

**TERMS AND CONDITIONS OF SALE****(PLEASE READ CAREFULLY)****1. Interpretation**

In these conditions:

“**ACL**” means the Australian Consumer Law set out in Schedule 2 to the CCA.

“**Agreement**” means the agreement between you and the Company for the supply of Goods comprising the documents referred to in clause 2 (a) (as varied by the Company from time to time).

“**CCA**” means the Competition and Consumer Act 2010 (Cth).

“**Company**” or “**we**” or “**us**” or “**our**” means Primary Flooring Pty Ltd ACN 615 172 097 as stipulated on the relevant Order.

“**Conditions**” means these terms and conditions as varied from time to time.

“**Consequential Loss**” means any loss or damage arising from a breach of contract, under an indemnity or guarantee, tort (including negligence), under statute or any other basis in law or equity being, loss of profits; loss of revenue; loss of savings or anticipated savings; loss or denial of opportunity; loss of any contract or future business; loss of custom; loss of use and loss of goodwill.

“**Consumer Guarantees**” means the guarantees that apply to goods and services purchased by consumers (as defined in the CCA), contained in Part 3-2, Division 1 of the ACL.

“**Corporations Act**” means Corporations Act 2001 (Cth).

“**Default Rate**” means 10%.

“**Guarantee and Indemnity**” means the guarantee and indemnity in favour of the Company annexed to any relevant credit application between you and the Company.

“**GST**” has the meaning given to that term in GST Law.

“**GST Law**” has the meaning given to that terms in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“**Insolvent**” has the meaning in section 95A of the Corporations Act or you are otherwise unable to pay your debts as and when they fall due.

“**Intellectual Property**” means all registered and unregistered rights in present and future copyright, trade marks, designs and patents, trade secrets, semi-conductor or circuit layout rights, rights in confidential information and all rights conferred under statute, common law or equity in relation to the above.

“**Order**” means an order by you to the Company requesting the supply of Goods including as set out in any order acknowledgement or via our online portal.

“**PPSA**” means the Personal Property Securities Act 2009 (Cth).

“**PPSR**” means the Personal Property Securities Register established pursuant to the PPSA.

“**Goods**” means the carpet underlay, timber and other flooring coverings specified in any Order and/or supplied to you pursuant to this Agreement.

“**Related Body Corporate**” is as defined in section 9 of the Corporations Act 2001 (Cth).

“**Representative**” means the officers, agents or employees of the Company or you (as the case may be).

“**Security Interest**” has the meaning given to it in section 12 of the PPSA.

“**you**” or “**your**” or “**Customer**” means the entity to whom the Goods are supplied.

**2. Application of terms and conditions**

- a) This Agreement consists of the relevant Order received by the Company in writing and these Conditions.
- b) If there is any inconsistency between these Conditions and any relevant Order, these Conditions shall take precedence.
- c) You agree that these Conditions of sale or subject to us giving you at least 30 days’ notice, such other terms and conditions as we may adopt from to time, govern the supply of the Goods by us to you to the exclusion of all other terms and conditions of sale or purchase. The terms and conditions current as at the time you place your Order will apply to the supply of the Goods under that Order. Despite the above, we reserve the right to correct clerical errors without notification.

- d) No variation to our terms and conditions of sale will be of any effect unless agreed to by us in writing.
- e) You agree that the terms and conditions contained in this Agreement will prevail over and replace any terms and conditions proposed by you.

### 3. Terms of Sale

- a) Upon placing an Order, you are deemed to accept, and agree to be legally bound by, this Agreement.
- b) The Company reserves the right to improve, change or alter the descriptions of the Goods offered and to discontinue or add any Good without prior notice to you (so long as that doesn't affect any Orders placed prior to the change).

### 4. Orders

- a) All Orders must be made in writing (including without limitation via our online portal) unless otherwise agreed by the Company.
- b) The Company, without prejudice to any other rights it has against you, reserves the right to charge you for any costs or extra expenses incurred by the Company if an Order is varied or cancelled by you.
- c) We reserve the right to specify the minimum order value which we shall accept from time to time and to impose a surcharge should you require delivery of goods having a value less than the minimum order value.

### 5. Prices

- a) Our prices are subject to change without notice but you will be notified of the price of the Goods prior to purchasing the Goods.
- b) You agree to pay the price for the Goods as set out in the Order.
- c) GST at the prevailing rate at the date of invoice will be included in the amount due and payable on the invoice. We state on the face of the invoice whether or not the prices shown on the invoice are inclusive or exclusive of such tax.
- d) In addition to the amount payable for the Goods, you must pay to the Company an amount equal to any GST applicable to any taxable supply by the Company under this Agreement.

### 6. Payment

- a) You must pay in full the amount payable for the Goods (as set out in the invoice) within 30 days from the end of the month in which the invoice

is issued.

- b) To the extent permitted by law, we reserve the right, to charge a fee for overdue payments, credit card payments, cancellation of orders, manual processing of payments, and to pass on bank fees imposed on payments.
- c) If you fail to make any payment to the Company on the due date or you are in breach of any of the terms and conditions of this Agreement or you are, in the reasonable opinion of the Company, Insolvent, then the Company is entitled to, at its election in its sole discretion to do all or any of the following:
  - i. cease supply of the Goods;
  - ii. refuse to deliver to you the Goods (or any part thereof);
  - iii. stop any Goods in transit;
  - iv. otherwise cease to perform any of its obligations to you,

and you must immediately pay to the Company all amounts due and payable to the Company, plus interest at the Default Rate and all of our costs and expenses (including legal cost determined as between solicitor/own client and mercantile agents fees) which may be incurred in the recovery or attempted recovery of the overdue amounts from you.

### 7. Settlement Discount

You may take advantage of a discount for early settlement of accounts at the rate agreed between us from time to time in our absolute discretion, provided that:

- a) payment is made in full within the time specified; and
- b) you do not have any other invoices outstanding beyond their due date at the time of payment.

### 8. Delivery and Risk

- a) Whilst we shall use all reasonable endeavours to comply with your particular delivery requirements and order specifications, you agree, subject to law that we are not liable for late delivery, non-delivery or for any loss, damage or delay caused to you from late or non-delivery of the Goods.
- b) Notwithstanding this clause 8, risk in the Goods passes to you or your specified agent on and from delivery of the Goods to you or as directed by you.

### 9. Reservation of Title

- a) Title to the Goods only passes to you once the Company has received all amounts owing to it

in respect of the Goods, on any other account whatsoever and upon you meeting your obligations under this Agreement and any other contract with us.

- b) Until such time as title to the Goods is transferred to you, you agree:
  - i. we have the right to call for or recover the Goods at our option (for which purposes our employees or agents may enter your premises);
  - ii. to keep the Goods and the benefit of any proceeds of the Goods on trust for us;
  - iii. notwithstanding the foregoing, you may sell the Goods to a third party in the ordinary course of business and you must account to the Company for all proceeds of the sale of the Goods including any insurance proceeds; and
  - iv. to insure the Goods.

#### 10. PPSA

- a) All capitalized terms in this clause have the meaning given to them in the PPSA (unless defined otherwise in this Agreement).
- b) You acknowledge and agree that you grant the Company a Security Interest in the Goods and their Proceeds including any Accounts and Accessions by virtue of the retention of title pursuant to clause 9.
- c) You agree that:
  - i. the Goods supplied by the Company secure the payment of the purchase price of those goods and of any other goods supplied by the Company;
  - ii. you will do all the things necessary to assist us to perfect the Security Interest including providing all information we require to register a Financing Statement or Financing Change Statement on the Personal Properties Securities Register (PPSR) as a Security Interest and a Purchase Money Security Interest pursuant to the PPSA;
  - iii. you will not change your name, ACN or ABN, address or other details required on the PPSR, without first notifying us;
  - iv. you waive your rights to receive a verification statement in respect of any Financing Statement or Financing Change Statement in respect of the Security Interest created pursuant to these terms and conditions;
  - v. if you make payment to us at any time

whether in connection with this Agreement or otherwise, we may, at our absolute discretion, apply that payment in any manner we see fit (e.g. we may apply payments that you make to past debts that you owe us instead of attributing that payment to the Goods that you intended to pay for); and

- vi. you must pay our costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement.
- d) Any Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over any other registered or unregistered Security Interest. You must keep the Goods free of any charge, lien or Security Interest and you must not otherwise deal with the Goods in a way that will or may prejudice any rights of the Company under this Agreement or the PPSA.
- e) To the maximum extent permitted by law, you agree that:
  - i. section 142 and 143 are excluded; and
  - ii. the Company need not comply with sections 95, 123(2), 129 (2), 130, 132, 134 (2) or 135.
- f) To the maximum extent permitted by law, you waive:
  - i. your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) and any other law before a secured party or receiver exercises a right, power of remedy; and
  - ii. any time period that must otherwise lapse under any law before a secured party or receiver exercises a right, power of remedy.

#### 11. The Company's Warranties

- a) Where the ACL applies, our Goods may come with guarantees that cannot be excluded under the ACL.
- b) Nothing in this Agreement is to be read or applied so as to exclude, restrict or modify any guarantee or other right or remedy in the ACL or other law which cannot by law be excluded, restricted or modified.
- c) Except as expressly set out in this Agreement or in respect of the Consumer Guarantees, the Company makes no warranties or other representations in respect of the Goods.

**12. Limitations of Liability**

- a) The Company limits its liability to you to:
  - i. where the Consumer Guarantees apply in relation to the supply of: (1) goods to either, at Company's discretion, the replacement of the goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; and (1) services to either, at the Company's discretion, the supply of the relevant services again or the payment of the cost of having those services supplied again; and
  - ii. for breach of agreement, negligence, breach of statutory duty or any other cause of action other than a breach of an applicable Consumer Guarantee in connection with the provisions of the Goods, in aggregate to the total fees paid to us by you in respect of this Agreement in the 12 months preceding the date of the event giving rise to the liability.
- b) To the extent permitted by law, the Company and its Representatives are not liable for any special, indirect or Consequential Loss.
- c) Subject to clause 11 a), you acknowledge that you do not rely on the skill or judgment of the Company as to whether or not the Goods are fit for any particular purpose.

**13. Indemnity**

Subject to the ACL, you indemnify the Company from every liability, loss, damage, cost and/or expense directly or indirectly incurred or suffered by the Company caused by or contributed to or by any of the following:

- a) you making any statement about the Goods (for example, about their performance or characteristics) without the Company's written approval;
- b) any negligence or breach of duty or breach of this Agreement by you or any third party; or
- c) your, (or any third parties contracted by or instructed by you) failure to:
  - i. adequately provide or display safety markings or safety information on or with the Goods;
  - ii. comply with any law about the Goods you use (for example, their sale, marketing, labeling or marking);
  - iii. take any reasonable precaution to

bring to the attention of any potential users of the Goods any dangers associated with Goods;

- iv. provide correct information to the Company; or
- v. correctly use, operate, repair or maintain the Goods by you or any third party,

except to the extent that such liability, loss, damage, cost and/or expense is caused or contributed to by the negligent, fraudulent or intentional acts or omissions of the Company.

**14. Return of Goods**

- a) We will not accept returns for credit without prior written authorization in accordance with the process outlined in sub clauses b) and c) of this clause.
- b) To the extent permitted by law, any Goods which you return for credit will only be accepted if they are in the original packaging, in pristine order and condition and accompanied by documentation showing:
  - i. your name, address and account number
  - ii. our invoice number
  - iii. reason for return
  - iv. our authorisation number
- c) If we authorise the return of Goods, the Goods must be carried by our nominated carrier at your cost.

**15. Withholding Supply**

We reserve the right, irrespective of whether or not an Order has been accepted and without notice to you, to withhold supply to you and we will not be liable for loss or damage resulting directly or indirectly from such action where:

- a) we have insufficient Goods to fulfil the Order;
- b) the Goods ordered have been discontinued; or
- c) we have determined, in our absolute discretion, that credit should no longer be extended to you.

**16. Modifications to Labels**

You may not, without our prior written consent, alter, remove or obliterate any labels which we attach to the Goods.

**17. Intellectual Property Rights**

You acknowledge and agree that:

- a) the supply of the Goods does not constitute the transfer of any Intellectual Property in the Goods; and

- b) you do not have any Intellectual Property, whether by way of copyright or registered design or otherwise, in the Goods or associated documentation and that we retain ownership of all such Intellectual Property.

#### 18. Governing Law

- a) The laws of the State of Victoria, Australia govern this Agreement.
- b) You agree with us to submit to the non-exclusive jurisdiction of the Courts of Victoria, Australia and the Federal Court of Australia and agree that any legal proceedings may be heard in those courts.

#### 19. Claims

- a) Any claims by you for short delivery/pricing must be made within 7 days of the delivery.
- b) Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within 60 days of delivery.

#### 20. Privacy

You agree to the Company collecting, using and disclosing personal information of you for various purposes in accordance with the Company's Privacy Policy (located at [www.dunlopflooring.com.au/privacy-policy/](http://www.dunlopflooring.com.au/privacy-policy/) as amended from time to time).

#### 21. Force Majeure

If the Company is prevented (directly or indirectly) from supplying the Goods (or any part thereof) by reason of acts of God, strikes, lockouts, trade disputes, fire, breakdown, delay in the manufacture of the Goods, interruption of transport, government

action, non-delivery of raw materials or any cause whatsoever (whether or not of a like nature to those specified above) outside its reasonable control, the Company is not liable to you whatsoever and the Company is entitled, in its absolute discretion, to give notice to you to either cancel the Order or this Agreement or extend the time for performance by the Company of its obligations.

#### 22. General

- a) This Agreement, any credit application between you and the Company and the Guarantee and Indemnity constitute the entire agreement between the Company and you and any prior agreement or understanding between the parties in respect of the subject matter in this Agreement, including any quotation, is superseded by, and are to be read subject to, this Agreement.
- b) If a provision of this Agreement would, but for this clause, be unenforceable, the provision must be read down to the extent necessary to avoid the result and if the provision cannot be read down to that extent, it must be severed without effecting the validity and enforceability of the remainder of this Agreement.
- c) A party waives a right relating to this Agreement only by notice in writing to the other party that it waives that right. A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or any other right.
- d) Nothing in this Agreement is to be treated as vesting any agency, joint venture or partnership between the parties or any relationship other than that of independent contracting parties.



## PERSONAL GUARANTEE AND INDEMNITY

**THIS GUARANTEE AND INDEMNITY** is given by the person(s) named in the Schedule as the **GUARANTORS** (the "**Guarantors**", each a "**Guarantor**") in favour of the parties described in clause 10 as **PRIMARY FLOORING PTY LTD ACN 615 172 097 trading as Dunlop Flooring** (each and together "**Primary Flooring Pty Ltd**" or "**the Company**")

## INTRODUCTION

- A. The Guarantors have asked Primary Flooring Pty Ltd to supply goods and/or services ("**the Supplies**") to the person named in the Schedule ("**the Customer**") and to extend (or continue to extend) credit to the Customer.
- B. Primary Flooring Pty Ltd has agreed to the request of the Guarantors in consideration of their agreement as follows.

## IT IS AGREED:

1. The Guarantors guarantee to the Company the punctual and due performance from time to time of each and every one of the Customer's obligations to the Company (including, without limitation, the payment of the monetary liabilities of the Customer (on any account and in any capacity whatsoever and including liabilities in respect of the Supplies) which are now owing, or may from time to time be owing by the Customer to the Company, including any legal and other costs and expenses incurred by the Company in seeking payment from the Customer or in enforcing this Guarantee and Indemnity against the Guarantors and all other amounts set out in the Conditions ("**the Debt**").
2. The Guarantors jointly and severally undertake, if the Customer fails to pay any part of the Debt when the same is due and payable, to pay the full amount of the Debt on demand by the Company and to hold harmless from all loss and to keep the Company indemnified against any loss in relation to the Debt.
3. By way of further security, the Customer hereby charges in favour of the Company with payment of the Debt all our estate and interest in any land in which we now or might subsequently acquire a legal or beneficial interest and agree, upon request, to execute a registerable instrument charging such estate or interest in favour of the Company.
4. The obligations of the Guarantors under this Guarantee and Indemnity are principal obligations and are not affected by:
  - a) any variation which may be agreed by the Company and the Customer in respect of the terms on which the Supplies are supplied and paid for;
  - b) any waiver, extension of time or indulgence given by the Company to the Customer or the Guarantor;
  - c) any right or claim which the Customer may assert to resist making payment of any part of the Debt;
  - d) any increase in the amount of the Debt;
  - e) any failure or omission by the Company to give notice to the Guarantors of any default by the Customer; or
  - f) any act, omission, matter or other thing whatsoever.
5. This Guarantee and Indemnity is a continuing obligation of each Guarantor for the amount of the Debt which may be owing from time to time and, binds the successors and assigns of the Guarantors and will not be affected by:
  - a) the death, incapacity, bankruptcy, of a Guarantor or the Customer; or
  - b) a Guarantor or the Customer which is a body corporate becoming an externally administered body corporate pursuant to the Corporations Law.
6. If the obligation of any Guarantor in respect of any part of the Debt is unenforceable, the Guarantor's obligations in respect of the balance of the Debt will not be affected by such unenforceability.
7. If any payment or other transaction relating to or affecting the Debt is:
  - a) void, voidable or unenforceable in part or in whole; or
  - b) is claimed to be void, voidable or unenforceable and that claim is upheld, conceded or compromised in whole or in part;

the liability of each of the Guarantors is the same as if:

- c) that payment or transaction (or the void, voidable or unenforceable part of it); and
- d) any release, settlement or discharge made in reliance on anything referred to in paragraph (b) above,

has not been made and the Guarantors must immediately take all action and sign all documents necessary or required by the Company to pay to or restore to the Company the Debt in full.

8. If all or any of the Debt is:

- a) not recoverable from the Customer; or
- b) not recoverable from a Guarantor under this Guarantee and Indemnity,

each of the Guarantors, as a separate and principal obligation, indemnifies the Company against any loss, liability, expense or outgoing suffered, paid or incurred by the Company in relation to such amounts and must pay the Company an amount equal to such amounts.

9. This Guarantee and Indemnity binds each of the signatories below as Guarantors notwithstanding that one or more of the persons named below may never execute this document.

10. For the avoidance of doubt it is expressly acknowledged by the Guarantors that the Guarantors' obligations extend to and may include debts and other obligations of the Customer which have arisen before or after the date of this Guarantee.

11. The expression "Primary Flooring Pty Ltd" or "the Company" means, whether severally or jointly and severally, Primary Flooring Pty Ltd Pty Ltd (ABN 88 615 172 097) and each of its related bodies corporate (as that term is defined in the *Corporations Act 2001*) and whether such body corporate is trading under the relevant company name or under any trading or business name.

12. The Guarantors consent and agree that the Company may:

- a) obtain a credit report from credit reporting agencies or other credit providers for the purpose of assessing this and any other application which you may make for commercial credit;
- b) obtain information from any other credit providers from time to time for the purpose of reviewing and assessing your commercial credit worthiness;
- c) disclose to or discuss with any credit providers or any credit reporting agencies, any prospective Guarantor and any person or body agreeing or considering whether to agree to be liable for any credit to be made available to you, any information maintained or in our possession relating to your application and the administration of your credit facilities; and
- d) collect and use any personal information or credit information as defined in the Privacy Act 1988 ("the **Privacy Act**") for the purposes referred to in paragraphs 12 (a) to (c) above.

13. You acknowledge that the consents referred to in paragraphs 12 (a) to (d) above will continue to remain in full force and effect until all credit facilities cease to be made available to you by us.

14. The Company is bound by the Act and the Australian Privacy Principles set out in the Privacy Act. A written policy outlining how Primary Flooring Pty Ltd manages personal information may be obtained from:

The Privacy Officer c/- Primary Flooring Pty Ltd, PO Box 248, Sunshine VIC 3020  
Telephone (03) 8311 6500 Fax (03) 8311 6510

15. **Each of the Guarantors acknowledges having read the terms of this Guarantee and Indemnity and having been:**

- a) **advised to; and**
- b) **given the opportunity to,**  
**seek independent legal advice prior to execution.**

## GUARANTEE AND INDEMNITY - SCHEDULE

**PRIMARY FLOORING PTY LTD:** "Primary Flooring Pty Ltd" comprises Primary Flooring Pty Ltd Pty Ltd (ABN 88 615 172 097) and each of its related bodies corporate (as that term is defined in the *Corporations Act 2001*) and whether such body corporate is trading under the relevant company name or under any trading or business name.

**CUSTOMER:** \_\_\_\_\_

[Insert full company/trading name and addresses, including ACN if a company ]

**GUARANTORS:** (Please ensure **ALL** Directors / Shareholders / Proprietors / Partners and beneficiaries of a trust over the age of 18 sign as guarantors).

<b>Full Name:</b>	
<b>Residential Address:</b>	
<b>DOB:</b>	<b>Drivers Licence:*</b>
<b>Guarantor Signature:</b>	
<b>Witness Signature:</b>	
<b>Name of Witness:</b>	

\*Please provide photocopy of licence

<b>Full Name:</b>	
<b>Residential Address:</b>	
<b>DOB:</b>	<b>Drivers Licence:*</b>
<b>Guarantor Signature:</b>	
<b>Witness Signature:</b>	
<b>Name of Witness:</b>	

\*Please provide photocopy of licence

<b>Full Name:</b>	
<b>Residential Address:</b>	
<b>DOB:</b>	<b>Drivers Licence:*</b>
<b>Guarantor Signature:</b>	
<b>Witness Signature:</b>	
<b>Name of Witness:</b>	

\*Please provide photocopy of licence

<b>Full Name:</b>	
<b>Residential Address:</b>	
<b>DOB:</b>	<b>Drivers Licence:*</b>
<b>Guarantor Signature:</b>	
<b>Witness Signature:</b>	
<b>Name of Witness:</b>	

\*Please provide photocopy of licence



