

Terms and Conditions of Sale

1. APPLICATION:

- 1.1 These Conditions alone shall govern and be incorporated in every contract for the sale of goods made by or on behalf of the Seller with any customer ("The Buyer"). They shall apply in place of and prevail over any terms or conditions, (whether or not in conflict or inconsistent with these Conditions), contained or referred to in any documentation submitted by the Buyer or in correspondence or elsewhere or implied by trade custom, practice or course of dealing unless specifically excluded or varied in writing by a director or other authorised representative of the Seller and any purported provisions to the contrary are hereby excluded or extinguished.
- 1.2 Acceptance by the Buyer of delivery of the goods shall (without prejudice to Condition 2 or any other manner in which acceptance of these Conditions may be evidenced) be deemed to constitute unqualified acceptance of these Conditions.
- 1.3 If, subsequent to any contract of sale which is subject to these Conditions, a contract of sale is made with the same buyer without reference to any conditions of sale or purchase, such contract howsoever made shall be deemed to be subject to these Conditions.

2. QUOTATIONS AND ACCEPTANCE:

- 2.1 Any quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise the same at any time prior to the Seller's acceptance of the Buyer's order.
- 2.2 The Seller's acceptance of the Buyer's order (including telephone orders) shall be effective only where such acceptance is made on the Seller's printed Order Confirmation form duly countersigned by an authorised representative of the Seller.

3. PRICES:

- 3.1 The prices payable for the goods shall be those stated on the Seller's Order Confirmation form PROVIDED THAT the Seller shall have the right at any time to revise prices to take into account inflation and/or increases in costs, overheads, the increase or imposition of any tax duty or other levy or any variation in exchange rates in which case the Seller shall use reasonable endeavours to give the Buyer one month's prior notice of such price revisions.
- 3.2 Unless otherwise specified the price stated on the Seller's Order Confirmation shall be exclusive of VAT and any other tax or duties payable by the Buyer, which shall be added to the price and payable by the Buyer in addition.
- 3.3 Any disputes in relation to pricing following invoicing should be notified to the Seller by the 28th of the month following the date of invoice.

4. TERMS OF PAYMENT:

- Subject (where appropriate) to Condition 7:
- 4.1 Payment of invoices shall unless otherwise agreed in writing be made in full without any deduction or set-off within the 28th of the month following the month of invoice. The date of invoice shall be the date on which the Seller sends the notification of an invoice, or email containing the invoice (as appropriate). The Buyer is responsible for regularly checking the content of their electronic mail. Time of payment shall be of the essence of all contracts between the Buyer and the Seller. The Seller reserves the right to suspend the provision of goods to the Buyer where any amounts are overdue under any contract with the Buyer until all such amounts have been paid.
 - 4.2 Any extension of credit allowed to the Buyer may be changed or withdrawn at any time.
 - 4.3 By placing an order with the Seller, the Buyer agrees to pay all invoices by electronic means whether BACS, transfer, or credit card, unless otherwise agreed with the Seller.
 - 4.4 The surcharge for paper invoicing shall not apply where technical difficulties result in invoices being in an unintelligible form, or where the Buyer is unable to access the electronic invoice provided that they contact the Seller within 2 Business Days of notification of the invoice, otherwise the surcharge will continue to apply.
 - 4.5 Interest shall be payable on overdue accounts at the rate of 4% over Barclays Bank PLC base rate from time to time to run from the due date for payment until receipt by the Seller of the full amount whether before or after judgment.
 - 4.6 If in the opinion of the Seller the credit-worthiness of the Buyer shall have deteriorated prior to delivery the Seller may require full or partial payment of the price prior to delivery or the provision of security for payment by the Buyer in a form acceptable to the Seller.

- 4.7 All payments made by the Buyer to the Seller shall be apportioned first to goods which have been resold by the Buyer and then to goods which remain in the possession or under the control of the Buyer notwithstanding any purported contrary apportionment by the Buyer.

5. DELIVERY:

- 5.1 Delivery or despatch dates mentioned in any quotation, Order Confirmation form or elsewhere are approximate only and not of any contractual effect and the Seller shall not be under any liability to the Buyer in respect of any failure to deliver on any particular date or dates. Time for delivery shall not be of the essence of any contract to which these Conditions apply and shall not be made so by the service of any notice.
- 5.2 Delivery shall be at the Buyer's premises unless otherwise stipulated or agreed by the Seller. The Buyer shall be responsible for ensuring that its premises are suitable for delivery to take place and that good roads to the point of delivery are available. The Buyer shall be solely responsible for unloading of goods at the point of delivery. Unless agreed in writing the Buyer shall unload and inspect the goods immediately on their arrival at its premises. The Buyer shall indemnify the Seller against any and all liabilities claims or costs arising as a result of the Seller or its sub-contractors assisting the Buyer in the unloading, loading or other removal of the goods from the point of delivery.
- 5.3 If the Buyer refuses or fails to take delivery of goods tendered in accordance with the contract or fails to take any action necessary on its part for delivery and/or shipment of the goods the Seller shall be entitled to terminate the contract with immediate effect, to dispose of the goods as the Seller may determine, and to recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure (including without limitation storage costs from the due date of delivery).
- 5.4 Unless otherwise expressly agreed the Seller may effect delivery in one or more instalments. Where delivery is effected by instalment each instalment shall be treated as a separate contract.
- 5.5 Section 32(2) of the Sale of Goods Act 1979 shall not apply. The Seller shall not be required to give the Buyer the notice specified in Section 32(3) of that Act.
- 5.6 Batch matching of goods is only guaranteed per individual delivery, the Seller shall not be liable for any consequential costs incurred by the Buyer where mixed batches are laid. Upon acknowledgement of supply from Forbo when placing a Call Off order, the Seller commits to supplying the volume of goods.

6. RISK & INSURANCE:

- 6.1 Risk in the goods shall pass to the Buyer on delivery.
- 6.2 From the time of delivery until property in the goods passes to the Buyer in accordance with Condition 8 the Buyer shall insure the goods for their full value with a reputable insurance office. Upon request, the Buyer shall use reasonable endeavours to get the Seller's interest in the goods noted on the insurance policy. Until property in the goods passes to the Buyer the proceeds of any claim on such insurance policy shall be held on trust for the Seller and shall forthwith account to the Seller with such proceeds.

7. RETURNS & CANCELLATION:

- 7.1 In circumstances other than those contemplated in Conditions 10.1(c) or (e), the Buyer may at the Seller's sole discretion be entitled to return the goods provided that (i) the Buyer notifies the Seller in writing within 14 days of receipt of the goods by the Buyer of its intention to return the goods, (ii) the goods' return is subsequently approved in writing by an authorised representative of the Seller, (iii) the goods returned consist of full rolls or boxes only, (iv) the Buyer follows the Seller's returns procedure as notified to the Buyer at the time that the return is authorised, and (v) the Buyer pays an administration fee to the Seller equal to 30% of the price of the goods returned.
- 7.2 The buyer may at the Seller's sole discretion request the cancellation of an order placed by the buyer provided that (i) the processing and production of the order has not begun (ii) the cancellation is subsequently approved in writing by an authorised representative of the Seller (iii) the Buyer pays for full production costs for refusal to take delivery of any made-to-order product items (iv) the Buyer pays an administration fee to the Seller equal to the 30% of the price of the goods for stocked items if the shipment despatch has begun from the originating factory.

8. TITLE:

- 8.1 Notwithstanding delivery and passing of risk, the goods shall remain the property of the seller until such time as the buyer shall have paid to the seller the agreed price (together with any accrued interest) and all other amounts owed by the buyer to the seller.
- 8.2 Until property in the goods has passed the Buyer shall be in possession of the goods in a fiduciary capacity and shall:
 - (a) not part with possession of the goods otherwise than in accordance with Condition 8.5;

Terms and Conditions of Sale

- (b) take proper care of the goods and take all reasonable steps to prevent any damage to or deterioration of them;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the goods;
- (d) keep the goods free from any charge, lien or other encumbrance and store the goods separately from other goods of the Seller or third parties in such a way to show clearly that they belong to the Seller;
- (e) notify the Seller forthwith upon the happening of any of the events set out in Condition 8.3(b); and
- (f) give the Seller such information relating to the goods as the Seller may from time to time require.

- 8.3 The Seller reserves the right to repossess and resell any goods to which it has retained title and the Seller's consent to the Buyer's possession of the goods and any right the Buyer may have to possession of the goods shall in any event cease:

- (a) if any sum owed by the Buyer to the Seller (whether in respect of the goods or otherwise) is not paid to the Seller by the date when it is due; or
- (b) if the Buyer (being an individual) enters into a voluntary arrangement or compounds with his creditors or if a petition is presented for the making of a bankruptcy order against him or if (being a company) an order is made or a resolution is passed for the winding-up of the Buyer (otherwise than for the purposes of amalgamation or reconstruction previously approved in writing by the Seller) or if a meeting is called to approve the appointment of a liquidator to the Buyer or if a petition is presented to the Court for the appointment of a liquidator to the Buyer or if a receiver, manager, administrative receiver or an administrator is appointed or a petition is presented to the Court for the appointment of an administrator to the Buyer or over any part of the Buyer's undertaking or if the Buyer makes a proposal for or enters into any compromise or arrangement with its creditors or if circumstances arise which might entitle the Court or a creditor to appoint a receiver, manager, administrative receiver or administrator or which might entitle the Court to make a winding-up order or if the Buyer takes or suffers any similar or analogous action in consequence of debt in any jurisdiction; or

- (c) if the Buyer commits a breach of any contract with the Seller.
- 8.4 The Buyer hereby grants an irrevocable right and licence to the Seller and its servants and agents to enter upon all or any of the Buyer's premises with or without vehicles during normal business hours for the purpose of inspecting and/or repossessing goods to which it has retained title. This right and licence shall continue to subsist notwithstanding the termination for any reason of any contract which is subject to these Conditions and is without prejudice to any accrued rights of the Seller under such contracts or otherwise.

- 8.5 Whilst the Buyer is in possession of the goods with the Seller's consent (but not otherwise) the Buyer may in the ordinary course of its business sell the goods provided that:

- (a) as between the Buyer and its sub-buyer or customer the Buyer shall sell the goods as principal and the Buyer shall not and shall not be empowered to commit the Seller to any contractual relationship with or liability to the sub-buyer or customer or any other person;
- (b) as between the Seller and the Buyer, the Buyer shall sell the goods in a fiduciary capacity as agent for the Seller; and
- (c) notwithstanding any agreed period of credit for payment of the price of the goods the Buyer shall pay the proceeds of such sales to the Seller forthwith upon receipt. The Buyer acknowledges that as a consequence of its fiduciary relationship with the Seller it is under a common law duty to hold the proceeds of any such sales or hiring on trust for the Seller and not to mingle such proceeds with any other monies or pay them into an overdraft bank account, such common law duty being unaffected by and wholly independent of the terms of these Conditions.

- 8.6 The Buyer agrees immediately upon being so requested by the Seller to assign to the Seller all rights and claims which the Buyer may have against its sub-buyers or customers arising from such sales until payment is made in full as stated above.

- 8.7 Notwithstanding the provisions of this Condition 8 the Seller shall be entitled to bring an action against the Buyer for the price of the goods in the event of non-payment by the Buyer by the due date even though property in the goods has not passed to the Buyer and/or shall have the right by notice to the Buyer at any time after delivery to pass property in the goods to the Buyer as from the date of such notice.

9. THIRD PARTY RIGHTS:

- 9.1 The Buyer shall indemnify the seller against any and all liabilities claims and costs incurred by or made against the Seller as a direct or indirect result of the carrying out of any work required to be done on or to the goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party.

- 9.2 If at any time any allegation of infringement of patent, copyright or design rights is made in respect of the goods or if in the Seller's reasonable opinion such an allegation is likely to be made, the Seller may at its option and at its own expense:

- (a) modify or replace the goods without detracting from overall performance thereof, so as to avoid the infringement; or
- (b) procure for the Buyer the right to continue to use the goods; or
- (c) repurchase the goods at the price paid by the Buyer less depreciation at such rate as is applied by the Seller to its own equipment.

- 9.3 The Buyer shall notify the Seller forthwith of any claim made or action brought or threatened alleging infringement of the rights of any third party. The Seller shall have control over and shall conduct any such proceedings in such manner as it shall determine. The Buyer shall provide all such reasonable assistance as the Seller may request. The cost of any such proceedings shall be borne by the Seller, subject to Condition 9.1 above.

- 9.4 Where the Seller or its employees or agents design the goods pursuant to a commission from the Buyer (whether in consideration of an order or otherwise) then the Buyer hereby assigns the design right in that design (and the right to apply for registration of that design, if applicable) to the Seller.

10. LIABILITY:

- 10.1 To the maximum extent permitted by law, the seller shall not be liable to the buyer:-
 - (A) for non-delivery unless a written claim is received by the seller within 7 days from the date of the seller's invoice or advice note, whichever is the shorter;
 - (B) for shortages in quantity or incorrect material delivered, unless the buyer notifies the seller of any claim within 7 days of receipt of the goods.
 - (C) for damage to or loss of the goods or any part of them in transit (where the goods are carried by the seller's own transport or by a carrier on behalf of the seller) unless the buyer notifies the seller of any such claim within 3 days of receipt of the goods or the scheduled date of delivery whichever shall be the earlier;
 - (D) for defects in the goods caused by fair wear and tear, abnormal or unsuitable conditions of storage or use or any act, neglect or default of the buyer or of any third party;
 - (E) for other defects in the goods unless covered by an applicable written product guarantee.
 - (F) for pricing claims unless the buyer notifies the seller of any claim for pricing disputes by the 28th of the month following the date of the original invoice.
 - (G) for consequential charges due to mixed batches being laid together if an order is requested for delivery over multiple shipment dates.
- 10.2 Where liability is accepted by the seller under condition 10.1 the Seller's only obligation shall be at its option to make good any shortage or non-delivery and/or as appropriate to replace or repair any goods found to be damaged or defective and/or to refund the cost of such goods to the buyer.
- 10.3 Whilst the seller will use its reasonable endeavors to ensure that an exact match of colour and pattern is achieved in respect of different batches of goods, variations do occur due to changes in the nature of the raw materials used in the manufacture of the goods. No liability is therefore accepted by the seller in respect of any variations in colour and/or pattern between different batches of goods. The buyer should ensure that batches of goods are not mixed and that goods required for any particular area are the subject of a single delivery. The seller is unable to guarantee exact batch matching if goods are ordered as a single order but taken over multiple delivery dates.
- 10.4 The seller shall not be liable for any loss, damage or liability of any kind suffered by any third party directly or indirectly caused by repairs or remedial work carried out without the seller's prior written approval and the buyer shall indemnify the seller against any and all claims and costs arising out of such claims to the extent that such repairs or remedial work have been performed by the buyer or its agents.
- 10.5 The seller's aggregate liability to the buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstance exceed the cost of the defective, damaged or undelivered goods which give rise to such liability as determined by net price invoiced to the buyer in respect of any occurrence or series of occurrences.
- 10.6 Subject to this condition 10 and to the maximum extent permitted by law:
 - (A) all conditions warranties and representations expressed or implied by statute common law or otherwise in relation to the goods are hereby excluded;

Terms and Conditions of Sale

- (B) the seller shall be under no liability to the buyer for any loss damage or injury, direct or indirect, resulting from defects in design, materials or workmanship or otherwise howsoever arising (and whether or not caused by the negligence of the seller its employees or agents) other than liability for death or personal injury resulting from the seller's negligence;
- (C) the seller shall have no liability for any indirect or consequential losses or expenses suffered by the buyer, howsoever caused, and including without limitation loss of anticipated profits, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.
- 10.7 In respect of consumer transactions only (as defined by The Consumer Transactions (Restrictions on Statement) Order 1976 as amended) nothing in these Conditions shall affect the statutory rights of the consumer.
- 10.8 Nothing in these Conditions shall exclude or limit any liability for death or personal injury resulting from a party's negligence, for fraud or fraudulent misrepresentation, or for any other liability that cannot be excluded or limited by law.
- 11. PACKAGING:**
The Buyer shall meet the cost of any special packaging requested by the Buyer or any packaging rendered necessary by delivery by any means other than the Seller's normal means of delivery.
- 12. CONFIDENTIALITY:**
All drawings, designs, specifications and information submitted by the Seller shall be treated as confidential and shall not be disclosed to any third party without the Seller's written consent or used by the Buyer other than for the purposes expressly authorized by the Seller.
- 13. LICENCES AND CONSENTS:**
If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the goods by the Buyer the Buyer shall obtain the same at its own expense and if requested produce evidence of the same to the Seller on demand. Failure to obtain any licence or consent shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.
- 14. FORCE MAJEURE:**
- 14.1 The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of goods by the Seller being prevented hindered delayed cancelled or rendered uneconomic by reason of circumstances or events beyond the Seller's reasonable control ("force majeure circumstances") including but not limited to Act of God war riot strike lock-out trade dispute or labour disturbance accident breakdown of plant or machinery fire flood storm difficulty or increased expense in obtaining working materials or transport or other circumstances affecting the supply of the goods or of raw materials by the Seller's normal source of supply or the manufacture of the goods by the Seller's normal means or the delivery of the goods by the Seller's normal route or means of delivery or any failure by the Buyer to comply with its obligations under the relevant contract with the Seller.
- 14.2 In force majeure circumstances the Seller may in its sole discretion terminate any contract for the supply of goods pursuant to these Conditions or cancel delivery of goods to the Buyer or may, with the agreement of the Buyer, deliver goods at an agreed rate of delivery commencing after any suspension of deliveries.
- 14.3 If due to force majeure circumstances the Seller has insufficient stocks to meet all its commitments the Seller may apportion available stocks between its customers at its sole discretion.
- 15. SAMPLES:**
Any samples or trade cards supplied to the Buyer are supplied solely for information and in no way import any express or implied conditions or warranties as to quality, description, fitness for purpose or merchantable quality and the Buyer shall be deemed to have satisfied itself as to such matters prior to ordering the goods.
- 16. TERMINATION:**
- 16.1 If the Buyer (being an individual) enters into a voluntary arrangement or if a petition is presented for the making of a bankruptcy order against him or if he compounds with his creditors or if (being a company) an application for an order is made or a resolution is passed for the winding-up of the Buyer (otherwise than for the purposes of amalgamation or reconstruction previously approved in writing by the Seller) or if a meeting is called to approve the appointment of a liquidator to the Buyer or if a petition is presented to the Court for the appointment of a liquidator to the Buyer or if a receiver, manager, administrative receiver or an administrator is appointed or a petition is presented to the Court for the appointment of an administrator to the Buyer or over any part of the Buyer's undertaking or if the Buyer makes a proposal for or enters into any compromise or arrangement with its

creditors or if circumstances arise which might entitle the Court or a creditor of the Buyer to appoint a receiver, manager, administrative receiver or administrator or which might entitle the Court to make a winding-up order or if the Buyer takes or suffers any similar or analogous action in consequence of debt in any jurisdiction or commits a breach of any contract between the Seller and the Buyer the Seller may without prejudice to any of its other rights stop any goods in transit and/or suspend further deliveries to the Buyer and/or exercise its rights under Condition 8 and/or by notice in writing to the Buyer terminate any contract with the Buyer.

- 16.2 Upon termination of any contracts pursuant to Condition 16.1 any indebtedness of the Buyer to the Seller shall become immediately due and payable and the Seller shall be relieved of any further obligation to supply any goods to the Buyer pursuant to such contracts.
- 16.3 Conditions 5.2, 9.1, 12 and 24, and the Seller's (but not the Buyer's) rights contained in Conditions 8 and 10 shall survive the termination of any contract to which these Conditions apply.
- 17. ASSIGNMENT:**
None of the rights or obligations of the Buyer under these Conditions may be assigned or transferred in whole or in part without the prior written consent of the Seller.
- 18. HEALTH AND SAFETY AT WORK ETC:**
The Buyer agrees to pay due regard to any information supplied by the Seller and relating to the use for which the goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work, and the Buyer undertakes to take such steps as may be specified by the above information to ensure that as far as reasonably practicable the goods will be safe and without risks to health at all times as are mentioned above.
- 19. LIEN:**
The Seller shall be entitled to a general lien on all goods and property owned by the Buyer in the Seller's possession (although the Buyer may have paid for the same in full) in satisfaction of the whole or part as the case may be of the unpaid price of any goods sold and delivered to the Buyer under any contract. The Seller shall be entitled to offset any sum or sums owing to it from the Buyer against any sums owed to the Buyer by the Seller.
- 20. HEADINGS:**
The headings of these Conditions do not form part of the Conditions and shall not affect their interpretation.
- 21. SEVERABILITY:**
If any of these Conditions is held to be invalid, illegal or unenforceable in any respect whether in whole or in part such invalidity, illegality or unenforceability shall not prejudice the effectiveness of the rest of these Conditions or the remainder of any part of a Condition affected.
- 22. WAIVER:**
Failure by the Seller to exercise or enforce any rights under any contract subject to these Conditions shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right at any time thereafter.
- 23. NOTICES:**
Any notice hereunder shall be in writing and be deemed to have been duly given if delivered personally or sent by prepaid first class post (airmail if to an address outside the United Kingdom) telex or telefax to the party concerned at its last known address. Notices delivered personally shall be deemed to have been given when delivered, notice sent by first class post shall be deemed to have been given seven days after despatch (fourteen days if given by airmail) and notices sent by telex or telefax shall be deemed to have been given on the date of despatch.
- 24. GOVERNING LAW:**
Any contract to which these Conditions apply shall be governed by and construed in accordance with the Laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.



FLOORING SYSTEMS