
South Coast Floor Coverings Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 “SCFC” means South Coast Floor Coverings Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of South Coast Floor Coverings Pty Ltd.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by SCFC to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between SCFC and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with SCFC’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and SCFC.
- 2.3 Where Goods are purchased by the Client in a supply only capacity, no returns will be accepted once the Goods have been installed.
- 2.4 All Goods need to be checked for colour and quantity on supply only sales with no claims being accepted for defects once the Goods have been installed.

3. Change in Control

- 3.1 The Client shall give SCFC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by SCFC as a result of the Client’s failure to comply with this clause.

4. Price and Payment

- 4.1 At SCFC’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by SCFC to the Client; or
 - (b) SCFC’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 SCFC reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, etc) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to SCFC in the cost of labour or materials which are beyond SCFC’s control.
- 4.3 At SCFC’s sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by SCFC, which may be:
 - (a) on delivery of the Goods or on completion of an installation and shall be cash on delivery unless otherwise arranged with SCFC;
 - (b) by way of instalments/progress payments in accordance with SCFC’s payment schedule;
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client’s address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by SCFC.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Client and SCFC, with the exception of special circumstances as per clause 4.6.
- 4.6 Payment for on delivery or pick up situations, only cash or a bank cheque will be accepted as a final payment. Personal and business cheques require seven (7) days for clearance purposes before the Goods may leave SCFC’s premises.
- 4.7 Where Goods are to be stored for a period of longer than six (6) weeks, SCFC requires payment of the balance outstanding less any applicable installation costs.
- 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to SCFC an amount equal to any GST SCFC must pay for any supply by SCFC under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

- 5.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
 - (a) the Client or the Client’s nominated carrier takes possession of the Goods at SCFC’s address; or

South Coast Floor Coverings Pty Ltd – Terms & Conditions of Trade

- (b) SCFC (or SCFC's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 5.2 At SCFC's sole discretion the cost of delivery is included in the Price.
- 5.3 SCFC may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 Any time or date given by SCFC to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and SCFC will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 6. Risk**
- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, SCFC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SCFC is sufficient evidence of SCFC's rights to receive the insurance proceeds without the need for any person dealing with SCFC to make further enquiries.
- 6.3 If the Client requests SCFC to leave Goods outside SCFC's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 6.4 SCFC will not accept responsibility for any damage to the floor due to microenvironments caused by air-conditioning, heating or large expanses of glass windows without curtains or blinds.
- 6.5 Whilst SCFC will take all due care to avoid contamination of the finished surface, SCFC accepts no responsibility for contamination by natural contaminants such as dust or hair which may be present at the worksite.
- 6.6 SCFC will only inspect or view a timber floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects.
- 6.7 The Client accepts that laying carpet and or other flooring materials may require the stretching or butting up against skirting boards. Whilst SCFC shall take due care during installation, where skirting boards have been prepared and painted with inferior quality paints or unpainted, SCFC shall not be liable for any scuff marks or damage to skirting board finishes. On well finished painted skirting boards, any marks will usually wipe off.
- 6.8 The Client accepts that SCFC will not be held liable for any damages to wire, pipes or cords installed under sub floors in any skirting or architrave.
- 6.9 Where SCFC is to install floor coverings and the Client gives less than twenty-four (24) hours notice of installation cancellation, then the Client shall be charge a cancellation fee of two hundred dollars (\$200).
- 6.10 Where SCFC is required to complete floor preparation due to being unable to sight the floor prior to laying a floor covering, this shall be charged as a variation as per clause 4.2.
- 7. Carpet Risk Clauses**
- 7.1 The Client acknowledges and accept that:
- (a) whilst carpet manufacturers make every effort to match dye lots, colours or shade may vary between batches of product and/or between sales samples and actual product supplied; and
 - (b) carpet manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when installed; and
 - (c) the installation process for carpet may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product; and
 - (d) that permanent shading (as applicable to cut pile, velour and velvet carpets) or watermarking cannot be predicted or prevented and this has no detrimental influence of the durability or life of the carpet and is not a manufacturing defect and therefore is not a defect; and
 - (e) crush lines may appear in carpet that has been stores for a period of time, which will disappear over times after installation.
- 8. Timber Flooring Risk Clauses**
- 8.1 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst SCFC will make every effort to match sales samples to the finished Goods SCFC accepts no liability whatsoever where such samples differ to the finished Goods supplied.
- 8.2 Timber is a hygroscopic material subject to expansion and contraction, therefore SCFC will accept no responsibility for gaps that may appear in the flooring during prolonged dry periods.
- 8.3 The Client acknowledges that Goods supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 8.4 In the installation of Timber or Bamboo flooring SCFC may need to remove and replace skirting and trims from the property, yet all care is taken SCFC take no responsibility for marks and gaps on skirting or trims e.g. nail holes, gaps between skirting and wall. You will need to have your own painter to do gap filling and touch up painting.
- 9. Vinyl or Cork Tile Flooring Risk Clauses**

South Coast Floor Coverings Pty Ltd – Terms & Conditions of Trade

- 9.1 The Client acknowledges and agrees that SCFC shall not be liable for any loss, damages or costs however arising in the event that:
- (a) a heavy or sharp object is dropped or falls on the vinyl, as vinyl will show scratches and will get cut as it is a soft and flexible Good; or
 - (b) an object is dragged across it as vinyl can rip and tear; or
 - (c) the vinyl discolours or bubbles in areas due to exposure to extreme heat (including, but not limited to, conservatories and floor to ceiling windows).
- 9.2 SCFC does not recommend vinyl to be installed over a floor that is a combination of wood and concrete, or expansion joints in concrete floors, as any movement, joint, seams in bison board, or thin line board will show through the vinyl.
- 9.3 The Client acknowledges and agrees that vinyl will not fully seal a floor around the edges particularly around showers or baths; the Client also agrees water can get underneath and therefore bubble and/or discolour the vinyl. SCFC shall not be held liable for any loss, damages or costs however arising due to the same.
- 9.4 SCFC hereby requests the Client to remove any and all appliances in the installation area prior to the commencement of any works. The Client acknowledges and agrees that SCFC shall not be held liable for any loss, damages or costs arising due to the Client's failure to comply with this clause.
- 9.5 SCFC shall advise the Client if SCFC believes that there are any issues with the sub floor (including, but not limited to, moisture problems which may cause the vinyl to bubble and discolour) however the Client acknowledges that it is not always possible to identify such problems therefore the Client agrees that SCFC shall not be held liable in any way whatsoever should any such issue go undetected causing damage to the Goods.
- 9.6 The Client acknowledges that whilst floor levelling compound and floor preparation may help smooth out rough floors; this will not necessarily level a floor.
- 9.7 In the installation of Vinyl or Cork flooring SCFC may need to remove and replace skirting and trims from the property, yet all care is taken SCFC take no responsibility for marks and gaps on skirting or trims e.g. nail holes, gaps between skirting and wall. You will need to have your own painter to do gap filling and touch up painting.

10. Tile or Paver Risk Clauses

- 10.1 The Client acknowledges that variations of colour, shade and grain are inherent in all kiln fired products and natural stone. While every effort will be taken by SCFC to match colour, shade or grain of product, SCFC shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied.
- 10.2 SCFC gives no guarantee (expressed or implied) against crazing, cracking, chipping or scratching that may occur that is beyond SCFC's control due to the nature of the product at the time of installation, therefore it is recommended that the Client allows for extra product for such breakages.
- 10.3 Polished porcelain tiles may appear as being smoky, hazy or smudgy which maybe referred to as optical hazing. This is due to the mineral content, and in some situations visible pores, in the tile and may only be visible when direct light hits the tiles at a particular angle, with darker shades of tiles being more prone to this. Such an inherent characteristic is not a manufacturing defect and does not affect the technical performance of the tile.
- 10.4 The Client accepts that where SCFC has supplied appropriate and industry acceptable instructions on the correct tile laying procedures and the Client or the Client's installer fails to follow such instructions, then SCFC shall not be held liable for any loss or damage incurred by the Client to the Goods.
- 10.5 In the installation of Tiling flooring SCFC may need to remove and replace skirting and trims from the property, yet all care is taken SCFC take no responsibility for marks and gaps on skirting or trims e.g. nail holes, gaps between skirting and wall. You will need to have your own painter to do gap filling and touch up painting.

11. Client's Responsibilities

- 11.1 It is the Client's responsibility to:
- (a) advise SCFC of any hidden cables prior to installation as SCFC shall not be held liable for any damage caused by the Client not giving clear notification of the position of such cables, and if possible, such cables to be disconnected prior to installation; and
 - (b) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation, unless otherwise quoted by SCFC; and
 - (c) remove all existing floor coverings, tacks and staples, unless otherwise quoted by SCFC; and
 - (d) fully disclose any information that may affect SCFC's installation procedures (including, but not limited to, disclosing known breaks or tears in the membrane, extensions of existing slabs, thickened beams, curing compounds that may have been used, or the use of concrete over 25mpa); and
 - (e) ensure the sub-floor is adequately ventilated and is structurally sound; and
 - (f) ensure that the levels of the sub-floor are satisfactory as the floor coverings can only follow the contours of the sub-floor and will not correct unevenness; and
 - (g) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Client. All care taken but no responsibility accepted by SCFC in this regard; and
 - (h) provide adequate dust sheets to protect the Client's furniture and décor. SCFC will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbling walls should be temporarily covered by the Client, until the coatings are dry; and
 - (i) extinguish all naked flames prior to coating including, but not limited to, pilot lights, heaters etc; and

South Coast Floor Coverings Pty Ltd – Terms & Conditions of Trade

- (j) disconnect and remove any appliances such as dishwashers, stoves, etc as SCFC is not a licensed electrician or plumber; and
 - (k) supply power to within eight (8) metres of the project; and
 - (l) make the premises available on the agreed date. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between SCFC and the Client, any additional costs will be invoiced to the Client as an extra.
- 11.2 New carpet being fitted under pre-fabricated wardrobes, cupboards and wall units may cause the frames to become twisted. If the Client wishes to have carpet laid under such furniture, then the Client shall dismantle these. Beds should also be dismantled to facilitate the ease of laying flooring.
- 11.3 The Client shall be responsible for any shaving or lifting of any doors required as a result of laying floor coverings.
- 11.4 In the installation of Vinyl or Timber or Bamboo flooring SCFC may need to remove and replace skirting and trims from the property, yet all care is taken SCFC take no responsibility for marks and gaps on skirting or trims such as nail holes, gaps between skirting and wall. You will need to have your own painter to do gap filling and touch up painting.

12. Access

- 12.1 The Client shall ensure that SCFC has clear and free access to the work site at all times to enable them to undertake the works. SCFC shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of SCFC.

13. Dimensions, Plans and Specifications

- 13.1 SCFC shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.
- 13.2 If the giving of an estimate or quotation for the supply of Goods involves SCFC estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of SCFC's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.
- 13.3 Should the Client require any changes to SCFC's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

14. Title

- 14.1 SCFC and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid SCFC all amounts owing to SCFC; and
 - (b) the Client has met all of its other obligations to SCFC.
- 14.2 Receipt by SCFC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Goods and must return the Goods to SCFC on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for SCFC and must pay to SCFC the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for SCFC and must pay or deliver the proceeds to SCFC on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of SCFC and must sell, dispose of or return the resulting product to SCFC as it so directs.
 - (e) the Client irrevocably authorises SCFC to enter any premises where SCFC believes the Goods are kept and recover possession of the Goods.
 - (f) SCFC may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SCFC.
 - (h) SCFC may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

15. Personal Property Securities Act 2009 ("PPSA")

- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by SCFC to the Client.
- 15.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SCFC may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

South Coast Floor Coverings Pty Ltd – Terms & Conditions of Trade

- (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, SCFC for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of SCFC;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of SCFC;
 - (e) immediately advise SCFC of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.4 SCFC and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by SCFC, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client must unconditionally ratify any actions taken by SCFC under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1 In consideration of SCFC agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies SCFC from and against all SCFC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SCFC's rights under this clause.
- 16.3 The Client irrevocably appoints SCFC and each director of SCFC as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 17.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify SCFC in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow SCFC to inspect the Goods.
- 17.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 17.3 SCFC acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SCFC makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. SCFC's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Client is a consumer within the meaning of the CCA, SCFC's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If SCFC is required to replace the Goods under this clause or the CCA, but is unable to do so, SCFC may refund any money the Client has paid for the Goods.
- 17.7 If the Client is not a consumer within the meaning of the CCA, SCFC's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by SCFC at SCFC's sole discretion;
 - (b) limited to any warranty to which SCFC is entitled, if SCFC did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 17.8 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) SCFC has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 17.9 Notwithstanding clauses 17.1 to 17.8 but subject to the CCA, SCFC shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;

South Coast Floor Coverings Pty Ltd – Terms & Conditions of Trade

- (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by SCFC;
 - (e) fair wear and tear, any accident, or act of God.
- 17.10 Notwithstanding anything contained in this clause if SCFC is required by a law to accept a return then SCFC will only accept a return on the conditions imposed by that law.

18. Intellectual Property

- 18.1 Where SCFC has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of SCFC.
- 18.2 The Client warrants that all designs, specifications or instructions given to SCFC will not cause SCFC to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify SCFC against any action taken by a third party against SCFC in respect of any such infringement.
- 18.3 The Client agrees that SCFC may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SCFC has created for the Client.

19. Default and Consequences of Default

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SCFC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes SCFC any money the Client shall indemnify SCFC from and against all costs and disbursements incurred by SCFC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SCFC's contract default fees, and bank dishonour fees).
- 19.3 Without prejudice to any other remedies SCFC may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions SCFC may suspend or terminate the supply of Goods to the Client. SCFC will not be liable to the Client for any loss or damage the Client suffers because SCFC has exercised its rights under this clause.
- 19.4 Without prejudice to SCFC's other remedies at law SCFC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SCFC shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SCFC becomes overdue, or in SCFC's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 SCFC may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice SCFC shall repay to the Client any money paid by the Client for the Goods. SCFC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by SCFC as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Act 1988

- 21.1 The Client agrees for SCFC to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by SCFC.
- 21.2 The Client agrees that SCFC may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 21.3 The Client consents to SCFC being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 21.4 The Client agrees that personal credit information provided may be used and retained by SCFC for the following purposes (and for other purposes as shall be agreed between the Client and SCFC or required by law from time to time):
- (a) the provision of Goods; and/or

South Coast Floor Coverings Pty Ltd – Terms & Conditions of Trade

- (b) the marketing of Goods by SCFC, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 21.5 SCFC may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 21.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that SCFC is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of SCFC, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by SCFC has been paid or otherwise discharged.

22. Dispute Resolution

- 22.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

23. Compliance with Laws

- 23.1 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

24. Building and Construction Industry Security of Payments Act 1999

- 24.1 At SCFC's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 24.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

25. General

- 25.1 The failure by SCFC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SCFC's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which SCFC has its principal place of business, and are subject to the jurisdiction of the Wollongong courts in New South Wales.
- 25.3 Subject to clause 17 SCFC shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by SCFC of these terms and conditions (alternatively SCFC's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by SCFC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.5 SCFC may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 25.6 The Client agrees that SCFC may amend these terms and conditions at any time. If SCFC makes a change to these terms and conditions, then that change will take effect from the date on which SCFC notifies the Client of

South Coast Floor Coverings Pty Ltd – Terms & Conditions of Trade

such change. The Client will be taken to have accepted such changes if the Client makes a further request for SCFC to provide Goods to the Client.

- 25.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.