

1. Definitions

- 1.1 "Seller" shall mean Mulford Holdings Limited its successors and assigns or any person acting on behalf of and with the authority of Mulford Holdings Limited.
- 1.2 "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 Seller to the Client.
- 1.3 "Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Services" shall mean all services supplied by the Seller to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Seller to the Client.
- 1.5 "Goods" shall mean all Goods supplied by the Seller to the Client (and where the context so permits shall include any supply of Services as defined above).
- 1.6 "Price" shall mean the price payable for the Services as agreed between the Seller and the Client in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 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 Seller.
- 2.4 The Client shall give the Seller 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, 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.
- 2.5 Services are supplied by the Seller only on the terms and conditions of trade herein 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.

3. Price And Payment

- 3.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Client in respect of Services supplied; or
 - (b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within sixty (60) days.
- 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties or as a result of increases to the Seller in the cost of materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 The Seller may submit detailed progress payment claims in accordance with the Seller's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
- 3.4 At the Seller's sole discretion:
 - (a) payment shall be due on delivery of the Services; or
 - (b) payment for approved Clients shall be 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.
- 3.5 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Seller.
- 3.7 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.
- 3.8 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 and until then the Seller's ownership or rights in respect of the Services shall continue.

4. Delivery Of Services

- 4.1 At the Seller's sole discretion delivery of the Services shall take place when the Client takes possession of the Services at the Client's nominated address.
- 4.2 At the Seller's sole discretion the costs of delivery are included in the Price.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Services as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 4.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

4.5 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Services (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.

5. Risk

- 5.1 If the Seller retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.
- 5.2 The Client acknowledges that Goods supplied may exhibit variations in shade, 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.
- 5.3 The Seller shall be under no liability for inferior existing paintwork where the Seller's paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish.

6. Clients Responsibilities

- 6.1 Where the Seller is providing Services relating to flooring, it is the Clients responsibility to;
- (a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and
 - (b) remove all existing floor coverings, tacks and staples; and
 - (c) ensure the sub-floor is adequately ventilated and is structurally sound; and
 - (d) ensure that the levels of a sub-floor are satisfactory as the floor coverings can only follow the contours of the sub-floor and will not correct unevenness; and
 - (e) 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; and
 - (f) provide adequate dustsheets to protect the Clients furniture and décor. The Seller will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbing walls should be temporarily covered by the Client, until the coatings are dry; and
 - (g) extinguish all naked flames prior to coating including but not limited to pilot lights heaters etc; and
 - (h) supply power to within 8 metres of the project; and
 - (i) ensure that full and final lighting as designed for the completed project is fully operational prior to sanding works commencing, and are made available for use at no cost for the duration of the project. Any costs incurred by the Seller will be invoiced to the Client should this requirement not be met.
- 6.2 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.
- 6.3 The Client shall establish an annual maintenance inspection program. The inspection should concentrate on "high risk" areas such as hatches, drains and around all roof top and deck equipment, as well as a general inspection of the entire area. Inspections should also include the examination of the roof, deck areas if possible from the underside for evidence of leaks, deteriorated decking, structural cracks or movement and other deficiencies. Parapets and edging should also be examined for evidence of cracking, deterioration and moisture infiltration. Failure on the Client's behalf to perform this annual inspection may void any warranty given by the Seller.

7. Access/Damage

- 7.1 The Client shall ensure that the Seller has clear and free access to the work site at all times to enable them to undertake the works. The Seller shall not be liable for any loss or damage to the site unless due to the negligence of the Seller.

8. Title

- 8.1 The Seller and Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Seller all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 8.2 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Seller 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 Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Client is only a bailee of the Goods and until such time as the Seller 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 Seller for the Goods, on trust for the Seller; and
 - (d) 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 Seller will be the owner of the end products; and
 - (e) if the Client fails to return the Goods to the Seller then the Seller or the Seller's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods, and the Seller will not be liable for any reasonable loss or damage suffered as a result of any action by the Seller under this clause.

9. Personal Property Securities Act 1999 (“PPSA”)

- 9.1 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 Services previously supplied by the Seller to the Client (if any) and all Services that will be supplied in the future by the Seller to the Client.
- 9.2 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 Services charged thereby;
 - (c) not register a financing change statement or a change demand 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 Services which would result in a change in the nature of proceeds derived from such sales.
- 9.3 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.
- 9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 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.
- 9.6 The Client shall unconditionally ratify any actions taken by the Seller under clauses 9.1 to 9.5.

10. Client’s Disclaimer

- 10.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Seller and the Client acknowledges that the Services are bought relying solely upon the Client’s skill and judgment.

11. Defects

- 11.1 The Client shall inspect the Services on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, error, omission, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions the Services shall be presumed to be free from any defect or damage. For defective Services, 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) rectifying or repairing the Services.
- 11.2 Services will not be accepted for return other than in accordance with 11.1 above.

12. Warranty

- 12.1 Subject to the conditions of warranty set out in Clause 12.2 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 delivery (time being of the essence) then the Seller will either (at the Seller’s sole discretion) replace or remedy the workmanship.
- 12.2 The conditions applicable to the warranty given by Clause 12.1 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.
- 12.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller 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.

13. Consumer Guarantees Act 1993

- 13.1 If the Client is acquiring Services 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 Services by the Seller to the Client.

14. Default & Consequences Of Default

- 14.1 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.
- 14.2 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 Seller.
- 14.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 14.4 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) the Seller may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. 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.
- 14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) 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.
- 14.6 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 in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller'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.

15. Security And Charge

- 15.1 Despite anything to the contrary contained herein or any other rights which the Seller 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 Seller or the Seller'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 Seller (or the Seller'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 Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller from and against all the Seller'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 Seller or the Seller'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 15.1.

16. Cancellation

- 16.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Client cancels delivery of the Services the Client shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

17. Privacy Act 1993

- 17.1 The Client and the Guarantor/s (if separate to the Client) authorises the Seller to:
- (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
 - (b) disclose information about the Client and/or Guarantors, whether collected by the Seller from the Client and/or Guarantors 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 and/or Guarantors.
- 17.2 Where the Client and/or Guarantors are an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 17.3 The Client and/or Guarantors shall have the right to request the Seller for a copy of the information about the Client and/or Guarantors retained by the Seller and the right to request the Seller to correct any incorrect information about the Client and/or Guarantors held by the Seller.

18. Unpaid Seller's Rights

- 18.1 Where the Client has left any item with Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Seller is in possession of the item;
 - (c) a right to sell the item.
- 18.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

19. Construction Contract Act 2002

- 19.1 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 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 Contractual Remedies Act 1979; 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.

20. General

- 20.1 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.
- 20.2 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 courts of New Zealand.
- 20.3 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.
- 20.4 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 20.5 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 Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.7 The Seller reserves the right to 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 Seller notifies the Client of such change.
- 20.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 20.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 20.10 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.