

# TERMS AND CONDITIONS

## PURCHASE ORDERS

All purchase orders must be in written form and sent via email to: [orders.ca@forbo.com](mailto:orders.ca@forbo.com) (Ontario/Western Canada) or [orders.qc@forbo.com](mailto:orders.qc@forbo.com) (Quebec/Maritimes). Purchase orders may also be faxed to the following offices:

- Ontario: 416-745-4211 or (toll free) 1-877-893-4680
- Eastern Region (Ottawa, Quebec, Atlantic Canada): 514-955-3370 or (toll free) 1-800-567-9268

Orders over \$10,000 should be faxed to us at least 96 hours before requested ship date in order to complete the paperwork required for credit and provide the warehouse sufficient time for packing.

Purchase orders must contain the following information:

- Purchase Order Number
- Account Number (if known)
- Bill to Address
- Ship to Address
- Job Name/Side mark
- Color Number/Product Number (purchases will be based on Color Number/Product Number listed on your P.O. only)
- Gauge
- Quantity in full square yards or full cartons (quantity will be rounded up to the next full increment)
- Price and Special Pricing Number (if applicable)
- Contact person's name, telephone number, fax number and/or email address
- Shipping Instructions, including delivery date, specific carrier (if applicable) or accessorial (i.e. Residential, Construction Site, Inside Delivery, Liftgate required, etc.)

If your purchase order lists a price that varies from your approved Price List, it must include a Special Price Quote Number from your local sales representative before it will be processed.

Orders will ship from the closest Forbo warehouse within 24 hours dependent upon: all required information being supplied, credit approval and/or material availability.

Once your purchase order is processed for shipping, a 10% charge will be incurred for any changes or cancellations. This applies only to full rolls, cartons, and sundries. Cut roll and custom orders cannot be changed or cancelled.

All purchase orders must have a ship date provided within 15 days of order placement or the order will be cancelled in writing.

All purchase orders are subject to credit approval and are accepted only subject to these terms and conditions. If your account is past due, your Accounts Payable Department will be notified within 24 hours of order placement. Your order will be held pending Forbo's receipt of overdue monies. If payment is not received by Forbo within 15 days, the order will be cancelled in writing.

All purchase orders are further subject to acceptance by us at our headquarters in Hazleton, Pennsylvania, and we reserve the right to accept or reject any order. Possession of a price list does not constitute an offer to sell. We reserve the right to discontinue the manufacture or sale of any product at any time. All prices are subject to change without notice. The price charged will be the price in effect at the time of shipment. Should any governmental action or request prevent us from implementing any price or continuing any price already in effect, we may cancel an order or any part thereof.

## CONSTRUCTION NOTICE/NOTICE TO THE OWNER

Forbo reserves the right to request a Project Information Sheet for all project orders over \$10,000. Construction Lien Notices will be filed according to your province/territory laws. We reserve our right to file a lien and/or bond claim. This is done to protect both your rights and ours, and is no way reflective of your credit standing.

## TAX

All sales, use or other taxes (federal/provincial/local), all duties, tariffs, import fees or other assessments, imposed on goods sold hereunder, or on the manufacture, sale or delivery thereof, shall be for your account.

A Tax Exemption Certificate must be on file before you place an order. If we ship to any place other than your home province, you must also have a Tax Exemption Certificate for that province on file, or tax will be charged to your invoice. If you do not have a Tax Exemption Certificate on file, tax will be charged and added to your invoice. All refunds will be your responsibility to collect from the appropriate government authority. We will not issue a tax credit. It is your responsibility to update your Tax Exemption Certificate, as required by your home jurisdiction.

## ORDER ACKNOWLEDGEMENT

An acknowledgement will be faxed to you upon processing of your purchase order. If the material(s), quantity, pricing, tax, or drop/freight/cut charges do not agree with your purchase order, please contact Customer Service immediately. If you have not received an order acknowledgement within 24 hours, please contact Customer Service, as we may not have received the purchase order.

## SHIPPING

We reserve the right to use the carrier of our choice when shipping freight prepaid. When you are responsible for freight and if you do not select a carrier, we will choose the most economical means of transportation for you.

Shipments to residential addresses will incur a \$60.00 Residential Delivery charge.

In the event of any general freight increase or any governmental ruling or regulation that results in increased freight costs, we may, without any advance notice, increase the amount of freight charged on the invoice to reflect such additional costs.

Quoted shipping dates are based on estimates at the time of quotation. We will use our best efforts to meet such shipping dates, but we shall not be liable for any direct or indirect costs or damages, including without limitation incidental or consequential damages, resulting from late deliveries. For orders with indefinite delivery dates, we will have the right to manufacture or procure the goods covered thereby and hold such goods for your account pending receipt of definite shipping instructions. Except as expressly provided otherwise herein, you agree to purchase, and will be charged for, all material ordered.

All shipments of goods hereunder shall be CPT destination inside Canada. Title to, and the risk of any damage to or loss or shortage of such goods shall pass to you upon delivery of such goods by the carrier to you. Any claims for loss or damage should be duly noted in writing on the delivery receipt, and our Customer Service department notified. If the shipment is signed for by you in good condition, no claim may be filed with us or the carrier. You will be responsible for full payment of the goods.

## RETURNS

You are responsible for inspecting all products and returning products prior to installation.

Any return due to Forbo error or manufacturer's defect will be resolved by us with no surcharge to you, all freight paid by us. You must prepay freight on all other returns. Forbo warehouse will contact you within 24-48 hours to arrange pickup. If you are not contacted, please contact Customer Service.

All requests to return goods must be made within 30 days of invoice date. You must call your Customer Service Representative for a written Return Authorization. Return Authorizations are valid for up to 30 days after the date you call. Returns without an authorization number will be refused by us.

All returns must be in full cartons & full rolls; cut materials are non-returnable. You may be subject to a minimum 25% restocking fee.

All returns must be packaged according to the specific instructions as listed on the Return Shipment Instructions. Failure to implicitly follow these packaging instructions can result in refusal of the return by us or no credit to be given.

Refusal of material without proper authorization will be billed to your account at a minimum of 35% restocking fee plus outbound and return freight.

## INVOICING

**INVOICES ARE ELECTRONICALLY EMAILED AND/OR FAXED TO YOU THE EVENING THAT YOUR ORDER HAS SHIPPED. THIS WILL BE YOUR ORIGINAL INVOICE; NO FURTHER HARD COPY WILL FOLLOW. STATEMENTS ARE MAILED ON A MONTHLY BASIS.**

## PAYMENTS

Invoices are payable in Canadian dollars.

Canadian customers should mail payments to:

**Forbo Flooring Corp. Canada  
Lockbox Profile #T56503C  
P.O. Box 56503, STN A  
Toronto, ON M5W 4L1**

We accept Visa, MasterCard, American Express, If paying via credit card an authorization form must be completed per order. When paying with a credit card, cash discounts will not be given.

## PAYMENT TERMS

Credit applications will be processed within 24 hours of receipt. Terms will be determined after all relevant information has been received and reviewed.

Upon credit approval, our standard payment terms are 2% 20<sup>th</sup> Month Following, Net 30 Month Following.

We do not ship orders C.O.D.

**CASH DISCOUNT IS APPLICABLE TO THE NET VALUE OF THE INVOICE ONLY. TO EARN CASH DISCOUNTS, PAYMENTS MUST BE RECEIVED BY THE ACTUAL DISCOUNT DUE DATE. REFERENCES TO "DAYS" MEAN CALENDAR DAYS.**

You agree to pay all amounts payable pursuant to these terms when due. If a credit balance exists on an account that is past due, Forbo has the right to apply the credit towards the past due balance. If any amount is not paid when due, we shall have the right, in addition to any other remedy available to us, to charge interest on such overdue amount at a rate equal to the lesser of 1.5% per month or the maximum rate permitted by law. In addition, if it becomes necessary to place your account with an attorney or other agency for collection, you shall be responsible for all costs and expenses, including all attorneys' and/or collection fees, incurred by us in connection therewith.

All payments, whether under the standard payment terms or otherwise, shall be considered received by us as follows: (A) for payments by check, when the check is received at our designated payment location, and (B) for payments by Electronic Funds Transfer, the business day on which the funds are immediately available to us.

If you (i) become insolvent, or otherwise are unable to pay your debts as they become due, file or have filed against you a petition in bankruptcy, make any assignment for the benefit of creditors, or have a receiver or trustee appointed for you or your property, (ii) take action to liquidate or otherwise cease doing business as a going concern, (iii) undergo a change in ownership, (iv) fail promptly upon request from us to provide adequate assurance or security for credit extended, or (v) take any other action that we determine in our sole discretion adversely impacts the conditions under which credit was extended, we have the right by notice to declare all amounts outstanding from you hereunder immediately due and payable.

## RETURN CHECKS

A \$40.00 charge will be billed to your account for each check returned due to non-sufficient funds.

A \$40.00 charge will be billed to your account for each stop payment, unless approved in writing by Forbo Flooring Corp. Canada, Credit Manager.

If your check is returned, your account terms will immediately be changed to Cash in Advance. If a returned check is not replaced with a Money Order or Cashier's Check within 10 days of notification, your account will be closed and forwarded to a collection agency to pursue legal action.

## LIMITATION OF LIABILITY/WARRANTY DISCLAIMERS

THE REMEDIES PROVIDED HEREIN ARE YOUR SOLE AND EXCLUSIVE REMEDIES. WE SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT, OR OTHER LEGAL THEORY ARISING OUT OF THE SALE, INSTALLATION, SERVICE OR USE OF ANY PURCHASED PRODUCTS BY YOU OR ANY THIRD PARTY, EVEN IF WE HAVE BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSSES, AND IN NO EVENT SHALL OUR LIABILITY EXCEED THE UNIT PRICE OF THE PRODUCT. WE NEITHER ASSUME NOR AUTHORIZE ANY AGENT, EMPLOYEE, REPRESENTATIVE, OR ANY OTHER PERSON TO CHANGE THE FOREGOING OR ASSUME ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, DELIVERY, SERVICE, OR USE OF OUR PRODUCTS; AND UNLESS AN AFFIRMATION, REPRESENTATION, OR WARRANTY MADE BY AN AGENT, REPRESENTATIVE, OR EMPLOYEE IS SPECIFICALLY CONSENTED TO IN WRITING BY EITHER THE GENERAL MANAGER OR FINANCE DIRECTOR, IT SHALL NOT BE ENFORCEABLE BY YOU. OUR FAILURE TO EXERCISE ANY OF OUR RIGHTS FOR ANY PERIOD SHALL NOT CONSTITUTE OR BE DEEMED A WAIVER OR FORFEITURE OF SUCH RIGHTS.

EXCEPT FOR PRODUCTS FOR WHICH WE HAVE ESTABLISHED A SPECIFIC WRITTEN WARRANTY, THE PRODUCTS DESCRIBED HEREIN ARE SOLD BY US WITHOUT ANY GUARANTEE AND/OR WARRANTY OF ANY KIND, ORAL OR WRITTEN. YOU ASSUME ALL RISKS, IF ANY, INCLUDING THE RISK OF INJURY, LOSS OR DAMAGE, WHETHER DIRECT, CONSEQUENTIAL OR INCIDENTAL, ARISING OUT OF THE USE, INSTALLATION, MISUSE, OR INABILITY TO USE THESE PRODUCTS.

EXCEPT AS OTHERWISE PROVIDED HEREIN, ALL PRODUCTS ARE PROVIDED "AS IS" AND WE DISCLAIM ALL REPRESENTATIONS AND WARRANTIES AND CONDITIONS

WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **INTELLECTUAL PROPERTY**

We own or have the right to use the ideas, concepts, techniques, inventions, technologies, processes, methodologies ("Intellectual Property") for our products and their creation and all modifications, improvements or changes therein. You agree that you will not, at any time, without our prior written consent, disassemble or reverse engineer any of our Intellectual Property or otherwise use the Intellectual Property to develop similar products or processes or permit any third party to do any of the foregoing.

#### **INDEMNIFICATION**

You agree, at your own expense, to indemnify, defend and hold harmless Forbo, its officers, directors, employees, agents, affiliates, distributors and licensees from and against any judgment, losses, deficiencies, damages, liabilities, costs and expenses (including attorneys' fees and expenses) incurred in connection with or arising from any claim, demand, suit, action or proceeding arising out of the purchase, use, misuse, inability to use or installation of our products or any service related thereto. We shall have the right to assume control over the defense of any such claim, demand, suit, action or proceeding.

#### **COMPLIANCE WITH LAW**

You shall be solely responsible for the use and disposition of all purchased products, including, without limitation, the obtaining of all permits, licenses or certificates required for the installation and use thereof. You represent and warrant that you shall use such products only in accordance with all laws, rules and regulations applicable thereto.

**THESE TERMS AND CONDITIONS SHALL APPLY AND BE DEEMED INCORPORATED INTO ALL PURCHASE ORDERS WHICH YOU MAY PLACE WITH US AND PART OF OUR AGREEMENT WITH YOU, WHETHER OR NOT THESE TERMS AND CONDITIONS ARE EXPRESSLY REFERENCED THEREIN. THESE TERMS AND CONDITIONS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN FORBO AND YOU AND SUPERSEDE ANY AND ALL PRIOR REPRESENTATIONS, AGREEMENTS OR UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, RELATIVE TO THE GOODS DELIVERED HEREUNDER, INCLUDING ANY INCONSISTENT TERMS AND CONDITIONS STATED IN YOUR PURCHASE ORDER. NO COURSE OF DEALING OR USAGE OF TRADE SHALL BE RELEVANT TO SUPPLEMENT OR EXPLAIN ANY OF THESE TERMS OR CONDITIONS. NO MODIFICATION OF THESE TERMS AND CONDITIONS SHALL BE EFFECTIVE UNLESS MADE IN WRITING AND EXECUTED BY US.**

**IN THE ABSENCE OF YOUR WRITTEN ACCEPTANCE OF THESE TERMS AND CONDITIONS, THE ACCEPTANCE BY YOU OF ANY GOODS DELIVERED HEREUNDER SHALL CONSTITUTE ACCEPTANCE OF THESE TERMS AND CONDITIONS. YOUR EXECUTION OF THESE TERMS AND CONDITIONS (OR ACCEPTANCE OF THESE TERMS AND CONDITIONS BY ACCEPTING ANY GOODS DELIVERED BY US) ARE DULY AUTHORIZED BY ALL NECESSARY CORPORATE ACTION ON YOUR PART. THESE TERMS AND CONDITIONS CONSTITUTE A VALID AND BINDING AGREEMENT ENFORCEABLE IN ACCORDANCE WITH THEIR TERMS.**

#### **MISCELLANEOUS**

Time of Essence: Time is of the essence of this Agreement.

Force Majeure: We shall not be liable for any failure or delay caused by events beyond our reasonable control, including, without limitation, acts of God, riots, floods, natural disasters, sabotage, terrorism, utility or transmission failures, fire or labor disturbances.

WAIVER AND AMENDMENT: These Terms and Conditions may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions hereof may be waived, only by a written instrument signed by the parties or, in the case of a waiver, by the party waiving compliance or as contemplated in "Limitation of Liability/Warranty Disclaimers", above,. The waiver by any party

hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

Specific Enforcement: You agree that in the event of a breach or threatened breach of the covenants set forth in the Intellectual Property sections hereof, we will be entitled to seek from any court of competent jurisdiction preliminary and permanent injunctive relief, which remedy will be cumulative and in addition to any other rights and remedies to which we may be entitled, without necessity of posting bond or other security. You acknowledge that a breach of those covenants would result in immediate and irreparable injury to us.

Governing Law: These Terms and Conditions and all questions relating to their validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the Province of Ontario (notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary) and the United Nations Convention on Contracts for the International Sales of Goods is explicitly excluded from this agreement. The original of these Terms and Conditions have been written in English and we agree that the original English version shall be the sole legal and binding version hereof. We each hereby waive any right we may have under any other law to have this agreement written in another language.

Venue and Jurisdiction: Each of us (i) agrees that all actions and proceedings relating directly or indirectly to these Terms and Conditions shall be litigated in courts located in the Province of Ontario; (ii) consents to the jurisdiction and venue of any such court and consents to service of process in any such action or proceeding by personal delivery or any other method permitted by law; and (iii) waives any and all rights either of us may have to object to the jurisdiction of any such court, or to transfer or change the venue of any such action or proceeding. WE FURTHER EACH WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO, THESE TERMS AND CONDITIONS.

Severability: The provisions of these Terms and Conditions shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.