

ACOUSTIC FLOORING – TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1 **Client** shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Company to the Client.
- 1.2 **Company** shall mean Acoustic Flooring Holdings Pty Ltd (ACN 605 607 010) as trustee for RMCJ Trust trading as 'Acoustic Flooring' (ABN 97 429 634 283), its successors and assigns or any person acting on behalf of and with the authority of Acoustic Flooring Holdings Pty Ltd (ACN 605 607 010).
- 1.3 **Guarantor** means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 **Goods** shall mean Goods supplied by the Company to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Client.
- 1.5 **Services** shall mean all Services supplied by the Company to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 **Price** shall mean the price payable for the Goods and Services as agreed between the Company and the Client in accordance with clause 4 of this contract.

2. Competition and Consumer Act 2010 (Cth) (CCA) and Fair Trading Acts (FTA)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the full extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by the Company from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Company shall constitute acceptance of these terms and conditions.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Company.
- 3.4 The Client shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, e-mail address or business practice). The Client shall be liable for any loss incurred by the Company as a result of the Client's failure to comply with this clause.
- 3.5 Goods are supplied by the Company only on these terms and conditions of trade to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

- 4.1 At the Company's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Company to the Client in respect of Goods and/or Services supplied; or
 - (b) the Company's quoted Price (subject to clause 4.2) which shall be binding upon the Company provided that the Client shall accept the Company's quotation in writing within thirty (30) days.
- 4.2 The Company reserves the right to change the Price in the event:
 - (a) of a variation to the Company's quotation including without limitation for work required to be performed or additional Goods required to be provided by the Company for reasons, causes, events or requirements not reasonably ascertainable by the Company at the time of submitting a quotation for Goods and/or Services; and/or
 - (b) the cost to the Company of supplying the Goods to the Client increases by more than 13% in any 12 month period, or from the date the Client is provided with a quotation for the Goods by the Company, whichever is the earlier.
- 4.3 Payment for the Goods shall be made to the Company as follows:
 - (a) 30% deposit payable at the date that the Client submits an order with the Company unless otherwise approved/arranged; and
 - (b) unless the Customer has applied for, and has been granted, a credit account, balance of payment must be paid prior to the Goods being dispatched from the Company's warehouse.
- 4.4 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to three percent (3%) of the Price), or by direct credit, or by any other method as agreed to between the Client and the Company.
- 4.5 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.6 All fees of any regulatory, council, local authority or statutory bodies including but not limited to search fees, connection fees, application fees and the like shall be added to the Price except when they are expressly included in the Price.

5. Delivery of Goods and/or Services

- 5.1 At the Company's sole discretion delivery of the Goods shall take place when:
 - (a) the Client takes possession of the Goods at the Company's address or the Company performs the Services; or
 - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Company or the Company's nominated carrier) or the Company performs the Services.
- 5.2 The costs of delivery are in addition to the Price, unless otherwise expressly stated by the Company in writing.
- 5.3 Delivery of indent Goods will take place approximately 8-10 weeks from the date that the Company receives the deposit referred to in clause 4.3 of this Terms and Conditions of Trade.
- 5.4 All delivery dates are estimates only and the Company shall not be liable for any delay in delivery, nor shall the Client be entitled to refuse or to accept delivery except where delay of an unreasonable length has occurred due to:
 - (a) circumstances within the Company's control; and
 - (b) Acts of Nature, war, riots, civil commotions, strikes, lock-outs, trade disputes (provided the Company is not required to settle strikes or lock-outs or other labour difficulties on terms contrary to its wishes), fires, breakdowns, interruptions of transport, Government actions and delay in delivery by the Company's suppliers.
- 5.5 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery. Please note that delivery of the Goods will include boxes weighing approximately 24kg.
- 5.6 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.8 On the date of delivery of the Goods, the Client or its representative is required to be available at the delivery address. In the event that the Client is not available to provide a signature on the pre-arranged date, the Client may be charged for re-delivery.
- 5.9 Due to insurance restrictions, deliveries may only be made to the kerb-side nearest to the delivery address. Deliveries cannot be left outside in porches, garages or any other location. At this time, if the Client lives above the ground floor (i.e. in a flat), the Company is unable to bring the goods inside the building.
- 5.10 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.

- 5.11 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) or perform the Services promptly or at all.

6. Risk

- 6.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Company is entitled without prejudice to any of its rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods) to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

7. Title

- 7.1 The Company and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid the Company all amounts owing for the particular Goods and/or performance of the Services; and
 - (b) the Client has met all other obligations due by the Client to the Company in respect of all contracts between the Company and the Client.
- 7.2 Receipt by the Company 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 and until then the Company's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from the Company to the Client the Company may give notice in writing to the Client to return the Goods or any of them to the Company. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
 - (e) the Client is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Company for the Goods, on trust for the Company; and
 - (f) the Client shall not deal with the money of the Company in any way which may be adverse to the Company; and
 - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
 - (h) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.

8. Application of the PPSA

- 8.1 In this clause 8, PPSA means the *Personal Property Securities Act 2009* (Cth). If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 8.2 This clause 8 applies to the extent that Company's interest in any Goods is a security interest.
- 8.3 The Goods are as defined by these Terms and Conditions of Trade.
- 8.4 The Client acknowledges and agrees that Company may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Client waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- 8.5 The Company can apply amounts it receives from the Client towards amounts owing to it in such order as the Company elects.
- 8.6 If the Client defaults in the performance of any obligation owed to the Company under these Conditions or any other agreement for the Company to supply Goods to the Client, the Company may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions or the PPSA. To the maximum extent permitted by law, the Client and Company agree that the following provisions of the PPSA do not apply to the enforcement by Company of its security interest in the Goods: sections 95, 118, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- 8.7 The Client and Company agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b) to (e) of the PPSA.
- 8.8 The Client must promptly do anything required by Company to ensure that the Company's security interest is a perfected security interest and has priority over all other security interests in the Goods.
- 8.8 Nothing in this clause 8 is limited by any other provision of these Terms and Conditions of Trade or any other agreement between the parties.

9. Defects

- 9.1 The Client shall inspect the Goods on delivery and shall, prior to laying, notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote within two (2) days of the Client becoming aware of such a defect. The Client shall afford the Company 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 conclusively presumed to be free from any defect or damage.
- 9.2 For defective Goods which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods and/or performing the Services or repairing the Goods provided that:
 - (a) the Client has complied with the provisions of clause 9.1 of these Terms and Conditions of Trade;
 - (b) the Company will not accept claims for damages or replacement of the Goods in circumstances where:
 - (i) the Goods have been laid/installed with visible defects;
 - (ii) a variation in, for example, colour or texture occurs from the sample shown to the Client that is within normal commercial tolerance;
 - (iii) the Client has sold the Goods for a situation that is not suitable for the Goods;
 - (iv) the Goods have been treated (other than by the Company) with any agent or substance including, but limited to, anti-soiling or flame-proofing products;
 - (v) the Goods have not been installed in accordance with Australian Standards 2455-1989;
 - (vi) the Goods have faded or changed character when exposed to direct sunlight for a period that exceeds accepted industry standards.
 - (c) 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 reasonable in all of the circumstances;
 - (d) in circumstances where a replacement of Goods that are more than 12 months old is required, a usage factor of 20% per annum will be deducted; and
 - (e) claims for Goods delivered to the Client in a wet condition will not be accepted unless written notification of the wet condition is given to the Company within a period of (5) five days from the actual delivery date. Wet goods should be held at the place of delivery pending advice from the Company.
- 9.3 For avoidance of doubt, Goods will not be accepted for return other than in accordance with clause 9.1 above.

10. Warranty

- 10.1 Subject to the conditions of warranty set out in clause 10.2 the Company warrants that if any defect in any workmanship of the Company becomes apparent and is reported to the Company within two (2) days of the Client becoming aware of such a defect, then the Company will either (at the Company's sole discretion) replace or remedy the workmanship.
- 10.2 The conditions applicable to the warranty given by clause 10.1 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 Company; 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 Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Company's consent.
- (c) in respect of all claims, the Company 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.
- 10.3 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 10.4 The conditions applicable to the warranty given on Goods supplied by the Company can be provided to the Client on request.

11. Intellectual Property

- 11.1 Where the Company has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Company, and shall only be used by the Client at the Company's discretion.
- 11.2 The Client warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.

12. Warranties, Liabilities and Indemnities

- 12.1 The Company acknowledges that consumer legislation contains certain guarantees for the supply of goods or services that cannot be excluded, restricted or modified by this Agreement. For example, for Consumers:
- (a) goods come with non-excludable guarantees that they are of acceptable quality and fit for the purpose for which they are commonly acquired or for a purpose made known to the Company and based on which the goods are supplied, and
 - (b) services come with non-excludable warranties that they will be provided with due care and skill and are fit for the purpose for which they are commonly acquired or for a purpose made known to the Company and based on which the services are supplied.
- Nothing in this Agreement is intended to exclude or restrict the application of such laws.
- 12.2 Except to the extent required by law and as detailed in clause 10 of this Terms and Conditions of Trade, neither the Company or its affiliates, directors, officers, employees, agents, service providers, contractors, successors or assigns will be liable for any losses, damages, liabilities, claims or expenses (including legal costs and defence or settlement costs) whatsoever, whether in contract, tort (including negligence), statutes or otherwise, arising out of, or in any way related to the supply of Goods and/or Services. This limitation applies to all direct, indirect, consequential, special, punitive or other losses, damages, liabilities, claims or expenses you or others may suffer, including for loss of profits, business interruption or loss or corruption of data or information.
- 12.3 The Company's liability for a breach of a condition or warranty which is implied by law and cannot be excluded is limited, to the maximum extent possible, to any of the following at the Company's option:
- (a) the supply of the Goods and/or Services again; or
 - (b) the payment by the cost of having the Goods supplied again or the Goods repaired.
- 12.4 You agree to indemnify and hold the Company, its officers, directors, shareholders, predecessors, successors in interest, employees, agents, subsidiaries and affiliates, harmless from any demands, loss, liability, claims or expenses (including legal fees), made against the Company by any third party due to or arising out of or in connection with the supply of the Goods.

13. Default & Consequences of Default

- 13.1 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 one half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Company.
- 13.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 13.4 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company has exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Security And Charge

- 14.1 Despite anything to the contrary contained in these Terms and Conditions of Trade or any other rights which the Company may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

15. Cancellation

- 15.1 The Company 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 Company shall repay to the Client any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

16. Privacy Act 1988 (Cth)

- 16.1 The Client and/or the Guarantor/s agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Company.
- 16.2 The Client and/or the Guarantor/s agree that the Company may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 16.3 The Client consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Client agrees that personal credit information provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Client and Company or required by law from time to time:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by the Company, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 16.5 The Company may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

17. Unpaid Company's Rights to Dispose of Goods

- 17.1 In the event that:
- (a) the Company retains or regains possession or control of the Goods; and
 - (b) payment of the Price is due to the Company; and
 - (c) the Company has made demand in writing of the Client for payment of the Price in terms of this contract; and
 - (d) the Company has not received the Price of the Goods, then, whether the title in the Goods has passed to the Client or has remained with the Company, the Company may dispose of the Goods and may claim from the Client any and all losses to the Company on such disposal.

18. No Liability

- 18.1 The Company is not liable to the Client in any way for loss or damage suffered directly or indirectly by the Client by reason of:
- (a) defects in existing installations, services or appurtenances in, on our about the Client's premises; or
 - (b) insufficient or defective foundations, walls or other structures not erected by the Company; which may become apparent from, or are accentuated or accelerated by, the provision of the Goods or the performance of the Services by the Company.

19. General

- 19.1 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.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 19.3 The Company shall be under no liability whatsoever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions.
- 19.4 In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.5 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 Company.
- 19.6 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.7 The Client agrees that the Company may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change.
- 19.8 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.
- 19.9 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.

Issue Date: 11 September 2015

Authorised By: Board of Directors