

## Definitions

1. In this Agreement the following definitions apply.
  - (a) **Company** means Future Floors (Qld) Pty Ltd (ACN 145 408 822) and where applicable any subsidiaries or related companies as defined in the *Corporations Act 2001* (Cth) and their servants or agents.
  - (b) **Customer** means any person, firm, corporation, government, semi-government or local government department or authority, its successors, assignees, trustees, administrators or liquidators, to whom or to which Goods or Goods are sold by the Company.
  - (c) **Force Majeure** includes strike, industrial dispute, raw material shortage, supplier issue, natural disaster, collision, accident, contamination or radiation, crime, civil unrest, act of terrorism, embargo, government sanction, war or event outside the control of the Company.
  - (d) **Goods** means goods or services provided by the Company to the Customer at any time including quotation, flooring materials, carpet, installation of flooring or carpet, manufactured product, repair, report or related goods or services.
  - (e) **Indemnity** whenever it is herein provided that the Customer must indemnify the Company, then the indemnity to be provided must be a full and complete indemnity from and against liability in respect of all claims, demands, action, suits, proceeds and costs.
  - (f) **Invoice** includes account, payment or monies paid in accordance with the Company's systems.

## General Terms

2. The Customer must pay all invoices due and owing to the Company on or before 30 days from the date of invoice unless prior written arrangements have been made with the Company. Failing to pay an invoice within 30 days of the date of invoice constitutes and event of default by the Customer (**Default**).
3. The Company may at any time without notice, terminate or suspend the Customer's right to receive Goods from the Company on credit and is not liable for any damages, costs, penalties or charges incurred by the Customer as a result of the non-supply of Goods by the Company.
4. All outstanding invoices become immediately due and payable in the event of Default on payment by the Customer of any invoice or account, regardless of whether or not some invoices may not otherwise have become due for payment.
5. Any amount that remains unpaid for 60 days from the date of invoice incurs interest at the rate of 1.5% per month or part thereof as an administration charge. The Customer agrees that that this is a fair and reasonable charge and is directly relevant to the likely damage that the Company might suffer as a result of non payment by the Customer. Interest will be calculated on all outstanding amounts from the date of issue of the invoice.
6. Any unpaid amounts that may from time to time be overdue to the Company and any interest charged is recoverable by the Company from the Customer as a liquidated debt.
7. Payment must be made by the Customer to the Company without any set off or deduction against any other amount whatsoever.
8. In the event of default on payment by the Customer, the Customer will be liable for all losses, liabilities, costs and expenses (including but not limited to debt recovery and legal expenses, including commission charged by debt recovery agents and solicitor's costs) on a full indemnity basis or on a solicitor and own client basis whichever is the higher, incurred by the Company seeking to recover the default amount, the Customer hereby charges its interest in any and all land registered in its name as security for payment of monies it owes the Company.

## Jurisdiction

9. This contract is deemed to have been entered into in the State of Queensland. Any legal action arising out of, or in respect of the contract and/or the interpretation thereof must be brought only in the State of

Queensland. The parties further agree to issue any proceedings in the Brisbane registry of the appropriate Court having monetary jurisdiction over the matter.

## Compliance

10. This Provision agreement is not bound by the following legislation and the Customer agrees that the following do not apply to this Provision agreement and are exceptions to each legislation or its successor except where applicable:
  - (a) *Competition and Consumer Act 2010*;
  - (b) *Trade Practices Act 1974*;
  - (c) *The Consumer Protection Rules 1987*;
  - (d) *Sale of Goods Act 1896*; and
  - (e) *Fair Trading Act 1989*.
11. Title in the Goods pass from the Company to the Customer on completion of the work to be performed as agreed between the Company and the Customer and full payment by the Customer to the Company.
12. The Customer is not entitled to damages or compensation from the Company for any loss suffered by reason of late delivery or if the Goods are damaged or destroyed due to the conditions of the site of the delivery or repair of the Goods.
13. The Company gives no warranty condition or representation express or implied as to the capacity or fitness of the Goods for any particular purpose, unless that particular purpose was specified to the Customer at the time of quotation by the Company.
14. The Company reserves the right to amend rates and/or terms and conditions from time to time without prior notice to the Customer.
15. The Customer irrevocably authorises, permits and consents to the Company entering any premises to retrieve and recover possession of any Goods which the Company may have provided to the Customer or any other such items to which the Company has the title of the right to exclusive or sole possession. This irrevocable authority allows the Company to use such force as is reasonably required to open doors or any other entrances even if the use of such force would damage the door or entrance. The Customer agrees that the presence of the Company or it's agents or servants at the premises and the use of such force and the occasioning of damages will not vest the Customer with any cause of action whatsoever against the Company and the Company may refer to this clause should any right or entitlement of the Company be called into question.
16. The Customer agrees that only suitably trained, qualified and licenced personnel approved by the Company may use the Goods provided by the Company prior to the Customer taking title of the Goods.
17. Where Goods are used by the Company, its legal liability arising from the use of the Goods is covered by third party property damage cover and public liability cover.

## Duties and Charges

18. Unless otherwise stated, all rates, charges and/or prices are quoted exclusive of GST, duty, taxes or any other statutory charge or fee payable in connection with the provision of Goods.
19. If the Goods are damaged or destroyed due to Force Majeure the Customer agrees the Company is not liable for any repair, replacement or delivery costs of the Goods or for any loss or damage the Customer incurs as a result whether caused directly or indirectly by the Force Majeure.

## Security interest and charge

20. References to PPS Law in this Agreement means the *Personal Property Securities Act 2009* (Cth) ("**PPSA**"), and any subordinated legislation relating to the PPSA, and includes references to amended, replacement and successor provisions of such law.

## Creation of a security interest and charge

21. To secure payment of invoices that are due and payable under this Agreement, the Customer:
  - (a) grants a security interest in all of its present and after-acquired personal property ("**the Security Interest**"); and
  - (b) to the extent permitted by law, also charges to the Company all of its present and future property, assets and undertaking wherever situated.

22. The charge created under clause 21(b) of this Agreement is a fixed charge over the Customer's property. However, if that charge is not legally and fully effective as a fixed charge then, for so long as and to the extent it may not be so legally and fully effective, that charge is a floating charge until such time as it becomes a fixed charge by virtue of clause 23 of this Agreement.
23. Any floating charge created under this Agreement will become a fixed charge automatically without the need for any notice or action by the Company immediately prior to or, if that would not result in the fixed charge being legally and fully effective, contemporaneously with, the occurrence of any Default.
24. The Security Interest created under this Agreement is in addition to and enforceable independently or any other security interest, guarantee or security, including the charge or charges created by clauses 21(b), 22 and/or 23 of this Agreement.
25. The Security Interest granted under this Agreement is a continuing security until The Company releases all property the subject of the Security Interest, despite any intermediate payment, discharge, settlement or other matter. The Customer's obligations under this Agreement continue despite any full or partial release of the property the subject of the Security Interest and no full or partial release of such property will release the Renter from personal liability under this Agreement until all money has in fact been received by the Company.

## Registration of security interest

26. The Company is at liberty to register its security interest, as a purchase money security interest ("**PMSI**") or otherwise, under the PPS Law. The Customer must do anything (such as obtaining consents and signing documents) which the Company requires for the purposes of:
  - (a) ensuring that the Company's security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling the Company to gain first priority (or any other priority agreed to by the Company in writing) for its security interest; and
  - (c) enabling the Company to exercise rights in connection with the security interest.
27. The Company may recover from the Customer the cost of doing anything under clause 26 of these terms and conditions, including but not limited to registration fees.

## Priority of security interest

28. The Company and the Customer intend that the security interest created under this Agreement takes priority over all other security interests and other interests in the property the subject of the security interest at any time other than security interests that are specifically agreed in writing between the Company and the Customer or as mandatorily preferred by law.
29. Nothing in this Agreement restricts the Company from claiming that the security interest created under this Agreement is a purchase money security interest in respect of all or part of the property the subject of the Security Interest.
30. The Customer may require the Company to release the property the subject of the Security Interest if the Company is satisfied that:
  - (a) all payments owing under this Agreement have been irrevocably paid in full;
  - (b) the Customer has complied with all of its obligations under this Agreement;
  - (c) if a Default has occurred, the Company has not sold or agreed to sell any property the subject of the Security Interest and is not deemed to have taken any property in satisfaction of any payments owing under this Agreement or pursuant to the Security Interest or the PPS Law.

31. The rights of the Company under this Agreement are in addition to, and not in substitution for, the Company's rights under any other law (including PPS Law) and the Company may choose whether to exercise rights under the PPS Law, enforce the terms of these terms and conditions, and/or under other law, as it sees fit.

## Consequences of default, powers and rights

32. If a Default occurs:

- (a) The Company may by notice to the Customer declare that all or any part of the payments due and payable under any invoice or invoices are immediately due and payable and, upon receiving such a notice, the Customer must immediately pay the amount claimed to be due and payable in that notice to the Company;
- (b) the Security Interest created under this Agreement will become immediately enforceable; and
- (c) any floating charge created under this Agreement will become a fixed charge in accordance with clause 23 of this Agreement.

33. While a Default subsists, regardless of whether the Company has appointed a Receiver, the Company may, without demand or notice to anyone (unless notice is required by any law), do all things that a secured party with a security interest in, or a mortgagee or an absolute owner of, the property the subject of the Security Interest can do, and exercise all rights, powers and remedies of a secured party with a security interest in, or a mortgagee or an absolute owner of, the property the subject of the Security Interest.

34. Without limiting any other clause in this Agreement or the provisions of the PPS Law, the Customer agrees that, by force of this Agreement and at any time while a Default subsists, the Company may:

- (a) seize any personal property the subject of the Security Interest;
- (b) dispose of any property the subject of the Security Interest in such manner and generally on such terms and conditions as the Company thinks desirable, including by private or public sale, lease or license; and
- (c) otherwise do anything that the Customer could do in relation to the Personal Property.

35. Without limiting the rights conferred on the Company by the PPS Law, the Company and the Customer acknowledge that the following provisions of the PPSA confer specific rights on the Company:

- (a) section 123 (seizing collateral);
- (b) section 126 (apparent possession);
- (c) section 128 (secured party may dispose of collateral);
- (d) section 129 (disposal by purchase); and
- (e) section 134(1) (retention of collateral).

*Contracting-out and waiver*

36. To the extent that Chapter 4 of the PPS applies to the Security Interest, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPSA, are "contracted out" of this Agreement in respect of all personal property to which that section can be applied:

- (a) section 95 (notice of removal of accession to the extent it requires the Company to give notice to the Renter);
- (b) section 96 (retention of accession);
- (c) section 121(4) (notice to grantor);
- (d) section 125 (obligations to dispose of or retain collateral);
- (e) section 130 (notice of disposal to the extent it requires the Company to give notice to the Renter);
- (f) section 129(2) and 129(3);
- (g) section 132(3)(d) (contents of statement of account after disposal);
- (h) section 132(4) (statement of account if no disposal);
- (i) section 135 (notice of retention);
- (j) section 142 (redemption of collateral); and
- (k) section 143 (reinstatement of security agreement).

37. The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

*Confidentiality*

38. The Company and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply to it. The Agreement in this clause is made solely for the purposes of allowing the Company the benefit of section 275(6)(a) and the Company shall not be liable to pay damages or any other compensation or be subject to injunction if the Company breaches this clause.

**Security interests**

39. The Customer must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Goods other than with the express written consent of the Company.

40. The Customer must take all steps including registration under PPS Law as may be required to:

- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling the Customer to gain (subject always to the rights of the Company) first priority (or any other priority agreed to by the Company in writing) for the security interest; and
- (c) enabling the Company and Customer to exercise their respective rights in connection with the security interest.

41. The Company may recover from the Customer the cost of doing anything under this clause, including registration fees.

**Inspection and acceptance**

42. The Customer may inspect the Goods on delivery or receipt and must provide notice to the Company within forty-eight (48) hours of delivery if the Customer alleges that the Goods do not fit the description of the Goods provided in the Proposal.

43. The return of any Goods must be at the expense of the Customer and will only be accepted by the Company if the Company accepts the return of the Goods in writing and the Goods are in a saleable condition. The Company reserves the right to charge a handling fee of 10% of the purchase price for Goods returned.

44. The Customer is responsible for any loss or damage to Goods caused during the period of time at the Customer's site. The Customer agrees to pay for the costs of any repairs or replacement as assessed by the Company or its agent within thirty (30) days of being notified.

**Cancellation**

45. The Customer does not have a right to cancellation unless agreed in writing between the Company and the Customer. If agreed in writing, the Customer must exercise its right to cancellation not later than seven (7) days prior to the estimated date of provision of Goods to the Customer. On cancellation, any deposit paid by the Customer to the Company is forfeited by the Customer to the Company.

46. If any Goods have already been purchased, prepared or provided by the Company to the Customer at the time the Customer has made a cancellation, the Customer is liable for the full cost of the Goods already incurred by the Company at the time of cancellation.

47. Where the Customer has caused any delay or cancellation, the Customer agrees that any deposit paid by the Customer to the Company is not to be refunded to the Customer.

**Default**

48. In the event of default on payment by the Customer, the Customer will be liable for all losses, liabilities, costs and expenses (including but not limited to all debt recovery and legal expenses) on a full indemnity basis or on a solicitor and own Customer basis whichever is the higher, incurred by the Company seeking to recover the default amount.

49. Any unpaid amounts that may from time to time be overdue and any interest charged shall be recoverable from the Customer as a liquidated or unliquidated debt.

50. Payment shall be made by the Customer to the Company without any set off or deduction against any other amount whatsoever.

51. If the Customer defaults on paying the full amount due and owing to the Company for the provision of Goods, the Customer irrevocably authorises, permits and consents to the Company:

- a) Registering its security interest in the Goods as a purchase money security interest under the PPS Law ("PMSI"). The Customer must do anything (such as obtaining consents and signing documents) which the Company requires for the purposes of:
  - (i) ensuring that the Company's security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - (ii) enabling the Company to gain first priority (or any other priority agreed to by the Company in writing) for its security interest; and
  - (iii) enabling the Company to exercise rights in connection with the security interest.
 The Company may recover from the Customer the cost of doing anything under this clause, including but not limited to registration fees;
- b) Registering an interest in any and all land registered in the Customer's or its Directors' names as security for payment of monies it owes the Company; and
- c) Entering any premises including by using reasonable force to seize, take possession of, retrieve and recover possession of any Goods provided by the Company to the Customer which the Customer has not paid for in full and any other such Goods to which the Company has the title of the right to exclusive or sole possession. The Customer agrees that the presence of the Company or its agents or servants at the premises and the use of such force and the occasioning of damages will not vest the Customer with any cause of action whatsoever against the Company and the Company may refer to this clause should any right or entitlement of the Company be called into question.

**Delivery**

52. All quotes are based on pick up of the Goods at the address designated by the Company. Delivery charges may be in addition to the quote provided.

53. Any permits and/or licence fees and toll charges incurred by the Company may be charged to the Customer's account.

54. This agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement. The agreement may be entered into by and becomes binding on the parties named in the agreement upon one party signing the agreement that has been signed by the other (or a photocopy or facsimile copy of that Agreement) and transmitting a facsimile copy of it to the other party.

**Acknowledgement**

I/We the undersigned declare that all information provided to the Company for the purposes of assessing the Customer's suitability for credit and provision of Goods is true and correct in every particular.

I/We the undersigned further acknowledge that I/we have authority to sign on behalf of the Customer and have read understand and agree to the above terms and conditions.

Customer: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Date: \_\_\_\_\_