

# Malnic Enterprises Ltd T/A A - Z Flooring – Terms & Conditions of Trade

## 1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Seller"** means Malnic Enterprises Ltd T/A A - Z Flooring, its successors and assigns or any person acting on behalf of and with the authority of Malnic Enterprises Ltd T/A A - Z Flooring.
- 1.3 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 **"Goods"** means all Goods or Services supplied by the Seller to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 **"Site"** means the address nominated by the Client at which the Services are to be undertaken by the Seller.
- 1.6 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using the Seller's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.8 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Seller and the Client in accordance with clause 6 below.

## 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with the Seller and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse Delivery.
- 2.6 Where the Seller gives any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller. Where such advice or recommendations are not acted upon then the Seller shall require the Client or their agent to authorise commencement of the Services in writing. The Seller shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

## 3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

## 4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to the Seller as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Seller in writing that said person is no longer the Client's duly authorised representative).

- 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Seller's profit margin) in providing any Goods, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

## 5. Change in Control

- 5.1 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.

## 6. Price and Payment

- 6.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Client; or
  - (b) the Seller's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Seller reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the Site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, obscured building defects, uneven floor levels, change of design etc) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to the Seller in the cost of labour or materials which are beyond the Seller's control.
- 6.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Client shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At the Seller's sole discretion a deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
- (a) on Delivery of the Goods;
  - (b) before Delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with the Seller's payment schedule;
  - (d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Seller.
- 6.6 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Seller.
- 6.7 The Seller may in its discretion allocate any payment received from the Client towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Seller may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Seller, payment will be deemed to be allocated in such manner as preserves the maximum value of the Seller's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute, unless the request for payment by the Seller is a claim made under the Construction Contracts Act 2002.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## 7. Provision of the Services

- 7.1 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the Site ready for the Services; or
  - (c) notify the Seller that the Site is ready.
- 7.2 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Seller's address; or
  - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

- 7.3 At the Seller's sole discretion the cost of Delivery is in addition to the Price.
- 7.4 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by the Seller for Delivery of the Goods is an estimate only and the Seller will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

## 8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 8.3 If the Client requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 8.4 Where the Seller is to both supply and install Goods then the Seller shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 8.5 The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.6 Where the Seller is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Seller shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.7 The Client agrees to indemnify the Seller against any claims howsoever arising from the provisions in clause 8.6.
- 8.8 The Client acknowledges and accepts that:
- (a) Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. The Seller will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
  - (b) doors may require a height adjustment following the installation of new flooring. Any such adjustment shall be at the Client's own cost.

## Carpet Risk

- 8.9 The Client acknowledges and accepts that:
- (a) whilst carpet manufacturers make every effort to match dye lots, colours or shade may vary between batches of product and/or between sales samples and actual product supplied;
  - (b) carpet manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when installed; and
  - (c) the installation process for carpet may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product.

## Timber Risk

- 8.10 Timber is a:
- (a) hygroscopic material subject to expansion and contraction, therefore the Seller will accept no responsibility for gaps that may appear in the flooring during prolonged dry periods; and
  - (b) natural product and as such colour, shade tone, markings, and veining may vary from samples provided.
- 8.11 Whilst the Seller will make every effort to match sales samples to the finished Goods the Seller accepts no liability whatsoever where the samples differ to the finished Goods.
- 8.12 The Seller will:
- (a) only inspect or view a timber floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects; and
  - (b) not accept responsibility for any damage to the floor due to microenvironments caused by air-conditioning, heating or large expanses of glass windows without curtains or blinds.
- 8.13 Whilst the Seller will take all due care to avoid contamination of the finished surface, the Seller accepts no responsibility for contamination by natural contaminants such as dust or hair which may be present at the Site.

## Vinyl Risk

- 8.14 The Client acknowledges and agrees that the Seller shall not be liable for any loss, damages or costs however arising in the event that:
- (a) a heavy or sharp object is dropped or falls on the vinyl, as vinyl will show scratches and will get cut as it is a soft and flexible Good; or
  - (b) an object is dragged across it as vinyl can rip and tear; or
  - (c) the vinyl discolours or bubbles in areas due to exposure to extreme heat (including, but not limited to, conservatories and floor to ceiling windows).
- 8.15 The Seller does not recommend vinyl to be installed over a floor that is a combination of wood and concrete, or expansion joints in concrete floors, as any movement, joint, seams in bison board, or thin line board will show through the vinyl.
- 8.16 The Client further acknowledges and agrees that:

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- (a) vinyl will not fully seal a floor around the edges particularly around showers or baths; the Client also agrees water can get underneath and therefore bubble and/or discolour the vinyl. The Seller shall not be held liable for any loss, damages or costs however arising due to the same; and
- (b) whilst floor levelling compound and floor preparation may help smooth out rough floors; this will not necessarily level a floor.
- 8.17 The Seller shall advise the Client if the Seller believes that there are any issues with the sub floor (including, but not limited to, moisture problems which may cause the vinyl to bubble and discolour) however the Client acknowledges that it is not always possible to identify such problems therefore the Client agrees that the Seller shall not be held liable in any way whatsoever should any such issue go undetected causing damage to the Goods.
- 9. Client's Responsibilities**
- 9.1 It is the Client's responsibility to;
- (a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation (including, but not limited to, removing all appliances from the vicinity of the Services);
- (b) remove all existing floor coverings, tacks and staples;
- (c) ensure the sub-floor is adequately ventilated and is structurally sound;
- (d) ensure that the levels of the floor are satisfactory as the floor coverings can only follow the contours of the floor and will not correct unevenness;
- (e) unless quoted for, provide adequate dustsheets to protect the Client's furniture and décor;
- (f) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Client. All care taken but no responsibility accepted by the Seller in this regard;
- (g) supply power to within 8 metres of the project; and
- (h) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between the Seller and the Client, any additional costs will be invoiced to the Client as an extra.
- 9.2 The Seller is not insured to remove furniture or fittings and will not do so, nor is the Seller licensed to move gas or electrical appliances. In the event that the Seller is requested to move furniture then this shall be at the Client's risk and the Seller shall not accept liability for any damage caused.
- 9.3 The Seller may at its discretion notify the Client that it requires to store at the Site equipment, plant and tools required for the Services, in which event the Client shall supply the Seller a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.
- 10. Access**
- 10.1 The Client shall ensure that the Seller has clear and free access to the Site at all times to enable them to undertake the Services. The Seller shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Seller.
- 11. Compliance with Laws**
- 11.1 The Client and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 11.3 The Client agrees that the site will comply with any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.
- 12. Title**
- 12.1 The Seller and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Seller all amounts owing to the Seller; and
- (b) the Client has met all of its other obligations to the Seller.
- 12.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 12.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 12.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Seller on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
- (e) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;
- (f) the Seller may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller; and
- (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 13. Personal Property Securities Act 1999 ("PPSA")**
- 13.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods and/or collateral (account) - being a monetary obligation of the Client to the Seller for Services - that have previously been supplied and that will be supplied in the future by the Seller to the Client.
- 13.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller; and
- (d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 The Seller and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Client shall unconditionally ratify any actions taken by the Seller under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of the Seller agreeing to supply the Goods, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 14.3 The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
- 15. Defects**
- 15.1 The Client shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:
- (a) the Seller has agreed in writing to accept the return of the Goods; and
- (b) the Goods are returned at the Client's cost within seven (7) days of the Delivery date; and
- (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.3 Subject to clause 15.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.
- 16. Warranty**
- 16.1 Subject to the conditions of warranty set out in clause 16.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within twelve (12) months of the date of installation (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Client to properly maintain any Goods; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Seller; or
- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
- (c) in respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 16.3 In the case of second hand Goods, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 17. Consumer Guarantees Act 1993**
- 17.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Client.
- 18. Intellectual Property**
- 18.1 Where the Seller has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.
- 18.2 The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 18.3 The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, photographs, designs, drawings or Goods which the Seller has created for the Client.
- 19. Default and Consequences of Default**
- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies the Seller may have under this Contract, if a Client has made payment to the Seller, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by the Seller;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 20. Cancellation**
- 20.1 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 20.2 The Seller may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21. Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by the Seller is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. The Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Seller that may result in serious harm to the Client, the Seller will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance

## Malnic Enterprises Ltd T/A A - Z Flooring – Terms & Conditions of Trade

- with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Seller in respect of Cookies where the Client utilises the Seller's website to make enquiries. The Seller agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the Seller when the Seller sends an email to the Client, so the Seller may collect and review that information ("collectively Personal Information")
- If the Client consents to the Seller's use of Cookies on the Seller's website and later wishes to withdraw that consent, the Client may manage and control the Seller's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Client authorises the Seller or the Seller's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by the Seller from the Client directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 21.4 Where the Client is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.5 The Client shall have the right to request the Seller for a copy of the Personal Information about the Client retained by the Seller and the right to request the Seller to correct any incorrect Personal Information about the Client held by the Seller.
- 22. Suspension of Services**
- 22.1 Where the Contract is subject to section 24A of the Construction Contracts Amendment Act 2015, the Client hereby expressly acknowledges that:
- (a) the Seller has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
    - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Seller by a particular date; and
    - (iv) the Seller has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
  - (b) if the Seller suspends work, it:
    - (i) is not in breach of Contract; and
    - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
    - (iii) is entitled to an extension of time to complete the Contract; and
    - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
  - (c) if the Seller exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to the Seller under the Contract and Commercial Law Act 2017; or
    - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Seller suspending work under this provision;
  - (d) due to any act or omission by the Client, the Client effectively precludes the Seller from continuing the Services or performing or complying with the Seller's obligations under this Contract, then without prejudice to the Seller's other rights and remedies, the Seller may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by the Seller as a result of such suspension and commencement shall be payable by the Client as if they were a variation.
- 22.2 If pursuant to any right conferred by this Contract, the Seller suspends the Services and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, the Seller shall be entitled to terminate the Contract, in accordance with clause 20.
- 23. Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 24. Trusts**
- 24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Seller may have notice of the Trust, the Client covenants with the Seller as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the Client will not without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
- 25. General**
- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Wellington Courts of New Zealand.
- 25.3 The Seller shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.5 The Client cannot licence or assign without the written approval of the Seller.
- 25.6 The Seller may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.
- 25.7 The Client agrees that the Seller may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Seller to provide Goods to the Client.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.