

Flooring Concepts Ltd – Terms of Sale and Delivery

Important Customer Information

1. Order Acceptance

Orders will only be accepted subject to the Company's standard terms and conditions of sale below.

2. Prices

Prices quoted do not include VAT .The Company reserves the right to alter prices without notice to take account of raw material or other cost increases, unless otherwise agreed , prices charged will be those ruling at the date of despatch of order .

3. Payment terms

Payment is due prior to receipt of goods. Once the order is placed a pro forma invoice is issued for payment either by BACS or cheque, these are the general payment terms unless a written contract otherwise provides .

4. Product Identification

The colour or production batch is identified on the roll or box label . Carpets and Woven Vinyl supplied to meet individual orders for any one colour can be from the same dye batch up to a certain quantity only .These quantities vary from product to product . The relevant data can be obtained on request . For large orders a batch planning service can be made available at the customers request .

5. Inspection / Returns

Goods must be inspected on delivery. In the case of transit damage or short delivery, the carriers note must be endorsed accordingly and the Company notified within three days of receipt. Claims for manufacturing or colour faults must be notified to the Company in writing within seven days of delivery and in any case cannot be accepted after the carpet or woven vinyl has been cut and / or installed to the floor .

Conditions of Sale

1. Definitions

The ` Company ` means Flooring Concepts Ltd , whose registered office ECL House, Lake Street, Leighton Buzzard, Beds, LU7 1RT . The ` Purchaser ` means the person or company which has contracted with the Company for the purchase of goods .

2. General

The purchaser must confirm all orders in writing. Telephone or verbal orders will not be accepted. Subject to any special terms or conditions to which the Company may agree in writing , every contract constituted by the Company's acceptance of an order will be subject to these terms and conditions to the exclusion of all terms and conditions (standard or otherwise) which the Purchaser may seek to impose . The placing of an order will be deemed to constitute acceptance of this term . Nothing in these terms or the Company's current price list or quotations from the Company shall be deemed to constitute an offer and the Company reserves the right to refuse to accept any order.

3.Price

Prices quoted for orders over 100m2 are delivered, when the order is under 100m2 delivery will be charged as detailed on our current price list unless otherwise stated and are subject to alteration without prior notice. Goods and services will be charged at the list price ruling at the time of despatch.

4.Value Added Tax

Prices quoted in the Company's price list do not include Value Added Tax, which will be charged at the applicable rate at the date of supply.

5.Terms of Payment

Payment is due prior to receipt of goods unless a written contract otherwise provides. At the Company's absolute discretion credit may be given should payment not be forthcoming within the agreed payment terms, interest may be charged at the rate of 1.5% per month from the due date on accounts which remain unpaid.

6.Force Majeure

(a) Any times or dates quoted for the manufacture or despatch of goods are intended to be estimates only and the Company shall not be liable in any manner whatsoever for failure or delay in manufacture or delivery howsoever such a failure or delay shall have been caused.

(b) The Company shall have the option to effect despatch by instalments and to issue a separate invoice in respect of each instalment.

(c) Without prejudice to the Company's rights under clause 6a above, all contracts or quotations may be cancelled or suspended without liability on the Company's part, by reason of contingencies beyond its control such as strikes, lock-outs, fire or the like interrupting due deliveries ,causing shortage of supplies or abnormally affecting prices of raw materials ,or by reason of the Company's inability to secure the necessary materials, labour, transport or licences.

7. Delivery and Carriage

(a)The Company will make arrangements for the delivery of goods to the premises nominated by the purchaser. If the Company does not receive forwarding instructions sufficient to enable it to despatch goods within 7 days after date of notification that they are ready for despatch, the purchaser shall take delivery or arrange for storage. If the Purchaser does not take delivery or arrange for storage as aforesaid the Company may take such arrangements on the Purchaser's behalf and all charges for storage or insurance and other incidental expenses shall be payable by the Purchaser.

(b)Delivery will be made carriage free for orders over 100m2 and for orders under100m2 carriage will be charged as per the current price list and will be charged to the Purchaser and become payable in the same manner and at the same time as the price of the goods.

(c) Where the Company is requested to effect delivery otherwise than by normal goods delivery at normal goods rates, the additional cost of carriage will be charged to the Purchaser and will become payable in the same manner and at the same time as the price of the goods.

(d) The Purchaser shall be responsible for ensuring the presence at the premises nominated for delivery of a person authorised to receive and sign for the goods . If no such person is present the Company may leave the goods on , or in the vicinity of the premises nominated without incurring any liability whatsoever to the Purchaser for any loss suffered by the Purchaser whether arising directly or indirectly out of the Company's action . The Company may if in its absolute discretion it thinks fit take the goods away from the nominated premises again if no such person is present and the Purchaser shall pay to the Company a reasonable sum in respect of carriage of the goods from the nominated premises , storage of the goods until the date of redelivery in accordance with the Purchasers instructions , and redelivery of the goods to the premises subsequently nominated by the Purchaser .

(e) The Company will endeavour to meet the required despatch and delivery dates but cannot accept liability for any additional cost , loss or expense incurred by the Purchaser resulting from any delay however this may be caused .

8. Risk

The risk in goods will pass to the Purchaser upon delivery thereof to the premises nominated by the Purchaser (and the Purchaser shall insure the goods to their full market value from the time of delivery to the Purchaser) provided that :

- (a) the Purchaser shall note on the carriers consignment document any evident loss or damage to the goods which may have occurred after they were handed to the carrier , and shall notify the Company and carrier by telephone (and confirm in writing) within three days of delivery or before cutting or installing , which ever of the three is soonest , of any loss or damage , such notification to be confirmed in each case by letter dispatched by registered mail not later than three days following delivery or before cutting or installing as the case may be , or
- (b) in the event of non – delivery of the goods (or of an instalment thereof) the Purchaser shall notify the Company and the carrier of such non- delivery by telephone (and confirm in writing) not later than seven days after the despatch date notified by the Company on the relevant invoice , such notification by the Purchaser to be confirmed in each case by letter dispatched by registered mail on the same day . If the Purchaser shall fail to make such notification (whether by reason of his failure to carry out an inspection of the goods in sufficient time or for any other reason) the Company shall be under no liability whatsoever in respect of any loss or damage to the goods however occurring after they were handed to the carrier and the Purchaser shall remain liable to pay the full price fro the goods so lost or damaged .

9. Insolvency

If the Purchaser shall make any default in paying any sum under any contract with the Company as and when it becomes due , or if he shall have distress or execution levied on his goods or property , or if he shall make or offer to make any arrangements or composition with creditors or if he shall commit any act of bankruptcy or have a petition presented against him , or if , where the Purchaser is a limited company , any resolution or petition to wind up the Purchaser (other for the purpose of amalgamation without insolvency) shall be passed or presented , or if a Receiver shall be appointed over the whole or any part of the Purchaser's business , all sums owing by the Purchaser to the Company shall become immediately due and payable (with interest thereon) and the Company shall have the right forthwith to suspend all further manufacturing or other work being carried out for the Purchaser and to withhold all further deliveries of goods or to terminate any contract then subsisting between the Company and the Purchaser . Such termination shall give rise to no liability whatsoever on the Company's part but shall be without prejudice to the Company's rights to payment in respect of manufacturing or other work already carried out or goods already delivered and without prejudice to the Company's rights under clause 10 hereof .

10 Title

(a) Neither the legal or beneficial title in goods shall pass to the Purchaser until all sums due from the Purchaser to the Company in respect thereof (the debt) and in respect of any other goods supplied by the Company to the Purchaser pursuant to any other contract between then shall have been paid in full and until such payment the Purchaser shall be the bailee on behalf of the company of the goods supplied and shall if the Company so requires store the goods in such manner that they are clearly identified as the property of the Company . If the debt shall become due or over due in whole or part or the Purchaser shall become insolvent then the Company may (without prejudice to any of its other rights) recover or resell the goods for which purpose the Purchaser hereby grants an irrevocable licence to the Company and its servants and agents to enter on any premises of the Purchaser to remove the goods .

(b) If notwithstanding sub clause 10(a) above the Purchaser shall sell the goods or any part thereof the Purchaser shall hold all proceeds of any such sale in trust for the Company in a clearly identifiable state in a separate account . At the discretion of the Company the Purchaser shall meet the debt out of the said trust fund insofar as the said trust fund is sufficient for that purpose , but without prejudice to the rights which the Company has under the terms of this contract under statute or common law .

11. Claims and Guarantees

(a) Except as provided in this clause goods supplied under a contract of which these conditions form part are supplied with the benefit of all conditions and warranties which are implied by statute from time to time provided the Company :

(i) Shall not be liable for any consequential damages or expenses or any liability to third parties incurred by the Purchaser due to misuse of the goods supplied.

(ii) Shall be under no liability whatsoever to the Purchaser in respect of any goods sold 'imperfect' or under any similar description . Nothing in the aforesaid proviso shall apply to the terms.

(b) Where the full quantity of goods is not delivered, the Purchaser shall be liable to pay only for the quantity delivered ,but shall have no other rights against the Company .

(c) In case the goods or any part thereof shall be rejected by the Purchaser (whether he be entitled so to reject the same or not) the Company shall not in any case be obliged to replace the same neither shall the Company be liable for any additional cost , loss or expense incurred by the Purchaser in consequence of such rejection .

(d) (i) All goods supplied by the Company must be inspected by the Purchaser and any error or defect in relation to the quality, size, design and colour match of the goods must be notified to the Company by the Purchaser within 7 days of receipt of goods or before cutting or installing, whichever ever of the three is soonest by telephone and confirmed in writing by registered mail posted on the same day. This provision is without prejudice to the Company's rights or exemption from liability under these terms or common law or statute.

(ii) If the Purchaser shall fail to make such notification as is required under sub clause 11 (d) (i) above (whether by reason of his failure to carry out an inspection of the goods supplied or otherwise) the Company shall be under no liability whatsoever whether in contract tort or otherwise in respect of any error, breach of contract or defect in relation to the quality, size, design, and colour match of the goods as is referred to in sub clause 11 (d) (i) or for any direct or indirect loss arising out of such purported error, breach of contract or defect and the Purchaser shall remain liable to pay the full purchase price.

12. Set Off and Counterclaims

The Purchaser shall not be entitled to withhold payments of any sums after they have become due by reason of any right of set off or counterclaim which the Purchaser may have or allege to have or for any reason whatsoever.

13. Postponements

In the event that the Purchaser requests a postponement in the manufacture or delivery of the goods, the Company may, if in its absolute discretion it thinks fit, agree to such postponement provided that the Purchaser will be liable to pay for the goods at the price ruling at the date on which they are eventually dispatched. The Purchaser shall also be liable to pay the Company on demand a charge to be laid down by the Company in respect of the storage and handling of the goods during the period of postponement and to reimburse the Company on demand any charges incurred by the Company in effecting storage with a third party and to reimburse the Company in respect of all expenses incurred and losses suffered by the Company arising directly out of such agreed postponement.

14. Cancellation of Orders

(a) Cancellation of orders cannot be accepted by the Company if the goods have already been cut or despatched.

(b) Cancellation of contract or special orders cannot be accepted by the Company if manufacture has commenced or raw materials have been purchased.

15. Returns

Save as provided in clause 11 (c) above, the Company will not accept the return of any goods without agreement in writing from the Company. Agreed returns will carry a surcharge of 20 % of invoice price to cover handling, shipping and restocking costs.

16. Descriptions and Specifications

All drawings, illustrations, descriptions, information, test results and specifications in the Company's catalogues, price lists and other advertising material, patterns and trials are intended to give no more than a general idea of the goods manufactured by the Company and such information is not intended to be and shall not be relied upon as giving a precise description of any goods nor as being a representation as to any matter contained therein, nor shall any part of it form of any contract with the Purchaser.

17. Appearance

(a) Matching: the Company cannot guarantee exact colour or pattern matching between sample and production batches or between different production batches of woven vinyl or of carpet. If material is to be from one batch, this is to be stated at time of ordering. Notwithstanding the remarks made in Important customer information paragraph 4.

(b) Fastness: conforming with trade practices and experience and bearing in mind important characteristics such as levelness, light fastness, colour accuracy, brilliance, penetration etc., which are demanded in carpets, dyestuffs are used which in the reasonable opinion of the Company are the best. Nevertheless, it is to be understood that no dye is permanently fast to light and light shades will tend to have lower fastness factors than dark shades dyed from the same dyestuffs and the Company shall not be liable in any way whatsoever for any such occurrence.

(c) Shading: All pile carpets may become subject to shading or pile crushing, which gives the appearance of light and dark areas or sometimes the impression of water marking. At present research is unable to identify the cause of this effect and the contribution of environmental factors cannot be ruled out. Accordingly, shading and pile crushing is not a manufacturing fault and the Company cannot guarantee products against this effect.

(d) Zipper Effect: on designs with high contrast, some 'zipper' effect at joints is unavoidable particularly on tiles. It is the responsibility of the Purchaser to ensure that this is acceptable prior to ordering.

18. Snagging of Loops

The Company's loop pile carpets have tuft anchorage commensurate with industry norms. Carpet loops may nonetheless be pulled up by, for example, shoe nails, stiletto heels, animal claws etc. The Company shall not accept any financial liability should this occur.

19. Stiletto Heels

Where stiletto heeled are in use carpets are liable to suffer damage from intense point loading. The Company shall not be liable for any loss in appearance or performance where such heels are in use.

20. Specials

Where the Company manufactures goods to a design, colour or format provided or specified by the Purchaser (not being an existing stock design, colour or format of the Company)

- (a) the Purchaser shall indemnify the Company against all damages, costs, claims, losses and expenses paid or incurred by the Company (including all sums paid by the Company in settlement of any claim or action) in consequence of the infringement or alleged infringement of patent, trade mark, registered design, copyright or other legal rights of a third party.
- (b) for the purpose of section 12 of the Sale of Goods Act 1979 the Company shall be bound to transfer only such title to the goods as it may have.

- (c) Subject to the existing rights of third parties of the property in any such design including copyright and any rights to register patent, trademarks, registered design or other interests in the same shall vest in the Company absolutely . The provisions of this sub clause are in addition to any rights which the Company may have under statute or common law or otherwise,.
- (d) Where a contract is undertaken, an overrun of goods may be produced due to the vagaries of the production methods. At the Company's discretion this may be supplied or invoiced to the Purchaser up to a maximum overage of 10% of the order quantity .However, it must be borne in mind that such an overage cannot be guaranteed.

21. Length and Width Tolerances

All goods sold or supplied by the Company are subject to length and width tolerance of plus or minus 1.25% , unless otherwise stated.

22. Advice and Warnings

(a) Where the Purchaser sub sells the goods the Company requires the Purchaser to advise his customers of matters dealt with in clauses 16 to 21 , as may be appropriate to each particular order .

(b) Without prejudice to any of the Company's rights under these terms , or common law or statute the Company shall not be liable for any loss or damage suffered by the Purchaser or any third party as a result of failure to follow any of the Company's recommendations with regards to the goods .

23. Governing Law

These terms and conditions and the contract in which they are incorporated shall be governed by English Law and jurisdictions exclusively granted to the courts of England and Wales .

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