

## **NSDB FLOORING LTD TERMS AND CONDITIONS OF SALE**

### **1. GENERAL**

**1.1** In these conditions the following words shall have the following meanings: "The Seller" means NSDB Flooring Ltd, and also where the context so permits any subcontractors for the Seller. "The Buyer" means the person, firm or company with whom any contract to sell the Goods is made by the Seller, whether directly or indirectly through an agent or a factor who is acting for or instructed by any such person, firm or company or whose actions are subsequent to the contract ratified by the actual Buyer. "The Goods" means the articles or things or work or any of them described in the contract between the Seller and the Buyer for the sale or supply of the Goods by the seller together with any packaging if appropriate.

**1.2** These conditions shall be deemed to be incorporated into every contract entered into by the seller to sell or supply the Goods and shall notwithstanding any statement to the contrary contained in any order, telex, letter or form of contract sent by the Buyer to the Seller or any other communication between the Seller and the Buyer, whatsoever unless these conditions shall be expressly agreed in writing by a duly authorised representative of the Seller.

**1.3** Notwithstanding anything that may be contained in any purchase order or any document of the buyer the goods are supplied subject to these conditions alone.

**1.4** Any terms of this contract or part of such a term in conflict with the law shall be deemed to be severable and the remainder of this agreement shall remain in full force and unaffected by any severance.

**1.5** No order placed on the seller shall be binding until confirmed in writing by the Seller.

**1.6** No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the seller and on the terms that the Buyer shall indemnify the Seller in full against losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges, and expenses incurred by the Seller as a result of cancellation.

### **2. PRICE**

**2.1** Unless otherwise stated the price shown overleaf is the VAT exclusive ex works price of the goods. Where the Seller is responsible for carriage, packing and insurance the goods will be charged at the rate correct at the time of delivery.

**2.2** The seller reserves the right at any time before the date of delivery to increase the price by notice in writing to take account of any increase in the cost of labour, materials or components between the date of the contract and the date of delivery. The buyer shall have the right within 14 days of receipt of such notice (as to which time shall be of the essence); by notice in writing, to rescind the contract whereupon neither party shall have any obligation or liability to the other.

**2.3** Payment is to be made on delivery, unless other payment terms are agreed and shown overleaf.

**2.4** Unless previously withdrawn any quotation given will remain open for the acceptance within 30 days of the date thereof. The prices shall be subject to variation if, at any time between the date of the quotation and the date of delivery, any alteration takes place in the rate of labour, costs of materials, or chassis on which the said prices are based.

**2.5** The quotation is conditional upon the Buyer providing at the time of placing the order or within the same time stated in the quotation, all information necessary to enable the supply of the Goods to proceed forthwith. The seller reserves the right to amend quoted prices to cover additional costs incurred because of failure to meet these requirements.

### **3. DELIVERY**

**3.1** Any delivery dates stated are given in good faith but the Seller accepts no liability in the event of their date being exceeded.

**3.2** Should expedited delivery be agreed an extra charge may be made to cover any overtime or any other additional cost involved.

**3.3** Where the contract is "ex-works" delivery shall take place when the Goods are dispatched by the Seller, or when they are collected by the Buyer or their agent or when the buyer is notified the work is complete.

**3.4** Where the Seller is responsible for carriage, delivery shall take place when the Goods are delivered by the Seller or its agent to the delivery address shown overleaf.

**3.5** The Goods shall be at the Buyer's risk immediately upon delivery to the Buyer (and the Buyer shall be insured accordingly)

**3.6** Where the Seller is responsible for carriage the Seller will replace Goods which fail to arrive or which arrive in a damaged condition. However in order to comply with the terms of the Seller's own insurance policy notification of loss or damage to the Goods in transit must be made to the Seller in writing within 14 days of the date of dispatch failing which no claim in respect of such loss or damage will be entertained by the Seller. The Seller shall not be liable for any indirect or consequential loss arising from damage to or loss of the goods in transit.

**3.7** The Buyer will pay such reasonable charges levied by the Seller in respect of storage where performance of the contract is suspended for any reason or where he Buyer fails to collect the Goods or give instructions for their delivery for four days after it has been notified by the Seller that they are ready for collection or installation.

**3.8** The Seller shall be entitled to charge interest on all overdue accounts at the rate of 2% per month (the full sum of such monthly interest accruing from the first day overdue) until actual payment has been formally demanded or judgement entered. All legal costs charges and expenses incurred by the Seller in recovering any debt shall be paid by the Buyer on a full indemnity basis.

### **4. INSTALMENTS**

**4.1** The Seller will invoice the Buyer when the goods, or where appropriate any instalment, are ready for delivery and such invoice shall be to the Buyer that the Goods are ready.

**4.2** When the rate of delivery / installation is not agreed the Seller shall be entitled to deliver the Goods in one or more instalments. Each instalment shall be deemed to be the subject of a separate contract subject to these conditions. The rejection of any individual instalment shall not entitle the Buyer to cancel the balance of the contract.

## **5. ACCEPTANCE**

**5.1** the Buyer shall inspect the goods immediately on their receipt / installation and shall be deemed to have accepted the Goods unless within 14 days after their receipt the Buyer shall have notified the Seller that the goods have been rejected as having been found not to be in accordance with the contract.

**5.2** If the buyer does so notify the Seller to this effect than the Seller shall be given the opportunity to inspect the Goods and if reasonably satisfied that the Goods are not in accordance with the contract for a reason for which the Seller is responsible, at its option repair or replace such Goods.

## **6. SPECIFICATION**

**6.1** Goods described in the Seller's catalogue or elsewhere are subject to a continuing process of technical change and development, and it is therefore understood and agreed by the buyer that Goods supplied may not comply in all respects with such technical specifications.

**6.2** Notwithstanding any recommendations or suggestion relating to the use of Goods contained in the Seller's catalogue or elsewhere made by the seller in response to a specific enquiry from the Buyer, it is the Buyer's responsibility (unless otherwise specifically agreed by the Seller in writing) to satisfy him/herself of the suitability of the goods for his / her own particular purpose and he shall be deemed to have done so. The seller can accept no responsibility for the accuracy of any drawings, particulars or specifications supplied by the Buyer or for any defect or failure of the Goods to comply with any specifications arising as a result of the same.

**6.3** It is the responsibility of the Buyer to ensure that site conditions are suitable and to inform the Seller when they are.

## **7. WARRANTY**

**7.1** Except as provided in clause 7.3 or 7.4 below or as otherwise agreed in writing, the Seller warrants that it shall repair or replace, at the Seller's option, any of the goods which become defective within 12 months from the date of delivery in ("the warranty period") due to faulty workmanship, materials or design by the Seller, provided that the Buyer shall have notified the Seller in writing of such defect and has given the Seller a reasonable opportunity to inspect the defective Goods

**7.2** At the discretion of the Seller, the Buyer shall return or allow collection, if possible, the defective goods to the Seller within 14 days of their replacement, at the Seller's cost. In the event that the Seller instructs the Buyer to dispose of the defective Goods, Buyer agrees to provide Seller with evidence of the destruction of such defective Goods.

**7.3** All the expenses incurred by the Seller in connection with the repair or replacement of the defective Goods, including all costs of transportation, shall be paid for by the Seller.

**7.4** the above warranty does not extend to materials or equipment not manufactured / installed by the Seller in respect of which the Buyer shall not be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

**7.5** The above warranty does not extend to materials or equipment which are second-hand or to defects which have occurred through abuse or misuse by the Buyer.

## **8 LIABILITIES**

**8.1** save as set out in 7.1 above or specifically agreed or otherwise in writing by the Seller all warranties and conditions, expressed or implied, statutory or otherwise, as to the quality or fitness for any purpose of the goods are expressly excluded, and no warranty, condition, description or representation is to be taken as having been given or implied by anything said or written by or on behalf of the Seller or on prior to the Goods being ordered.

**8.2** The Seller's liability (if any) to the Buyer in respect of the goods shall all be in the circumstances being limited:

**7.2.1** to the actual goods proved to be defective or unfit for the purpose or conditions; and

**7.2.2** At the Seller's option either to giving a refund of the amount paid by the Buyer and seller, or a reasonable credit or allowance for those of the goods proved to be defective or to replacing them at the agreed point of delivery.

**8.3** Except in respect of death or personal injury caused by the Seller's negligence or as provided in this clause the seller shall not otherwise be liable to the Buyer and in particular shall not under any circumstances be liable to compensate the Buyer for any indirect special or consequential losses damages or costs or expenses whatsoever however arising (including but not limited to loss of profit, loss of use or production or liability to third parties)

**8.4** Any recommendation or suggestion relating to the use of the Goods in promotional literature or in response to a specific enquiry is given in good faith only. Notwithstanding that the Buyer may have made a particular purpose, process or condition of use of the Goods known to the Seller when the Goods are specifically supplied to the Buyer's own specification it shall be deemed to have satisfied itself before placing any orders as to the suitability of the goods. The Seller shall be presumed ignorant of any particular, special or unusual condition under which they are intended to be used and the Seller shall not be liable to the Buyer if the Goods shall be found unfit for any such purpose, process or condition unless such purpose, process or condition has been warranted in writing by one of the Seller's directors.

## **9. CLAIMS**

Subject to clauses 3, 6, 7 and 8 above the seller shall not be liable in respect of any claim (except in respect of a death or personal injury caused by the seller's negligence) unless it has received written notice of the same within the warranty period.

## **10. CANCELLATIONS**

Work individually commissioned or non-standard products not used or taken up by the Buyer may not be capable of resale or reprocessing. In the event of cancellation or alterations of the contract or any part of it being requested by the Buyer and the Seller accepting the same the Seller will therefore charge the buyer 100% of the price of the work cancelled or to be substituted on which installation has commenced or been completed at the date of receipt of such written notice of cancellation or alteration by the Seller. An appropriate reduction (to be determined solely by the Seller) will be given in respect of any non-standard parts or Goods held in storage by the Seller as the Buyer's property if such goods can be reused in any order by the Buyer.

## **11. INTELLECTUAL PROPERTY RIGHTS**

**11.1** All intellectual property rights (including but without limitation copyright, design rights, patents, trademarks and moral rights) in the Goods and in any samples, specifications, designs and drawings supplied by the seller are the Seller's exclusive property, and may not be copied or used without the seller's prior written consent.

**11.2** The Buyer shall indemnify the Seller against all liabilities (including the costs of defending unsuccessful actions) arising as a result of Goods supplied by the Seller in accordance with the Buyer's specifications, instructions or designs and which infringes or it is alleged infringes any patent, trademark, copyright or the intellectual property rights above.

## **12. INSOLVENCY**

**12.1** If the Buyer ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or being a company is deemed to be unable to pay its debts or has a winding up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him / her the seller without prejudice to other remedies shall:

**12.1.1** have the right not to proceed further with the contract or any other work for the Buyer and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Buyer, such charge to be immediate debt to him and

**12.1.2** in respect of all unpaid debts due from the Buyer have a general lien on all Goods and property in his possession (whether installed or not) and shall be entitled on the expiration of 14 days notice, to dispose of such goods or property in such a manner and at such a price as he thinks fit to apply the proceeds towards such debts.

**12.1.3** the Buyer agrees that sales under this clause may take place notwithstanding that the Goods have a design on them which is the subject of copyright or reservation or patent or trademark or marks and the Buyer shall indemnify the Seller against all claims by third parties in respect of anything done by the seller in good faith under the clause and the Seller shall be presumed to have acted in good faith unless the contrary is proved.

## **13 RETENTION OF TITLE**

**13.1** Subject to the power being given to the Buyer by this condition, sole and absolute ownership of the Goods shall remain vested in the Seller until all amounts relating to goods supplied by the Seller to the Buyer under this or any other contract have been paid in full and the seller retains the right of disposal of the goods until ownership passes under this condition.

**13.2** Subject to condition 13.4 the Buyer may at any time after delivery use or sell the goods in the ordinary course of business even though the amount invoiced for has not been paid in full.

**13.3** Until ownership in the Goods passes to the Buyer, it shall hold them as bailee in a fiduciary to the seller and

**13.3.1** Shall store the Goods in a manner which makes them readily identifiable as the Seller's Goods and:

**13.3.2** Shall upon request, promptly inform the Seller of the location of the Goods

**13.4** In the event of the Buyer defaulting in payment of any amount due for the Goods for seven days (whether or not any credit period has expired) or if the Buyer ceases or threatens to cease to carry on trading or passes or calls a meeting to pass a resolution for a winding up or if a receiver is appointed for any of the Buyer's assets or if a winding up order is presented, then the Buyer shall forthwith cease to use or otherwise dispose of the goods not then used, disposed of or sold and shall upon demand forthwith deliver up to the Seller any of the Seller's Goods in the Buyer's possession or under its control.

**13.5** On making such a demand as in clause 13 the Seller shall be entitled without incurring any liability to the Buyer to enter the Buyer's premises or any other premises where the seller's goods are to be located to inspect the Buyer's stocks and to remove and resell such Goods

**13.6** Nothing in this condition shall give the Buyer the right to return the Goods without the seller's consent

**13.7** Whilst the above clauses are considered by the parties to be reasonable in all the circumstances having regard to the nature of the seller's business it is agreed that if such clauses shall when taken together be adjudged to be beyond what is reasonable in all circumstances for the protection of the seller's interest but would be adjudged reasonable if parts of the wording hereof were deleted the said clauses shall apply and such words deleted.

## **14 FORCE MAJEURE**

The Seller shall be under no liability if he shall be unable to carry out any provision of the contract for any reason beyond his / her control (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply, lock out, strike or any other action taken by employees in a contemplation of furtherance of a dispute or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency the Buyer may by written notice to the Seller elect to terminate the contract and pay for work done and materials used, the subject thereto shall otherwise accept delivery when available.

## **15 LAW**

These conditions and the contract shall be governed construed and take effect in accordance with the laws of England and shall be subject to jurisdiction of the English courts.

## **16. SET OFF**

The Buyer shall not be entitled to set off any claims against payment of any accounts owing to the Seller.

