

## Terms and Conditions of Sale - Australia

### 1. Preliminary

These terms and conditions (**these terms**) apply to the sale of goods and/or services by Braeside Mills Operations Pty Ltd ABN 57 659 692 421 trading as Armstrong Flooring (**Seller**) to any person ordering the Products or to whom Products are otherwise supplied (**Customer**).

### 2. Orders

- 2.1 All orders for goods and/or services (**Order**) must be placed in the manner and form required by the Seller from time to time and will be subject to acceptance by the Seller (which may accept or reject an order in whole or in part in its absolute discretion).
- 2.2 The Order is an offer by the Customer to the Seller to acquire the goods and/or services described in the Order from the Seller in accordance with the Order and these terms. The Customer may not withdraw the Order. The Order is only accepted when the Seller gives to the Customer written notice of acceptance of the Order or by any other means.
- 2.3 If the Seller accepts the Order before it is withdrawn, a binding agreement (**Contract**) between the Customer and the Seller will arise under which the Seller agrees to supply to the Customer, and the Customer agrees to acquire from the Seller, the goods and/or services described in the Order (**Deliverables**) in accordance with the Purchase Order and these terms.
- 2.4 Where the Seller provides a quotation to the Customer (whether orally or in writing), the quotation does not constitute an offer to provide any Deliverables to the Customer. All quotations are based on the Seller's estimated costs of production, manufacture and/or supply at the time the quotation is issued to the Customer, and are subject to change without notice.

### 3. Delivery

- 3.1 Delivery of the Deliverables will be made in the manner and at the place specified in the Contract or if not specified, delivery will be at the Seller's premises.
- 3.2 In respect of Deliverables (being goods) to be delivered to the Customer, the Seller is only required to deliver the specific Deliverables to the Customer, and is not required to deliver, install or unload any item of Deliverables other than as provided for in the Contract. The Customer is responsible upon delivery to unload the Deliverables in a timely manner.
- 3.3 If the site or address nominated by the Customer for the purpose of supply of any Deliverable is unattended at the date of supply during ordinary business hours or any other time for supply notified to the Customer or the Customer otherwise fails to accept delivery of the Deliverables, the Seller may deposit any Deliverables (being goods) at that address or store, at the Customer's cost and expense, the Deliverables at any place the Seller deems necessary or appropriate in the circumstances and the Deliverables will be deemed to be supplied and delivered under the Contract on the date when the Seller was originally willing to deliver the Deliverables. The Seller's standard re-delivery fee will apply where the Customer's premises were unattended or unable to take delivery of any Deliverables during ordinary business hours.

### 4. Title and Risk

- 4.1 Title to any Deliverables (being goods or the product or result of performing or otherwise providing any services) only passes to the Customer (or any person acquiring the Deliverables through or from the Customer) when those Deliverables have been physically delivered to the Customer or the Customer has met all its obligations and paid all amounts outstanding to the Seller on any account whatsoever, whichever occurs last. Until title to the Deliverables has passed to the Customer, the Seller may retrieve the Deliverables that have been supplied to the Customer and the Customer authorises the Seller to enter and occupy any site for that purpose.
- 4.2 The Seller is responsible for the care and security of the Deliverables (being goods or the product or result of performing or otherwise providing any services), and assumes the risk of (and must make good) any loss or destruction of or damage to each such item, until the item is delivered (or deemed to be delivered) to the delivery site or collected by the Customer or otherwise supplied to the Customer in accordance with the Contract, and after such supply the Customer bears the risk of any loss of or damage to the supplied item.

### 5. Time Requirements

- 5.1 The Seller will use its reasonable efforts to supply the Deliverables in the quantities by the delivery times set out in the Contract or, if not specified, within a reasonable time in all the circumstances.
- 5.2 The Seller reserves the right to supply the Deliverables by instalments. Each instalment may be invoiced separately and will be deemed to be a separate contract under the same provisions as the main Contract.
- 5.3 Failure to supply some or all of the Deliverables will not entitle the Customer to repudiate or rescind the Contract or any other order.
- 5.4 The Seller is not liable for any loss or damage suffered by the Customer or any other person due to or in connection with any delay in supplying any Deliverables or failure to perform its obligations under the Contract arising from any circumstance beyond its reasonable control which results in the Seller being unable to observe or perform on time an obligation under the Contract. Any provision of these terms that excludes any terms, conditions or warranties, or limits the liability of a party will apply only to the extent permitted by law and these terms will be construed subject to such terms, conditions, warranties and limitations.

### 6. Payment

- 6.1 The Seller is entitled to be paid by the Customer the total of the prices and other amounts, including delivery charges for the Deliverables agreed to be supplied (**Contract Sum**).
- 6.2 The Customer must pay to the Seller each invoiced amount to which the Seller is entitled in respect of the Contract Sum prior to supply of the Deliverables, except as otherwise provided in the conditions of any approval of credit by the Seller or any invoice for the Contract Sum.
- 6.3 The Customer must not withhold payment or make any deduction from the invoiced price or any other amount owing to the Seller without the Seller's prior written consent.
- 6.4 Without limiting any other right or remedy the Seller may have under the Contract, where the Customer fails to pay any amount due to the Seller under the Contract, the Seller will be entitled to interest at a rate of 12% per annum accruing daily on the outstanding amount for the time being from the due date of payment (and any payment made by Customer will be credited first against any such interest that has accrued); and to recover from the Customer all legal and

other costs incurred by the Seller in connection with the Customer's default in payment and the collection of any overdue moneys.

- 6.5 All outstanding payments must, unless otherwise agreed by the Seller, be paid by electronic funds transfer, or subject to prior agreement by the Seller and payment of all additional charges as may be advised by the Seller from time to time, by MasterCard or Visa credit cards.

### 7. GST

All amounts payable to the Seller under the Contract (other than an amount for GST payable to the Seller under this clause 7) have been calculated without regard to GST except where the Contract otherwise provides. If the whole or any part of any such amount is the consideration for a taxable supply for which the Seller is liable to pay GST the Seller may charge the Customer, and the Customer must pay the Seller, concurrently with the payment of that amount, an additional amount equal to the GST payable in respect of the taxable supply calculated on the basis that the value of the taxable supply is the amount payable for the taxable supply excluding any GST. The recovery of consideration for any taxable supply made under the Contract is subject to the Seller issuing to the Customer a tax invoice in respect of the supply. Where the Seller is entitled to reimbursement from the Customer for any cost incurred by the Seller in respect of any Deliverable, the Seller will only be entitled to recover the cost less the amount of any input tax credit which the Seller is entitled to receive for the acquisition to which the cost relates. In this clause 7, a word or term defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning.

### 8. Customer Acknowledgements

The Customer acknowledges and agrees that:

- 8.1 In placing the Order or otherwise entering into the Contract, the Customer does not do so on the basis of, and does not rely on, any representation, warranty, statement or promise except as expressly set out in the Contract, and all conditions, warranties and other terms which would be implied or otherwise incorporated into the Contract as binding on the Seller are excluded to the fullest extent permitted by law.
  - 8.2 The Customer must notify any third party purchaser of any defect in any Deliverables disclosed by the Seller to the Customer prior to sale of the Deliverables.
  - 8.3 Where any good is supplied with batch numbers identifying products manufactured at the same time, it is the responsibility of the Customer to ensure correct batching numbers are used prior to installation of the good. Should different batches be installed, the Seller will not be liable in any way for claims relating to variations in batch numbers.
  - 8.4 If the Customer provides instructions to the Seller relating to the design or packaging of any good, the Customer warrants that the following of such instructions and the supply of such good will not infringe the intellectual property rights of any person.
  - 8.5 The Customer must not make any representation whatsoever or give any warranty to any subsequent purchaser of the Deliverables that the Deliverables may be used for any purpose other than that stated in the Seller's specifications for the Deliverables, labels and other materials made available by the Seller to the public.
  - 8.6 The Customer will not modify any Deliverables being sample/product displays and/or marketing materials other than in accordance with the Seller's instructions from time to time.
  - 8.7 The Seller grants to the Customer a non-exclusive, non-transferable right to use in Australia and New Zealand the Seller's name and all trademarks (registered or unregistered), product and brand names and copyright utilised by the Seller in respect to the Deliverables (IP) solely for uses associated with the marketing and sale of the Deliverables provided that such use must be strictly in adherence with the Seller's rules from time to time regarding the use of the IP. The Customer must not tamper with or otherwise vary any of the Seller's labelling, signage on samples or display stands and, unless approved in writing by the Seller, the Customer must not market or sell the Deliverables under any trademark, product or brand name other than as designated by the Seller.
  - 8.8 The Customer consents to the use and disclosure by the Seller of the Customer's personal information as set out in the Seller's Privacy Policy (available at [www.armstrongflooring.au](http://www.armstrongflooring.au)) and agrees to comply with the Privacy Act 1988 (Cth) (**Privacy Act**) and not to knowingly do anything or permit anything to be done which might lead to a breach of the Privacy Act.
- ### 9. Limitation of Liability
- 9.1 None of the Seller and its related bodies corporate and the officers, employees, agents, contractors and subcontractors of any of them (the Seller Group) has any liability to the Customer or any other person for any consequential or indirect loss arising due to a breach of the Contract or in tort (including negligence) in connection with the provision of, or failure to provide, any Deliverables or otherwise under or in connection with the Contract including, without limitation, loss of profits, bonuses, anticipated income, anticipated cost savings or corruption or destruction of data.
  - 9.2 If the Seller supplies or provides any goods or services in connection with the supply of the Deliverables (other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption) in breach of a condition or warranty expressly set out in the Contract or implied by law into the Contract that cannot be lawfully excluded which, in the case of goods, requires the goods to correspond with a description or sample, to be of merchantable quality or to be fit for a purpose or, in the case of services, requires the services to be rendered with due care and skill or to be fit for a purpose, the liability of the Seller Group to the Customer (and any other person) for or in connection with the breach is limited at the option of the Seller to:
    - (a) in the case of defective goods – replacement of the goods or supply of equivalent goods; or repair of the goods; or payment of the cost of replacing the goods or of acquiring equivalent goods or of having the goods repaired; and
    - (b) in the case of defective services – supply of the services again; or payment of the cost of having the services supplied again.
  - 9.3 The total liability of the Seller Group to the Customer (and any other person) for a breach of the Contract or in tort (including negligence) in connection with the provision of, or failure to provide, any Deliverables or otherwise under or in connection with the Contract (except for liability arising due to the supply or provision of goods or services in breach of a condition or warranty implied by law into the Contract that cannot be lawfully excluded) is limited to the Contract Sum.

## 10. Indemnity

**10.1** The Customer will be liable for and shall indemnify the Seller Group against any loss, death, injury, cost, damage (whether personal or property and whether direct or consequential, including consequential financial loss) or other liability (including, without limitation, legal costs on a full indemnity basis) arising out of or in connection with a breach by the Customer of the Contract and/or the exercise of the Seller's rights under the Contract, the supply of the Deliverables or otherwise caused or contributed to by any act, omission or negligence of the Customer or any of its officers, employees, agents or contractors arising directly or indirectly out of supply of the Deliverables. Even though not a party to the Contract, a person will be entitled to the benefit of an indemnity or release given in its favour by the Customer under the Contract, and the indemnity or release may be enforced on its behalf by the Seller.

**10.2** The liability of the Customer under clause 10.1 shall be reduced proportionately to the extent such loss was directly caused by any act or omission of the Seller.

## 11. Australian Consumer Law

Under the Australian Consumer Law (ACL), consumers have certain rights which cannot be excluded. Nothing in the Contract shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, disclaimer, right, liability or remedy implied by law (including the ACL) and which by law cannot be excluded, restricted or modified.

## 12. Application of PPSA

The parties acknowledge and agree that:

**12.1** A term used in this clause 12 has the meaning given to it in the Personal Property Securities Act 2009 (Cth) (PPSA), unless the context otherwise requires.

**12.2** The Customer grants to the Seller a security interest under the PPSA in any Deliverables supplied under the Contract.

**12.3** The Customer consents and agrees to do anything reasonably necessary to ensure that any such security interest is perfected.

**12.4** The Customer acknowledges and agrees that the Seller may apply to register a security interest in any Deliverables at any time before or after delivery of any Deliverables. The Customer waives its right under section 157 of the PPSA to receive notice of any verification of the registration.

**12.5** The Seller may apply amounts it receives from the Customer towards amounts owing to the Seller in such order as the Seller may choose.

**12.6** If the Customer defaults in the performance of any obligation owed to the Seller under the Contract or any other agreement with the Seller to supply any Deliverables to the Customer, the Seller may enforce its security interest in any Deliverables by exercising all or any of its rights under the Contract or the PPSA.

**12.7** To the maximum extent permitted by law, the following provisions of the PPSA do not apply to the enforcement by the Seller of its security interest in any Deliverables: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

## 13. Confidentiality Obligations

The Customer 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 13 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 13, or to the extent necessary to allow the Customer to comply with any applicable law or to enforce its rights under the Contract.

## 14. Returns

To the extent permitted by law and subject to clause 11:

**14.1** The Seller is under no obligation to accept a return of any Deliverable, but may do so at its sole discretion. If the Seller does accept a return, it may do so subject to conditions, including charging a return fee.

**14.2** The Customer must arrange to inspect any Deliverables immediately upon the Customer's receipt of the Product. The Seller will be under no obligation to accept a return of any allegedly faulty or defective Deliverables where the fault or defect is not notified in writing to the Seller within 2 business days of the Customer's receipt of the Deliverables or, in any case, where the alleged fault or defect was caused by the Customer, any work carried out by the Customer or any other person (except the Seller or any of its personnel) or fair wear and tear.

**14.3** For the avoidance of doubt, the Seller will be under no obligation to accept a return of any Deliverables unless the Deliverables are returned undamaged, unused and in their original and undamaged condition (excluding any fault or defect that was present at the time of the Customer's receipt of the Deliverables) with labelling clearly identifying the original invoice and return approval. Such Deliverables shall until delivered to or collected by the Seller remain at the Customer's risk.

## 15. Termination by the Seller

**15.1** If: (a) the Customer commits any breach of the Contract or any other agreement with the Seller including without limitation by failing to pay any amount due to the Seller by the due date for payment; (b) the Customer dies or commits an act of bankruptcy, or the Customer 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 Customer gives notice of its intention that the Customer be dissolved, wound up or placed into bankruptcy; (c) the Customer is (or states that it is) insolvent or an insolvent under administration (each as defined in the Corporations Act); (d) execution or other process issued on a judgment, decree or order of a court (whether an Australian Court or not) in favour of a creditor against the Customer, or another person authorised to be sued as nominal defendant on behalf of the Customer, is returned wholly or partly unsatisfied, or the Customer makes a statement from which it may be reasonably deduced that such an event has occurred; (e) the Customer takes any step to obtain protection or is granted protection from its creditors under any applicable legislation; or (f) the parties cannot agree on terms in relation to the supply of and payment for any Deliverables the Seller may, in its absolute discretion, by giving to the Customer its notice of election, either suspend supply of the Deliverables until the matter is remedied to its satisfaction; or terminate the Contract at any time, including following an election to suspend further supply of the Deliverables.

**15.2** Where the Seller elects to terminate, termination will be effective at the date of termination

stated in the notice or, if no date is stated, on the date the termination notice is given to the Customer. Where the Seller elects to suspend further supply of the Deliverables, the Seller will not have any liability for any loss or damage suffered by the Customer or any other person due to or in connection with any delay in supplying the Deliverables arising from the suspension, and the time to supply the Deliverables will be extended by such period as the Seller reasonably requires having regard to the impact of the suspension on the work required to manufacture and/or supply the Deliverables.

## 16. Consequences of Termination

**16.1** Where the Contract is terminated for any reason, the Customer agrees that any deposit paid is not refundable and may be retained by the Seller to cover the Seller's time and effort in relation to the Contract. Additionally the Customer must pay the Seller for the Deliverables supplied up to and including the date of termination such amount which would have been payable for the Deliverables if the Contract had not been terminated and the Seller had invoiced the Customer for payment and the cost of goods and materials reasonably on order by the Seller for the Deliverables at the date of termination (less any amount for those Deliverables or those goods and materials already paid by the Customer).

**16.2** 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 but will terminate all other rights and obligations of the parties under the Contract. This clause 16 and clauses 4, 5, 10, 12, 13, 15, 17 (excluding clause 17.1) and 18 survive termination of the Contract.

## 17. General

**17.1** 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.

**17.2** The Contract is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

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

**17.4** 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.

**17.5** 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 Customer may only sub-contract or assign any of its rights, obligations or any other interest under the Contract to any person after it obtains the written consent of the Seller. The Seller may sub-contract or assign any of its rights, obligations or any other interest under the Contract to any person without the Customer's consent.

**17.6** 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.

**17.7** Should the supply of the Deliverables be subject of a prior written contract between the Seller and the Customer, the terms of that contract apply and prevail to the extent of any inconsistency with the Contract. Otherwise, the terms of the Contract entirely comprise the terms set out in the Order and these terms, 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 Order or set out in the Customer's standard terms and conditions of purchase or otherwise will apply or have any effect unless expressly agreed to in writing by the Seller.

**17.8** Each party represents and warrants to each other party (at the date of the Seller'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.

**17.9** Where a Customer enters into the Contract as trustee of a trust, the Customer also represents and warrants to the Seller 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 Customer 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.

## 18. Interpretation

**18.1** 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 word or term defined in the Corporations Act 2001 (Cth) has the same meaning in these terms and a reference to the personnel of the Seller is a reference to the Seller's employees; any individuals engaged by the Seller as subcontractors; and individuals employed or engaged by the Seller's subcontractors who perform or assist with the supply of any Deliverables.

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