

Terms and Conditions of Sale and Quotation

1. Definitions

In these Terms unless otherwise specified:

- (a) "consequential loss" means loss beyond the normal measure of direct damages and includes without limitation and whether or not such loss would be within the normal measure of direct damages, indirect loss, loss of profit, loss of revenue, loss of business, loss of actual or anticipated savings, loss of bargain, loss of business reputation, loss of use, cost of capital or costs of substitute goods, facilities or services and loss of opportunity (including opportunities to enter into arrangements with third parties);
- (b) "Contract" means the agreement of Floortech to supply the Products and perform the Services as set out in the Quote and these Terms;
- (c) "Floortech" or "us" means West Swan Nominees Pty Ltd ACN 091 509 349 trading as Floortech Flooring Systems;
- (d) "Insolvency Event" means the happening of any of these events in relation to the Defaulting Party:
 - (i) where the Defaulting Party enters into a compromise or arrangement (or announces one) under section 411 of the *Corporations Act 2001* (Cth);
 - (ii) where a managing controller is appointed over the whole (or substantially the whole) of the Defaulting Party's property; or
 - (iii) where the Defaulting Party enters into voluntary administration.
- (e) "Products" includes all materials and goods supplied by Floortech in accordance with the Contract.
- (f) "Purchaser" or "you" or "your" means the person, firm, company or organisation specified in the Quote;
- (g) "Quote" means a quote (or similar document) provided by Floortech to the Purchaser;
- (h) "Services" means all services specified in the Quote to be performed by Floortech;
- (i) "Site" means the site for delivery of Products and performance of Services specified in the Quote; and
- (j) "Terms" means the terms and conditions set out in this document.

2. General

- (a) The Purchaser's terms and conditions, howsoever provided, do not form part of the Contract (even if any representative of Floortech signs those terms and conditions and/or they are annexed to the Terms or any Quote or purchase order). Any variation or changes to the Contract (other than an update to these Terms by Floortech), whether to apply to all subsequent orders, or any particular order, may only be made if it:

- (i) is in writing;
- (ii) is signed by authorised managers of both parties; and
- (iii) expressly states that it is a variation to the Contract, and

the parties agree and acknowledge that their representatives and employees that are not authorised managers as referred to in this clause do not have the authority to vary the Contract, or to agree that these Terms do not apply to a supply to which these Terms would otherwise apply.

- (b) The Purchaser (and each of its directors if applicable) warrants the correctness of the plans, specifications and information which it/they has/have furnished to Floortech ("**Specifications**"), and acknowledges that Floortech has relied upon those Specifications. The Purchaser must ensure that Floortech is provided with full and correct Specifications (and the opportunity to revise any recommendations) prior to accepting the Quote. Floortech will not be liable for any failure of the Product to perform arising from incorrect selection of Product (due to incorrect or incomplete Specifications), or for any installation, alteration or damage to the Product by any person other than Floortech.
- (c) The Purchaser warrants that any Specifications provided to Floortech are accurate and complete, and do not infringe any intellectual property rights subsisting in third parties. The Purchaser shall indemnify Floortech against any claim, action, damage, loss, liability, demand, notice, proceedings, charge, expenses, outgoing, payment or liabilities of any nature including, without limitation, any costs, whether or not the subject of a court order, connected with or incidental to or arising from the Services, whether known or unknown at the date of the Contract, whether arising at common law or in equity or under statute or otherwise made against Floortech, or costs or expenses incurred by Floortech, arising from a breach of this warranty.
- (d) All documentation supplied by Floortech remains the property of Floortech and no part of any documentation including Quotes and tender documents are to be divulged to another entity without the prior written consent of Floortech. Copying, selling, publishing or reproducing in any way without the written consent of Floortech, is a breach of copyright and subject to prosecution, however the Purchaser and its builder may retain the supplied copies of those plans solely for the purpose of their records in relation to the building.

3. Quote Acceptance

The Quote sets out the specific Products and Services to be provided by Floortech, and unless specified in the Quote, is an offer to supply not an offer to subcontract. Quotes will remain valid for 30 days from the date in the Quote unless otherwise stated in the Quote ("Validity Period"). Any extension of the Validity Period is at the discretion of Floortech. Acceptance of the Quote and these Terms must be in writing by signing at the foot of the Quote. If there is any inconsistency between the Quote and these Terms then the provisions of the Quote will prevail.

4. Commencement and Performance

- (a) Upon acceptance of the Quote, Floortech will commence work promptly (taking into account its current order book and the quoted delivery time) and use reasonable endeavours to effect delivery within the quoted time. However, delivery times are estimates only, and are subject to variation due to factors beyond Floortech's reasonable control, including (but not limited to) Events (as that term is defined in clause 17(b)), resource availability, scheduling constraints, programmed equipment maintenance downtime, incomplete or inaccurate instructions from the Purchaser, project stakeholder delays and variations. Project duration estimates are based on the best information available to Floortech on the date of the Contract. Floortech shall not be liable for any loss, cost expense, damage or any other amount that the Purchaser may incur or suffer howsoever and whatsoever arising from any delay of a time frame provided to Purchaser or the delay of the provision of the Products or Services (save and except delay caused by a negligent act or omission of Floortech). The Purchaser shall not be relieved of any obligation to accept or pay for any Products or Services by reason of any delay in delivery.
- (b) Floortech shall only be liable to provide the Products and Services specified in the Quote. Any Products and Services not specified in the Quote (for example the supply of concrete, labour, scaffold erection, plumbing pre-lay and any other required pre-lay) shall be the responsibility of the Purchaser. Minor seepage through the floor and/or slurry spills over the edge form will be the responsibility of the Purchaser/concreter to clean before curing if the concrete and/or labour for the concrete are supplied by the Purchaser. If Floortech provides a full service (including the supply of concrete, labour, scaffold erection, plumbing pre-lay and any other required pre-lay) any cleaning or spillage will be the responsibility of Floortech and/or Floortech contracted concreters and/or labour.
- (c) Notwithstanding any other clause in the Contract, Floortech may subcontract its obligation to install in its absolute discretion. Floortech will be responsible for its obligations under the Contract notwithstanding that subcontracting.

5. Variations

- (a) Any change to any detail of the Products or Specifications may result in a price change.
- (b) Prices quoted for the Products are subject to variation by Floortech after the expiration of the Validity Period set out in any Quote. Further prices may be varied (upon notice to the Purchaser) if Floortech is provided with incomplete or incorrect information.
- (c) The measurements, quantities and other particulars on which the Quote is based are approximate and are:
 - (i) based on the Specifications supplied by you or your builder; and
 - (ii) reliant on the accuracy of the building on-site to match the Specifications given to Floortech by you or your builder.

Any increase or decrease in price which may arise from any variation between the estimated measurements, quantities or particulars and the actual measurements, quantities or particulars shall be determined by Floortech and added to or subtracted from the quoted price. Floortech will not be responsible for any loss or damage arising from or connected with a failure by you or your builder to conform with engineering requirements as shown on plans or notified verbally and confirmed in writing within 7 days.

- (d) Any Quote given without full engineering plans being drawn prior to submission of the Quote is as accurate as possible however Floortech retains the right to alter the quoted amount subject to the engineering plans being drawn and accurate details designed to comply with relevant Australian Standards. Any engineering plans supplied to the Purchaser are to be at the Purchasers cost and will reflect Floortech's and the engineers' costs in supply of those plans.
- (e) Any changes to orders (including plan specifications, details, sections or elevations) after placing requires administrative work in addition to any materials and labour involved. Floortech will therefore include a reasonable administration charge in the costs of any variation together with Floortech costs for resupply, restocking, engineering and an /or lost time for any Floortech personnel, contractors or suppliers. Floortech will take reasonable steps to limit these costs once informed of the variation.
- (f) The Purchaser acknowledges that the Product is manufactured to order, and consequently, there is no refund or credit for cancellation, return or exchange of any Product (other than in respect of warranty claims).

6. Rise and Fall

The Quote is based on (among other things) the cost of material current as at the date of the Quote. Any variations to the cost of steel either before or after acceptance of an order shall be notified to the Purchaser and be payable in accordance with the Contract. Evidence of any variation in the cost of steel can be provided to the Purchaser upon request.

7. Access

- (a) The Purchaser must provide safe and unrestricted access to delivery Sites. The Purchaser indemnifies and releases Floortech against all claims arising from a failure to provide safe and unrestricted access. The Purchaser agrees that any price quoted by Floortech was on the basis of unrestricted access being provided to the delivery Site during normal working hours. In addition to the price quoted, the Purchaser shall pay the price charged by Floortech (available on Floortech's website or as notified to the Purchaser from time to time) for any waiting time or time incurred by Floortech in obtaining unrestricted access to the delivery Site.
- (b) The Quote does not include any provision for cranes or the supply or erection of scaffolding. If a crane (including a specialised crane) or scaffolding is required it must be provided and safely erected prior to Floortech commencing work on the Site and made available for Floortech's use without cost to Floortech. Scaffold frames must not be placed in conflict with structural beams being placed in position for the Product or otherwise in a manner which inhibits the installation of the Products.
- (c) You (or your builder) are responsible for any structural columns and T bars and lintels over openings as nominated in the Specifications referred to in the Quote.

- (d) You (or your builder) are responsible for all traffic management at the Site, and shall ensure that Floortech is not impeded in its delivery or laying of the Products by those arrangements. The Purchaser agrees to comply at all times with the *Occupational Safety and Health Act 1984*, *Occupational Safety and Health Regulations 1996* and all relevant road transport laws of Western Australia, and assumes all liability as a receiver of the Product upon delivery.
- (e) Delivery will be made to the kerb alignment or edge of the road unless the parties agree otherwise in which case you authorise Floortech's driver to place the Products in any other area you or your builder have requested. You understand and accept that:
 - (i) the weight of the delivery vehicle is substantial and that most domestic pavements are incapable of supporting this weight;
 - (ii) damage may be caused to your property and third party property (such as pavements, underground soak wells, septic tanks or other buried services) by Floortech placing the Product in the area that you or your builder has requested; and
 - (iii) Floortech shall not be liable for and is hereby released from and indemnified by you in respect of:
 - (i) loss or damage to your, your builder's property;
 - (ii) loss or damage in respect of personal injury or death to any person; and
 - (iii) claims by third parties against Floortech in respect of loss or damage to any property, death or personal injury, arising out of or in connection with Floortech placing the Product in the area that you or your builder have requested unless solely caused by Floortech's negligent act or omission.
- (f) The Purchaser must inspect the Products on delivery, and notify Floortech verbally within 24 hours and in writing within 7 days of any damage or short delivery. If you do not notify Floortech within that time, the Products will be presumed to have been delivered in accordance with the Quote and in good condition without any apparent defects unless proven otherwise.

8. Damage on Site

- (a) If damage to buildings, the Site, materials or the Products are alleged to be caused by Floortech then:
 - (i) Floortech will not be liable unless notification of such damage is given to Floortech within 7 days of the occurrence of the damage. Such claims must then be jointly investigated by the Purchaser and Floortech or their appointed representatives and liability and rectification required, if any, determined; and
 - (ii) Floortech's liability is in any case limited as set out under the heading "Warranty".
- (b) Notwithstanding any other clause in the Contract, Floortech is not liable for any loss or damage to the Products after they are installed on Site unless solely caused by Floortech's negligent act or omission.

9. Risk and Title

- (a) The Products are at your risk from the time the Products leave Floortech's premises for delivery to the Site. You must keep the Products insured from the time at which risk passes to you. Ownership of the Products remains with Floortech until you have paid in full the price of the Products and Services specified in the Quote. If the Site is unattended at the time of delivery (being a time nominated by you or your builder), Floortech may leave the Products on Site, and shall not responsible for any loss, damage or theft after delivery where:
 - (i) the Services specified in the Quote are supply only; or
 - (ii) where you delay the installation of the Products after delivery to Site.
- (b) Nothing in the Quote gives you any lease or right to use Floortech's plant and equipment ("**Equipment**") used to provide the Products and/or Services under the Contract. Title in the Equipment remains with Floortech at all times.

10. Terms of Trading

- (a) Subject to the Quote, cash with order, except for trade customers that have entered into a 30 day credit arrangement prior to acceptance of the Quote, in which case the terms of that credit arrangement will apply.
- (b) Subject to the Quote, Floortech will provide you with a monthly statement in respect of Products and Services supplied ("**the Statements**"). The Statements will set out the sum of:
 - (i) the price of all Products and/or Services purchased by you from Floortech, less
 - (ii) amounts paid by or credited to you relating to respective previous Statements.
- (c) For trade customers, Products and/or Services purchased during the month must be paid by the last working day of the following month.
- (d) Any payment made by you of less than the nett amount shown on the Statements is deemed payment of the price of the Products and/or Services which were supplied first in time, equivalent to the amount of such payment.

11. Fees and Other Charges

- (a) Floortech may, in its discretion, require you to pay a deposit in order to commence the Services. Floortech reserves the right not to provide any Services until any required deposit is paid in full.
- (b) Unless agreed otherwise, all payments must be paid strictly within 30 days of the date of an invoice provided by Floortech to you.

- (c) You are required to pay for all statutory charges, including all increases to such statutory charges.
- (d) You authorises Floortech to pay for any statutory charges directly as and when such charges become payable, although Floortech is not required to do so.
- (e) Floortech may charge you interest calculated at 12% with respect to any monies that may be owing to Floortech and unpaid when due, and such interest shall be calculated from the due date for payment until the date of actual payment.
- (f) You agree and acknowledges that Floortech reserves the right not to commence or continue the Services or supply the Products (as the case may be) until such time as you have paid all outstanding amounts in full.
- (g) Costs or expenses incurred by Floortech in recovering any outstanding amounts including (but not limited to) all legal fees (on a solicitor client basis) or costs, debt collection costs and bank fees on dishonoured cheques are also payable on demand by you.
- (h) In consideration of the Floortech agreeing to provide Products and Services, you (both severally and jointly, as the case may be) agree in the event that any monies you may owe Floortech from time to time under the Contract should not be paid within the time requirements specified in this clause, in addition to Floortech's right to charge interest, you as the beneficial owner charge in favour of Floortech all of your rights, title and interest in land (wherever situated) or any property (personal or real) owned by you (whether jointly or otherwise) to secure the payment of those monies and you acknowledge that Floortech is entitled to register an absolute caveat over any land of which you are the registered proprietor and perfect any such security so as to ensure that such charge is enforceable as a security.

12. Compliance with Standards

All works carried out by Floortech are designed by structural engineers in accordance with the current Standards Association of Australia code and appropriate State or Federal legislation, regulations and rules. Floortech may refuse to proceed with works other than as designed by the structural engineers, but if it does not, it will not accept liability or give any guarantees where supply or fixing is specified by the Purchaser or the Purchaser's builder contrary to above, and the Purchaser indemnifies Floortech from any and all liability and claims arising from it so proceeding.

13. Warranty

- (a) The supply under the Contract may be subject to statutory warranties (including under the Australian Consumer Law) which by law Floortech is unable to exclude. Floortech will comply with its obligations in respect of any such warranty, and any express warranty or guarantee given is in addition to those statutory warranties.
- (b) Where any materials and processes are specified by the Purchaser and not manufactured by Floortech, those materials and processes will be supplied subject to the manufacturer's warranty. Subject to any statutory warranty, Floortech shall not be liable for any defects in those materials or processes.
- (c) In the event any product supplied by Floortech under the Contract is defective, the liability of Floortech (if any) shall be limited to your rights under the Australian Consumer Law.
- (d) You agree that if any Product requires replacement, repair or rectification under any express or statutory warranty, you will allow Floortech to undertake such replacement, repair or rectification. Floortech will not be liable for the costs of any replacement, repair or rectification undertaken by any other person, except where Floortech has agreed in writing to such work, or where your statutory warranties require Floortech to pay those costs.
- (e) Where you acquire Products from Floortech for the purpose of on-supplying to another person ("**consumer**"), Floortech shall not be liable for any consequential loss suffered by you unless otherwise stated in the Contract. However, to the extent required by the Australian Consumer Law, Floortech or the relevant manufacturer may be liable for any consequential loss suffered by the consumer.
- (f) To the extent permitted by law, Floortech's liability under any condition or warranty which cannot legally be excluded is limited to:
 - (i) supplying the Products and Services again; or
 - (ii) paying the cost of having the Products and Services supplied again,
 and otherwise is limited to 10% of the payments paid to the Company for the Goods and Services.
- (g) Nothing in the Contract shall operate to exclude or restrict any right you have under any statute, including under the Australian Consumer Law, except to the extent permitted by that statute.
- (h) If you wish to make a warranty claim, you must notify Floortech in writing, providing details and sufficient evidence of the product, its purchase and the alleged defect, at its address or to its facsimile number or email address, which are set out in the Quote.

14. Default & Termination

- (a) A party ("**Non-defaulting Party**") may terminate the Contract at any time by written notice to the other party ("**Defaulting Party**") if any of the following apply:
 - (i) the Defaulting Party fails to carry out any provision of the Contract, the failure is capable of remedy and the Defaulting Party does not remedy that failure within 14 days after written notice to the Defaulting Party requiring it to be remedied;
 - (ii) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
 - (iii) the Defaulting Party suspends or delays payment of its debts;

- (iv) the Defaulting Party is unable to pay its debts as and when they fall due or goes into bankruptcy;
 - (v) the Defaulting Party (being a corporation) has a liquidator appointed to it, or has a mortgagee of the corporation assume control of, or a receiver appointed to any of the assets or undertakings of the Defaulting Party (not being an Insolvency Event);
 - (vi) the Defaulting Party (being a corporation) is deregistered;
 - (vii) the Defaulting Party breaches a credit arrangement; or
 - (viii) to the extent permitted by law, the Defaulting Party is subject to an Insolvency Event.
- (b) The Contract may be terminated by Floortech at any time effective immediately upon the giving of notice if a change occurs in the Purchaser's circumstances which, in Floortech's reasonable opinion, may have a material adverse effect on the Purchaser's ability to comply with its obligations under the Contract. Examples include (but are not limited to):
- (i) a change in the Purchaser's financial position up and until an Insolvency Event occurring;
 - (ii) the Purchaser factoring its debts; or
 - (iii) the Purchaser becoming party to litigation, arbitration or any other administrative proceeding.
- (c) If you are the Defaulting Party under the Contract (or any of the events under clause 14(b) occur) Floortech may, at its option, exercise any or all of the following rights in addition to any other rights it may have under the Contract or at law:
- (i) suspend deliveries of further Products to you whether under the Contract or otherwise; and/or
 - (ii) withdraw any credit facilities which may have been extended to you and require immediate payment of all moneys owed to Floortech by you.
- (d) The Purchaser must advise Floortech in writing not later than 14 days before any event specified in clauses 14(a) and 14(b) occurs.
- (e) The Defaulting Party will be responsible for, and will indemnify the Non-Defaulting Party against, any damages, costs (including, without limitation, legal fees on a solicitor-client basis), losses and expenses, incurred by the Non-Defaulting Party as a result of the breach.
- (f) On termination of the Contract by Floortech under this clause 14 then, without prejudice to any other rights which Floortech may have:
- (i) Floortech may forfeit any applicable deposit; and
 - (ii) Floortech is entitled to payment by the Purchaser of a sum equal to the cost of Products and/or Services provided and then unpaid by the Purchaser. If Floortech has received monies under the Contract for which no Products or Services have been provided then such monies will be refunded to the Purchaser.
- (g) On termination of the Contract, each party retains its rights against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.

15. GST

- (a) Any expression used in this clause and which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* has the same meaning in this clause.
- (b) Unless otherwise expressly stated, all amounts stated to be payable by the Purchaser under the Contract are exclusive of GST. If GST is imposed on any supply made under or in accordance with the Contract, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

16. Dispute Resolution

- (a) If a dispute or difference arises between Floortech and the Purchaser in respect of any fact, act, matter or thing arising out of or in any way connected with the Contract and one party requires the dispute or difference to be resolved, then that party will promptly give the other party a written notice giving details of the dispute.
- (b) Within 14 days of a party receiving a notice, the parties, and/or their delegates, must meet and attempt to resolve the dispute in good faith.
- (c) If, within 14 days of the meeting, the dispute is still not resolved, then, either party may proceed to litigation.
- (d) In the event of any dispute between the parties, the Purchaser shall pay all undisputed amounts to Floortech.

17. Force Majeure

- (a) A party (**Affected Party**) is not liable for any delay or failure to perform an obligation (other than to pay money) under the Contract] caused by an act of God, fire, war, insurrection or other armed conflict, riot, vandalism or sabotage, strike, lockout, ban, transport or port accident or congestion, pandemic, epidemic, quarantine of persons or goods, limitation of work or other industrial disturbance or any law, rule, regulation, order, requirement or restraint imposed by any government or governmental agency whether local, state, national or international (other than an order, requirement or restraint resulting from the Affected Party's breach of any law, permit or authorisation).
- (b) The Affected Party must notify each other party as soon as practical of any anticipated delay or failure caused by an event specified in clause 17(a) (**Event**).

- (c) The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event to the extent performance is prevented by the Event from the date notice is given under clause 17(b) and any such non-performance or delay in performance of the Contract will not be a breach of the Contract.
- (d) Any party may terminate the Contract at the expiration of not less than 7 days' notice to the other party if prevention of performance of a material obligation by an Event, or a delay caused by the Event, exceeds 90 days.
- (e) If a party terminates the Contract under clause 17(d), all money previously paid under the Contract for which no goods, services or other consideration has been provided must be refunded.

18. Miscellaneous

- (a) The Contract is governed by and is to be construed according to the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.
- (b) If any part of the Contract is, or becomes, void or unenforceable, that part is, or will be, severed from the Contract so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.
- (c) A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege.
- (d) The Contract constitutes the entire agreement between the parties with respect to the subject matter of the Contract and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of the Contract as at the date of the Contract. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Contract and has no further effect.
- (e) If the Purchaser signs the Contract as the trustee of any trust (the "**Trust**"), the Purchaser is personally liable for the performance of all covenants contained in the Contract and agrees that Floortech's right of recourse pursuant to this Contract shall not be limited to the Purchaser's assets but shall extend to the assets of the Trust, and the Purchaser charges its right of indemnity from the assets of the Trust to Floortech.
- (f) If the Purchaser comprises more than one entity, each Purchaser is jointly and severally liable under this Contract.

19. Privacy

Floortech collects the Purchaser's personal information for the purpose of providing the Products and/or Services and keeping a record of transactions on our file. Personal information can include sensitive health information as required by Floortech from time to time. Our Privacy Policy can be found at www.bgc.com.au.