

## **WANAKA WOOD FLOORS LIMITED - TERMS AND CONDITIONS OF TRADE**

### **1. APPLICATION OF TERMS**

- 1.1** These terms of trade apply to all of the supplies of goods and services from Wanaka Wood Floors Limited (“we” or “us”) to the customer (“you”). These terms replace all earlier written or oral agreements and any terms and conditions contained in any other document used by you. Your acceptance of any goods or services from us indicates your continuing acceptance of these terms of trade.
- 1.2** You may have additional rights under the Consumers Guarantees Act 1993.

### **2. GOODS**

- 2.1** The goods supplied by us (including any incidental supply of services) shall be as described on any invoices, quotation, work authorisation or other forms which are provided by us to you.

### **3. DELIVERY AND RISK**

- 3.1** You are responsible for insurance and risk in the goods from the time they leave our premises.
- 3.2** You agree to pay all delivery costs. If we deliver any order in instalments, then each delivery is a separate contract on these terms.
- 3.3** You do not have the right to possess the goods until they are delivered to you or collected by you. If you ask us to deliver goods to another person or another person collects the goods on your behalf, that person takes possession of the goods for you as your agent, and you are still directly responsible to us on these terms.

### **4. PRICES**

- 4.1** Unless otherwise agreed in writing before you place an order, prices for goods or services are those stated in our price list, or otherwise in force at the date when you place the order. Prices are subject to alteration without notice.
- 4.2** Unless we state otherwise in writing, quoted prices are exclusive of GST, and are valid only for the time stated on any quotation, or if no time is stated, on the date of quotation only.
- 4.3** You must pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.
- 4.4** Orders may be cancelled only if we agree in writing to the cancellation and the order has not been processed by us. We may charge you a cancellation fee.

### **5. PAYMENT AND PROPERTY**

- 5.1** Unless we have agreed in writing to extend credit to you, you must pay for all goods in full before delivery or collection. You must pay a deposit of 25% of the sale price of the goods when you place an order with us.

- 5.2** Where we have agreed in writing to extend credit to you, and unless otherwise advised to you in writing and signed by us, you must pay in full, without deduction or set-off, within 20 days of the date of invoice unless otherwise agreed in writing. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- 5.3** If you have not paid in full by the due date, you will forfeit any discounts which we may have offered to you, and we may place you on stop credit.
- 5.4** If you have not paid in full within thirty days after the date of invoice, we may charge you interest compounding monthly on the unpaid overdue balance at a rate of 5% per annum above the current overdraft rate charged by our bankers, and we may charge costs (including collection cost and legal cost on a solicitors/client basis) and suspend delivery or further goods or performance of our services until your account is paid in full.
- 5.5** Payments which you make to us will be applied first to any amount owing in respect of services, and then to payment for goods supplied by us.
- 5.6** Property and ownership of goods, whether in original form or incorporated in, comingled with, or attached to another product, will not pass to you but will remain with us until we receive payment in full of the purchase price of the goods and all other amounts that you owe us for any reason.
- 5.7** Until property passes to you, you shall hold any goods and proceeds of any kind in trust in a fiduciary capacity as bailee, and store them in a manner to enable them to be identified and cross referenced to the particular invoices.
- 5.8** You must not resell or part with possession of any goods that we supply for your use before you have paid for it in full, unless we have given you written consent.
- 5.9** If you have not paid for the goods, and we reasonably believe that the goods have been or will be destroyed, damaged, disposed of, sold, endangered, removed or concealed, or that you are or will be in breach of any parts of this clause 4, we or our agent may enter your property without further notice to you or to any other person and remove any goods which are our property, using such force as is necessary and without prejudice to our rights.
- 5.10** Where you acquire goods from us for your personal, domestic or household use, nothing in this clause 4 will limit or derogate from rights you may have under the Credit Repossession Act and we will comply with that act in exercising our powers under this clause.
- 5.11** You indemnify us against all costs and claims in respect of our exercise of rights under this clause 5.

## **6. SECURITY INTEREST**

- 6.1** If we already have a perfected security interest in the goods we supply to you together with their proceeds, that security interest is continued under these terms of trade. Otherwise, you grant us a security interest in the goods we supply to you. Our security interest covers the goods together with proceeds of all kinds to the value of all goods and services that we have supplied to

you, whether or not those goods have become comingled into or mixed with other goods. The goods and services subject to the security interest will be described on our invoices.

- 6.2** You agree that you will do all acts necessary and provide us on request with all information that we require to register a financing statement over the goods and any proceeds of sale of those goods. You waive all rights to receive a copy of any verification statement of a financing statement.
- 6.3** You must advise us immediately in writing of any changes to information you have provided to us, and at least 12 business days before changing your name, your company name, or your trading name.
- 6.4** You agree that you will supply us, within 2 business days of our written request, with copies of all security interests registered over your personal property, and you authorise us as your agent to request information from any secured party relating to any security interest which is held in any personal property which is held in or has been in your possession or control.
- 6.5** You must reimburse our reasonable cost, including legal costs on a solicitor/client basis, associated with the discharge or amendment of any financing statement registered by us, whether or not the change was initiated by you.
- 6.6** If we repossess goods under this agreement, we may retain those goods or dispose of them without notice to you or to any other person, and after deducting reasonable costs, we will credit any surplus by way of set-off against any sums owing to us. We shall not be obliged to issue you with a statement of account or to pay any person other than you or your receiver or liquidator any sum in excess of the total amount you owe us at the time we credit your account. We will not be obliged to reinstate this agreement or resupply any repossessed inventory or equipment to you.
- 6.7** You authorise us to search the Personal Property Security Register at any time for any information about you, or if you are a company, your parent or associated companies.

## **7. DEFECTS AND RETURNS**

- 7.1** All claims for shortage or delivery damage or failure to comply with the description or quote must be made to the carrier and to us within five business days after the date of the delivery (time being of the essence), or in the case of non-delivery, within two business days of the due date for delivery. You shall afford us an opportunity to inspect the goods within a reasonable time following delivery if you believe the goods are defective in any way. If you fail to comply with the requirements of this clause, the goods shall be presumed to be free of any defect or damage.
- 7.2** We will use our best efforts to deliver goods, or perform services, in a timely manner, but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance.
- 7.3** For any defective goods which we have agreed in writing that you are entitled to reject, our liability is limited to either replacing the goods or repairing the goods (at our option).

- 7.4** You acknowledge and agree that returns shall only be accepted by us in accordance with our returns policy as notified to you from time to time on our website or otherwise in writing, and that you may receive a credit for goods returned only if we have consented in writing.
- 7.5** However, nothing in these terms of trade or in the returns policy will limit or affect any rights that a non-business customer may have under the Consumer Guarantees Act 1993.

## **8. LIMITATION OF LIABILITY**

- 8.1** We will not be liable for any losses of any kind or any delay in supplying goods or services which are caused in whole or in part by circumstances beyond our reasonable control, and we will not be liable for any losses or costs incurred as a result of any user of any product suffering any injury, medical condition or death while using the goods supplied by us.
- 8.2** We are not liable for any losses of any kind caused by your failure to comply with instructions for any goods sold by us.
- 8.3** Subject to clause 8.1 and 8.2, our liability shall be limited to the value of defective goods or services supplied, and none of us, our employees, contractors or agents or any of their materials or components, or any supplies or services, will be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This limitation of liability includes, but is not limited to costs (including costs of returning goods to us or returning to manufacturer), indirect or consequential loss, loss of contracts, loss of products, damage caused by or arising from delays in delivery, or faulty or delayed installation, unreasonable use, negligence (including a failure to do something that should have been done or to prevent something from happening), faulty specifications in design, or faulty materials or components of the goods.

## **9. PERSONAL INFORMATION**

- 9.1** We will use any personal information that you supply for credit, administration, service and marketing purposes. You have the right of access to, and to ask for correction of, your personal information.
- 9.2** You authorise any person or company to provide us with any information we may require in response to your application for credit and/or other enquiries, and you authorise us to search the Personal Property Securities Register for any information about you or (in the case of a company) your parent or associated companies.
- 9.3** You have the right to request a copy of the information which we retain about you, and to request us to correct any incorrect information which we hold about you.

## **10. GENERAL CONDITIONS**

- 10.1** We may change these terms of trade from time to time by notice to you in writing which may be by email.

- 10.2** If we fail to enforce any terms or to exercise any right under these terms of trade at any time, we have not waived that right.
- 10.3** You may not assign or sub-contract any of your rights or obligations under these terms of trade.
- 10.4** If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect, and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.
- 10.5** Any agreement between us is governed by the laws of New Zealand.
- 10.6** Any dispute is subject to the exclusive jurisdiction of the New Zealand Courts.