

## Terms and Conditions of Purchase

### 1. Preliminary

These terms and conditions (these terms) apply to the goods (**Goods**) and/or services (**Services**), or any of them or both (**Deliverables**), described in an order for the acquisition of Deliverables (**Purchase Order**) provided, delivered or otherwise issued by Braeside Mills Operations Pty Ltd ABN 57 659 692 421 or Armstrong Flooring NZ Limited (**Purchaser**) to the any person or supplier (**Supplier**).

### 2. Purchase Order

**2.1** The Purchase Order is an offer by the Purchaser to buy the Deliverables from the Supplier in accordance with the Purchase Order and these terms. The Purchaser may at any time withdraw the Purchase Order (orally or in writing) before it is accepted by the Supplier. The Purchase Order is only accepted when the Supplier gives to the Purchaser written notice of acceptance of the Purchase Order or supplies the Deliverables. If the Supplier accepts the Purchase Order before it is withdrawn, a binding agreement (**Contract**) between the Purchaser and the Supplier will arise under which the Supplier agrees to sell as beneficial owner to the Purchaser, and the Purchaser agrees to buy from the Supplier, the Deliverables in accordance with the Purchase Order and these terms.

**2.2** It is acknowledged and agreed that the health and safety of all persons affected by the performance of the Contract is an overriding obligation in the completion of the Contract. The Supplier shall provide all appropriate documentation to comply with occupational health and safety requirements including risk assessments together with such other information and assistance as the Purchaser may reasonably require in respect to any statutory or health and safety or environmental issues related to the provision of the Deliverables and/or to evaluate or report on any matter required by law in connection with the Supplier's obligations under the Contract.

### 3. Delivery and Installation

**3.1** The Supplier must deliver to the Purchaser, and where necessary install, the Deliverables during the Purchaser's normal business hours (or as otherwise agreed):

- (a) to the delivery address; and
  - (b) by the delivery date;
- set out in the Purchase Order.

**3.2** The Purchaser reserves the right to refuse to accept delivery of any Deliverables delivered more than seven (7) days prior to the specified delivery date without its prior approval.

**3.3** Each delivery of Goods must clearly show the Purchaser's Purchase Order number, a complete description of the Goods being delivered, including the contents, quantity and weight of each package and the Supplier's name and as otherwise required by law. If practicable, packaging should be designed to optimise reuse and recycling capacity.

**3.4** The Supplier shall procure that its employees, sub contractors or other parties engaged by the Supplier in relation to the Deliverables:

- (a) obtain prior permission before accessing the Purchaser's premises to deliver or carry out any works relating to the Deliverables; and
- (b) comply with all applicable laws and any rules, policies or directions provided by the Purchaser.

### 4. Goods Warranties

Where the Deliverables comprise or include Goods, the Supplier represents and warrants to the Purchaser as follows:

**4.1** The Supplier is the legal and beneficial owner of the Goods, and the Goods are sold, and title to them will pass, to the Purchaser free from any encumbrance or security interest including, without limitation, a mortgage, charge, pledge, lien, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement or subordination to a right of a person or an adverse or competing interest of another person.

**4.2** On delivery to the Purchaser, the Goods will be new, free from defects, of merchantable quality, fit for their intended purpose, in appropriate packaging, in compliance with all relevant standards and legal requirements and in conformity with the size, weight, grade, colour and/or other specifications and description of the Goods set out in the Purchase Order or any brochure, sales literature or other materials or representations published or provided by the Supplier (or manufacturer of the Goods) or any plans or other documents provided by the Purchaser before the date of the Purchase Order and, where the Goods are for on-supply to an entity in connection with the generation, transmission, distribution or supply of electricity or gas, in accordance with the technical specifications required by the entity.

**4.3** Where a particular brand is not specified in the Purchase Order, the Goods will be of a quality and type appropriate for the intended use of the Goods.

**4.4** Neither the Goods, nor the Purchaser's use of the Goods, will infringe upon any intellectual property rights of any third party.

**4.5** The Purchaser (or its nominee) may at any time prior to delivery inspect the Deliverables and processes of manufacture relating to the Deliverables, and the Supplier shall if requested provide the Purchaser with reasonable assistance in such inspections.

**4.6** Where factory testing is specified in the Purchase Order as required, the Supplier must factory test the Goods before they are delivered to the Purchaser to confirm that the Goods meet the published specifications for the Goods and otherwise satisfy the warranties in this clause 4 provide to the Purchaser the results of the factory testing at or before delivery, and only deliver to the Purchaser the Goods which have been factory tested and the test results for which show the Goods meet the published specifications for the Goods and otherwise satisfy the warranties in this clause 4.

### 5. Services Warranties

Where the Deliverables comprise or include Services, the Supplier represents and warrants to the Purchaser that the Services will be performed or otherwise provided by the Supplier:

**5.1** so that when provision of the Services is completed the product or result will be of high quality, free from defects and suitable and able to be used for the purposes for which it is intended;

**5.2** in a proper and tradesman-like manner using best industry practices and to a standard reasonably expected of a highly skilled, competent and experienced contractor who provides services of a similar nature to the Services;

**5.3** with due care and skill;

**5.4** so that the intellectual property rights of a third party are not breached either by the provision of the Services or the use of the product or result or use of any Services as intended;

**5.5** in compliance with all laws, regulations, by-laws, regulatory approvals (including, without limitation, building permits and planning approvals), policies, guidelines and requirements of a government agency relating to privacy, and industry codes and standards applicable to the Services or site at which the Services are to be performed or otherwise provided and, where the Services are provided for, or in connection with infrastructure, facilities or services of, an entity involved in the generation, transmission, distribution or supply of electricity or gas, in compliance with any standards or other requirements imposed by the entity generally or specifically in relation to the Services; and

**5.6** to the reasonable satisfaction of the Purchaser.

### 6. Remedies

**6.1** If there is a breach of any of the representations and warranties in clauses 4 or 5 in respect of any Deliverables or if any Deliverables are defective or unacceptable to the Purchaser:

(a) where the Deliverables are or include Goods, either: (i) the Purchaser may repair or convert the Goods into a condition acceptable to the Purchaser, in which case the Supplier must reimburse the Purchaser its reasonable costs of doing so promptly after receiving written notice of those costs; or (ii) the Purchaser may require the Supplier to replace the Goods, in which case the Supplier must, as soon as reasonably practicable and in any case within 14 days from the date the Purchaser notifies the Supplier that it requires the Goods to be replaced, deliver to the Purchaser replacement goods acceptable to the Purchaser to the ship to address set out in the Purchase Order (or such other address as the Purchaser may notify the Supplier) and the representations and warranties by the Supplier under the Contract will apply to these replacement goods, and the Purchaser must make available for collection by the Supplier the Goods that are to be replaced when the replacement goods are delivered to the Purchaser; and

(b) where the Deliverables are or include Services, either: (i) the Purchaser may perform or otherwise provide services, or have services performed or otherwise provided by others to redress the breach or defective or unacceptable Services, in which case the Supplier must reimburse the Purchaser its reasonable costs of doing so promptly after receiving written notice of those costs; or (ii) the Purchaser may require the Supplier to perform or otherwise provide the Services again, in which case the Supplier must, as soon as reasonably practicable and in any case within 14 days from the date the Purchaser notifies the Supplier that it requires the Services to be provided again, provide to the Purchaser replacement services acceptable to the Purchaser at the 'ship to' address set out in the Purchase Order (or such other address as the Purchaser may notify the Supplier) and the representations and warranties by the Supplier under the Contract will apply to these replacement services.

**6.2** The foregoing does not limit the Purchaser's rights and remedies under any other provision of the Contract.

**6.3** Where the Deliverables comprise or include Goods, the Supplier must ensure that all warranties and guarantees given by the manufacturer or other supplier of any of the Goods, and agrees that the representations and warranties and the Supplier's other obligations under clauses 3 to 5 and this clause 6, are given for the benefit of, and may be relied on by, the Purchaser and any person acquiring the Goods through or from the Purchaser.

### 7. Title & Risk

**7.1** Title to the Deliverables passes to the Purchaser (or any person acquiring the Deliverables through or from the Purchaser) on the date the Deliverables are delivered to the Purchaser or the date the Purchaser pays for the Deliverables, whichever occurs first. Any Deliverables that are to be delivered by the Supplier must be identified and clearly marked as the property of the Purchaser. The Supplier must not register a security interest in relation to the Deliverables on the Personal Property Securities Register in Australia and/or New Zealand except with the prior written consent of the Purchaser.

**7.2** The Supplier is responsible for the care and security of the Deliverables, and assumes the risk of (and must make good) any loss or destruction of or damage to any of the Deliverables, until the Deliverables are delivered into the safe keeping of the Purchaser in accordance with the Contract and the Purchaser has inspected and accepted the Deliverables, and after such delivery the Purchaser bears the risk of any loss of or damage to the delivered Deliverables.

### 8. Payment

**8.1** After delivery of all of the Deliverables to the Purchaser that are required to be delivered by a particular delivery date, the Supplier may prepare and give to the Purchaser a tax invoice for the price set opposite the description of those Deliverables in the Purchase Order (**Purchase Price**). The tax invoice must contain sufficient detail for the Purchaser to verify the amount payable and any other details the Purchaser may specifically require. Unless otherwise stated in the Purchase Order, the Purchaser shall pay the Purchase Price of Deliverables that have been delivered to it within 30 days from the end of the month in which the tax invoice for the Purchase Price is given by the Supplier to the Purchaser in accordance with this clause 8 or the date of delivery of the Deliverables, whichever is later. The total price payable for any Deliverables includes GST. The Purchase Price shall not be subject to review by the Supplier, and is inclusive of any related charges, including delivery and installation of the Deliverables.

**8.2** Should the Purchaser reasonably dispute any invoice the Purchaser may withhold payment of the disputed amount pending resolution of the dispute. The Purchaser may reduce any payment due under this Purchase Order by any amounts owed by the Supplier to the Purchaser.

### 9. Time Limit

**9.1** After the end of 120 days from the date of delivery of the Deliverables to the Purchaser (**Final Payment Claim Period**):

- (a) the Supplier may not deliver an invoice for or make any other claim for payment for any of the Deliverables; and

(b) the Purchaser has no further liability to the Supplier in relation to any of the Deliverables;

except in relation to any unpaid amount in respect of the Deliverables invoiced by the Supplier in accordance with the Contract before the end of the Final Payment Claim Period.

## 10. Intellectual Property

10.1 The Supplier grants the Purchaser an irrevocable, perpetual and royalty-free licence to use, reproduce, modify and adapt all intellectual property owned by the Supplier to the extent required for any of the Deliverables.

10.2 All intellectual property created by the Supplier (either by itself or jointly with any third party), in supplying the Deliverables or otherwise pursuant to or incidental to the Contract will be owned by the Purchaser.

10.3 The Supplier shall not use any intellectual property owned by the Purchaser, including its name or any trade marks, without the Purchaser's prior written consent.

## 11. Confidentiality

11.1 The Supplier must not, and must ensure that its related bodies corporate (if any) and the officers, employees and agents of it or any of its related bodies corporate do not, use, copy or disclose to any person any information about the Contract or relating to the supply of any Deliverables or obtained under or in connection with the Contract or any Deliverables except on a confidential basis and to the extent necessary under the Contract. This clause 11 does not prohibit the use, copying or disclosure of information that is in or falls into the public domain otherwise than due to a breach of this clause 11, or to the extent necessary to allow the Supplier to comply with any applicable law or to enforce its rights under the Contract.

## 12. Liability & Indemnity

12.1 The Supplier must, with insurers acceptable to the Purchaser, obtain and maintain public/product liability insurance, and if relevant professional indemnity insurance, each of not less than AUD10 million per occurrence and any other insurances reasonably required by the Purchaser based upon the nature of the Deliverables. The Supplier must, upon request from the Purchaser provide certificates of currency of the insurances required. The Supplier is responsible for any insurance excesses or deductibles.

12.2 The Supplier agrees and acknowledges that the Purchaser will not be, in any circumstances, liable for any special, indirect or consequential loss related to this Purchase Order including loss of production, loss of profits or anticipated profits or loss of business or opportunities or the like (even if caused by the Purchaser's negligence and/or the Purchaser was aware of the possibility of such loss or damage).

12.3 The Supplier indemnifies the Purchaser and its related bodies corporate and the officers, employees, agents and contractors of any of them against any loss, death, injury, cost or other liability (including, without limitation, legal costs on a full indemnity basis) arising out of or in connection with a breach by the Supplier of the Contract or the supply or failure to supply any Deliverables or the use or application of any Deliverables by the Purchaser (or any person acquiring the Deliverables through or from the Purchaser) or any infringement through the supply or use of any Deliverables of any patent, trademark, copyright, design or other intellectual property of any person. Even though not a party to the Contract, a person will be entitled to the benefit of the indemnity given in its favour by the Supplier under this clause 12, and the indemnity may be enforced on its behalf by the Purchaser.

## 13. Termination

If: (a) the Supplier fails to deliver any Deliverables to the place or by the time required or otherwise in accordance with the Contract; (b) the Supplier commits any other breach of the Contract which is capable of remedy, and fails to remedy the breach within 7 days from receipt of written notice of default from the Purchaser (and the parties agree that failure to perform an obligation by a particular time is a breach capable of remedy); (c) the Supplier commits a material breach of the Contract which is not capable of remedy; or (d) the Supplier is dissolved, wound up or placed into bankruptcy or an order is made by a court or an application is made to a court for an order or a resolution is passed or the Supplier gives notice of its intention that the Supplier be dissolved, wound up or placed into bankruptcy, a controller or administrator is appointed in respect of the Supplier or any property of the Supplier or takes possession or gains control of any property of the Supplier, the Supplier (except to reconstruct or amalgamate while solvent) enters into, or resolves to enter into, a scheme of arrangement, administration, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them, the Supplier is (or states that it is) insolvent or an insolvent under administration or the Supplier takes any step to obtain protection or is granted protection from its creditors under any applicable legislation

the Purchaser may terminate the Contract with respect to any or all of the Deliverables at any time by giving to the Supplier written notice of termination. Termination will be effective on the date of termination stated in the notice, or if no date is stated, on the date the termination notice is given to the Supplier. Where the Contract is terminated with respect to any Deliverables, the Supplier must return to the Purchaser any amount paid for the Deliverables and the Purchaser must make available for collection by the Supplier any of those Deliverables that have been delivered to the Purchaser and the Purchaser may procure similar goods elsewhere and the Supplier will be liable for any additional costs incurred by the Purchaser as a consequence. In addition, termination of the Contract will not prejudice or otherwise affect any rights and obligations of the parties expressed in the Contract or intended to survive termination of the Contract, nor will it prejudice or otherwise affect any right or remedy one party has against another party in respect of any breach of the Contract before termination, and termination of the Contract with respect to only some of the Deliverables will not prejudice or otherwise affect any rights and obligations of the parties with respect to the other Deliverables, but termination of the Contract (whether with respect to any or all of the Deliverables) will terminate all other rights and obligations of the parties under the Contract. This clause 13 and clauses 7.2, 10, 11, 12, 15 (except clause 15.3) and 16 survive termination of the Contract.

## 14. Force Majeure

14.1 Neither party will be liable for any delay or failure to perform its obligations under the Contract due to any circumstance beyond the party's reasonable control which results in the party being unable to observe or perform on time an obligation under the Contract provided the affected party promptly advises the other party of the event and

uses all reasonable endeavours to reduce and remove the event as quickly as possible.

14.2 The Purchaser shall be entitled for the duration of such force majeure event to procure the Deliverables from a third party and to reduce accordingly and without any obligation to the Supplier the quantity or amount of Deliverables ordered under the Purchase Order.

## 15. General

15.1 The Supplier acknowledges it has access to and reviewed the Purchaser's "Supplier Code of Conduct" and agrees to comply with its terms. Any failure by the Supplier or its employees or contractors to comply with the Supplier Code of Conduct shall constitute a breach by the Supplier of the Contract.

15.2 The Supplier shall in the performance of the Contract, comply with all applicable laws (including without limitation all privacy laws).

15.3 Each party must, at its own expense, do everything reasonably necessary to give effect to the Contract and the transactions contemplated by it, including without limitation the execution of documents.

15.4 Where the Purchaser entity is located in Australia, the Contract is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there. Where the Purchaser entity is located in New Zealand, the Contract is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

15.5 The parties may only amend the Contract if each party signs the written amendment.

15.6 The rights and remedies provided in the Contract are cumulative with and not exclusive of the rights and remedies provided by law independently of the Contract.

15.7 Each indemnity in the Contract is:

(a) a continuing obligation despite any settlement of account or the occurrence of any other thing, and remains in full force and effect until all money owing, contingently or otherwise, under the indemnity has been paid in full;

(b) is additional, separate and independent from the obligations of the parties; and

(c) survives termination of the Contract.

It is not necessary for a person to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

15.8 The Contract is for the benefit of the parties and their successors and assigns. The parties and their successors and assigns are bound by the Contract. The Supplier may only sub-contract or assign any of its rights, obligations or any other interest under the Contract after it obtains the written consent of the Purchaser.

15.9 If any provision of the Contract is void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction the provision must be read down to the extent it can be to save it but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of the Contract nor affect the validity or enforceability of that provision in any other jurisdiction where it is not invalid.

15.10 Should the provision of the Deliverables be subject of a prior written contract between the Purchaser and the Supplier, the terms of that contract apply and prevail to the extent of any inconsistency with these terms. Otherwise, the terms of the Contract entirely comprise the terms set out in the Purchase Order and these terms and conditions, and they constitute the entire agreement of the parties in respect of the subject matter of the Contract and supersede, replace and override all other discussions, undertakings, terms and agreements. Without limiting the generality of the foregoing, no additional term set out in the Supplier's acceptance of the Purchase Order will apply or have any effect unless expressly agreed to in writing by the Purchaser.

15.11 Nothing in the Contract constitutes the parties as partners or agents of the other and no party has any authority to bind the other legally or equitably except as expressly stated in the Contract.

15.12 Each party represents and warrants to each other party (at the date of the Purchaser's acceptance of the Order) that (1) it has the power to enter into and perform the Contract, (2) the Contract is valid and binding on it and enforceable against it in accordance with its terms subject to any necessary stamping, the availability of any equitable remedies and to laws affecting creditors' rights generally; (3) it benefits by entering into the Contract; and (4) it is able to pay its debts as and when they fall due, and no action has been taken towards winding it up or placing it in bankruptcy.

15.13 Where a Supplier enters into the Contract as trustee of a trust, the Supplier also represents and warrants to the Purchaser that: (1) the trust is valid and subsisting; (2) it is the only trustee of the trust and no action has been taken or is proposed to remove it as trustee or to appoint any additional trustees of the trust; (3) it as trustee has the power to enter into and perform this agreement and does so for a proper purpose of the trust; (4) the beneficiaries of the trust benefit from the entry into and performance of this agreement; and (5) it has the right to be indemnified out of the assets of the trust for all liabilities incurred by it under or in connection with this agreement as trustee of the trust and the assets of the trust are sufficient to satisfy that right. The Supplier must ensure that until it has no further obligation or liability under the Contract it remains the sole trustee of the trust and whilst trustee no income or capital of the trust is distributed to any beneficiary if to do so would result in the assets of the trust being less than its liabilities immediately after the distribution or would materially prejudice the trustee's ability to pay all of the creditors of the trust out of trust assets.

## 16. Interpretation

16.1 In these terms headings and bold typing are included for convenience only and do not affect interpretation and, unless the context otherwise requires a reference to a word includes the singular and the plural of the word and vice versa and a reference to a gender includes any gender; a term which refers to a person includes a company, a partnership, an association, a corporation, a body corporate, a joint venture, a sovereign state, a government or a government department or agency; an agreement, obligation or indemnity on the part of 2 or more persons binds them jointly and severally; a reference to Deliverables includes any replacement goods supplied or required to be supplied by the Supplier under clause 6; and a word or term defined in the Personal Property Securities Act 2009 (Cth) or Personal Property Securities Act 1999 (NZ) has the same meaning where used in connection with security interests regulated under that Act.

16.2 No provision of the Contract will be construed adversely to a party solely on the ground that the party was responsible for its preparation.