



TERMS AND CONDITIONS OF SALE

These are some of the Terms and Conditions of Sale of all goods, merchandise and services ("the goods") supplied by **FORBO FLOORCOVERINGS PTY LTD ACN 004 533 251 ABN 87 004 533 251** and its associated and subsidiary companies (all of which are referred to as "Forbo") to any person, firm or company placing an order with Forbo for the purchase of any goods ("the Customer"). **For a full set of Terms and Conditions of Sale, which may alter from time to time, please refer to Forbo's website, www.forbo-flooring.com.au.**

1. GENERAL

- 1.1 All orders placed with Forbo shall only be accepted subject to these Terms and Conditions.

2. PRICES

- 2.1 All prices shall be those referred to in Forbo's price lists and/or arrangements current at the date of Invoice.

- 2.2 Prices shall be subject to change without notice.

3. TERMS OF PAYMENT

- 3.1 The granting of Credit shall be at the absolute discretion of Forbo and unless otherwise demanded by Forbo, the Customer shall make payment of all amounts payable within thirty (30) days after the end of the month in which delivery is made or thirty (30) days from the date of the Invoice, whichever is the earlier.

- 3.2 Customers shall not be entitled to withhold payments by reason of account query, dispute or set off.

- 3.3 If the Customer fails to make payment in accordance with Clause 3, Forbo shall be entitled to:-

- Require the payment of cash upon delivery of any further goods;
- Charge an interest charge at the rate of one point five per centum (1.5%) per month on a cumulative basis calculated on a day to day basis on any monies due but unpaid;
- Claim from the Customer all costs, expenses and charges incurred on any account whatsoever on an indemnity basis including but not limited to any action taken by Forbo to recover monies or goods owing by the Customer;
- Credit any payments received from the Customer first against any interest charges and costs and all such charges shall be payable on demand;
- Cease any further deliveries to the Customer and to terminate any agreement in relation to goods that have not been delivered.

4. DELIVERY

- 4.1 Any date or time quoted for delivery is an estimate only and failure to delivery at that date or time shall not confer any right of cancellation or refusal of delivery on the Customer or render Forbo liable for any loss or damages.

- 4.2 Forbo's obligation to deliver shall be discharged on arrival of the goods at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Customer shall unload the goods upon delivery, **provided that** if the Customer is unable or unwilling to accept physical delivery of the goods when the goods are ready for delivery, Forbo shall be entitled to charge a fee for any delay experienced or arrange for the storage of the goods at the risk and cost of the Customer including all transportation, storage and other consequential costs. Forbo may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions

5. INSPECTION

- 5.1 The Customer shall examine the goods immediately after delivery and Forbo shall not be liable for any misdelivery, shortage, defect or damage unless Forbo receives details in writing within seven (7) days of the date of delivery of the goods.

6. PROPERTY AND RISK

- 6.1 Notwithstanding delivery of the goods or their installation, property in any given goods shall remain with Forbo until the Customer has paid and discharged any and all other indebtedness to Forbo on any account whatsoever.

- 6.2 The risk in the goods shall pass to the Customer

upon delivery to the Customer or his agent or to a transport

- 6.3 company nominated by the Customer.

- 6.4 The Customer acknowledges that it is in possession of

- 6.5 the goods solely as a bailee for Forbo until payment as defined in clause 3 has been made in full to Forbo and until such payment:

- 6.6 The Customer shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following delivery;

- 6.7 The Customer shall store the goods separately from any other goods and in a manner which clearly identifies the goods as the property of Forbo and shall maintain records of goods owned by Forbo. The Customer shall allow Forbo to inspect these records and the goods themselves on request.

- 6.8 The Customer hereby irrevocably grants to Forbo, its agents and servants, an unrestricted right and licence, without notice to enter premises occupied by the Customer to identify and remove any of the goods the property of Forbo without in any way being liable to the Customer or any person claiming through the customer.

- 6.9 Forbo licenses the Customer to install the goods. If the goods are affixed to other materials, the totality thereof shall be the sole and exclusive property of Forbo until payment as defined in Clause 3 has been made in full to Forbo.

- 6.10 The Customer shall be at liberty to agree to sell the goods (independently or affixed to other materials) subject to the condition that until payment has been made in accordance with clause 3, the Customer shall sell as an agent and bailee for Forbo and that the entire proceeds from the sale thereof shall be held in a separate account on trust for Forbo.

- 6.11 The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade may be revoked at any time by Forbo and shall automatically cease if a Receiver is appointed over any of the assets on the undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or administration or calls a meeting of, or makes any arrangement or composition with, creditors or commits any act of bankruptcy or if the Customer is in default of any of its obligations to Forbo.

7. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPS ACT")

- 7.1 The Customer acknowledges and consents to Forbo maintaining registration on the register of any security interest contemplated by these Terms in any manner Forbo considers appropriate. The Customer agrees to execute all documents and provide all information and assistance required by Forbo, to ensure registration and maintenance of any security interest.

- 7.2 The Customer waives any right to receive notice of a verification statement in relation to any registration in respect of the goods.

- 7.3 The Customer agrees not to register a financing change statement in respect of a security interest contemplated by these Terms, or in favour of a third party, without Forbo's prior written consent.

- 7.4 The Customer hereby agrees to waive or exclude such Sections of the PPS Act as Forbo may require, subject to those Sections being capable of exclusion.

- 7.5 For the purpose of section 20(2) of the PPS Act, the collateral is the Goods, including any Goods provided by Forbo from time to time. These Terms are a security agreement for the purposes of the PPS Act.

8. WARRANTIES

- 8.1 Neither party excludes or limits the application of any Statute (including the *Competition and Consumer Act 2010* (Cth) as amended from time to time ("the Act")),

- 8.2 where to do so would contravene that Statute or cause any provision of these Terms and Conditions to be void.

- 8.3 To the extent permitted by law, all implied conditions and warranties are excluded. To the extent that any implied conditions and warranties cannot be excluded, the Customer's sole and exclusive remedy for any loss or damage howsoever arising is limited to any one of the following, as determined by Forbo:

- In the case of any Goods supplied by Forbo:
 - the replacement of the relevant Goods or supply of equivalent Goods; or
 - the repair of the Goods; or
 - after prior agreement between Forbo and the Customer, payment of the cost of replacing or having the Goods replaced or repaired; or
 - reimbursement of some or all amounts paid by the Customer for the Goods.

- 8.4 Goods which are not manufactured by Forbo are subject solely to the warranties (if any) specified by the manufacturers or the third party suppliers to Forbo, and the Customer acknowledges that, to the extent permitted by law, Forbo gives no warranties beyond such manufacturers or suppliers warranties.

- 8.5 Subject to the Act and any other legislation, Forbo is not liable to the Customer for any loss or damage which may, without limiting the generality of the foregoing, arise directly or indirectly in respect of the Goods, any defects in the Goods and/or of its officers, agents, employees to comply with the Contract or any obligation imposed by law.

- 8.6 If the Customer is considered a Consumer, Forbo's goods come with guarantees that cannot be excluded under the Australian Consumer Law. A Consumer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. A Consumer is also entitled to have the Goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

- 8.7 The warranty period for the goods varies according to the specific warranties provided by different Manufacturers. Customers should contact their Sales Representative for details of each warranty. Forbo will bear the cost of valid warranty claims. The cost of rejected warranty claims are to be born by the Customer. Any Customer with a warranty or warranty expenses claim should notify their Sales Representative in writing at 23 – 24 Ormsby Place, Wetherill Park, NSW, 2164.

9. RETURNS

- 9.1 Other than in respect of Forbo's obligations pursuant to Clause 8 hereof Forbo shall not be liable to accept any returned goods but may in its absolute discretion accept the return of goods.

10. GOVERNING LAW

- 10.1 The Customer agrees that these Terms and Conditions of Sale shall be construed according to the laws of the State or Territory as Forbo may in its sole discretion determine. Proceedings by either Forbo or the Customer may be instituted and/or continued in such State or Territory as Forbo may in its sole discretion determine.

11. STATEMENT OF DEBT

- 11.1 A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of Forbo shall be prima facie evidence of the amount of indebtedness of the Customer to Forbo at that time.