5917490
- "Customer"** shall mean the party engaging the Company to provide the Goods
- "Date of Delivery"** shall mean the date and time that the Goods are delivered to the Customer by the Company
- "Goods"** shall have the meaning given to that term pursuant to clause 3 of these terms and conditions of trade
- "Guarantor(s)"** shall mean the person(s) from time to time who are the directors and/or shareholders of the Customer
- "Order"** shall mean a non-binding application for the provision of Goods placed by the Customer with the Company from time to time, by any means acceptable to the Company.
- "Purchase Price"** shall mean the sum payable (inclusive of GST) by the Customer to the Company for an Order