

Floorsafe Australia – Purchase Terms & Conditions

Introduction

By engaging Floorsafe Australia Pty Ltd (ACN 105 516 265 ABN:56 105 516 265) trading as Floorsafe Australia (defined as 'Us', 'Our', 'We' or the 'Supplier') for the Goods and Services, the person, partnership, corporation, trust or other entity (defined as 'You', 'Your' or the 'Buyer') (together, the 'Parties' and individually a/the 'Party' as the context requires) agrees to be bound by these Purchase Terms & Conditions (the 'Agreement') and any associated document(s) including, as the circumstances may be, the Website Terms and Conditions, Privacy Policy, Credit Application and any Invoice sent by the Supplier to the Buyer ('Associated Document(s)').

Acceptance of this Agreement by the Buyer constitutes a legally binding contract between the Parties and from that time will govern the relationship of the Parties relative to the subject matter of this Agreement.

The Supplier provides the commercial sale of goods which include, but are not limited to, stair nosings, floor tactiles, antislip floor treatment, tapes and goods of a similar nature ('Goods') as well as, if requested by the Buyer and agreed to by Us, the ancillary delivery and installation of Goods (together the 'Goods and Services').

The Buyer has engaged the Supplier on a first time or continuing basis (as the case may be) for the Goods and Services rendered and supplied by the Supplier and agrees to the terms as outlined in this Agreement.

By accepting this Agreement, the Buyer acknowledges they have read, understood and agreed to all of the terms, conditions and obligations herein and in any Associated Document(s) applicable to the Buyer and agree to be bound by them.

1. Goods and Services

1.1 The Buyer agrees:

- 1.1.1 to the provision of Goods and Services from the Supplier as outlined in this Agreement;
- 1.1.2 to the supply of Goods in connection with the Goods and Services whether by:
 - (a) personal collection by the Buyer of Goods from the location nominated by the Supplier ('Pick-up' from the 'Supplier Premises'); or
 - (b) by transportation of Goods by the Supplier to the location nominated by the Buyer ('Delivery' to the 'Buyer Premises'), as agreed between the Parties or as ordered by the Buyer through the Supplier's electronic platform at <https://floorsafe.com.au/> ('Website'); and
- 1.1.3 to the associated payment terms under this Agreement as varied by any applicable Associated Document.

2. Payment Terms

2.1 The Supplier will provide the Goods and Services for the price as agreed between the Parties and/or indicated on the Website and as otherwise reflected in a tax invoice duly provided by the Supplier to the Buyer outlining the price for the Goods and Services, any

applicable taxes and charges and the date of invoice issue (the '**Payment Price**' as reflected in the '**Invoice**').

2.2 The Buyer acknowledges and accepts that the Payment Price will be the Payment Price as determined by the Supplier pursuant to this Agreement.

2.3 Unless the Buyer has entered into a Credit Application or the Parties have otherwise agreed between themselves in writing, the Buyer acknowledges and agrees to pay to the Supplier the Payment Price in full and in cleared funds before the dispatch of Goods ('**Payment Date**').

2.4 The Buyer shall be entitled to make payment in any manner nominated by the Supplier including by cash, credit or debit card or by electronic funds transfer into the account nominated in writing by the Supplier or online via the Website portal.

2.5 If any associated Credit Application terms also apply to the Buyer for the Goods and Services, the Buyer acknowledges and agrees that any breach of the Credit Application terms may attract additional expenses and interest than as imposed on the Buyer under this Agreement.

3. Taxes & Charges

3.1 Any such charges or any other tax applicable to any Goods, the subject of the Goods and Services, shall be noted on the Invoice and be charged to the Buyer.

3.2 Notwithstanding anything else in this Agreement, if the Supplier has any liability to pay Goods and Services Tax ('**GST**') on any of the Goods and Services, the Buyer shall pay the amount of GST as indicated on the Invoice.

4. Pick-up & Delivery

4.1 If the Buyer has agreed to the purchase of Goods, in connection with the Goods and Services, by Pick-up, the Buyer acknowledges it is their sole responsibility for organising and carrying out the transportation of Goods from the Supplier Premises.

4.2 The Supplier accepts no liability and/or responsibility for any Loss suffered by the Buyer or its agents in the transportation of Goods associated with **clause 4.1**, and the Buyer shall indemnify the Supplier in respect of, or in connection with, such Loss.

4.3 If the Buyer has agreed to the supply of Goods, in connection with the Goods and Services, by Delivery or has otherwise made an order to that effect through the Website, the Buyer must ensure:

4.3.1 the Supplier is provided with the Buyer Premises (which will represent the end destination for Delivery);

4.3.2 outline any information that may be material to the Delivery (for example, a specific access or designation route at the Buyer Premises; and

4.3.3 provide the Supplier, its personnel and equipment adequate space and access to the Premises on the day of Delivery.

4.4 Upon Delivery, the Buyer shall be solely responsible for checking that the Goods and Services agreed to have been complied with and must record any discrepancies in writing (including discrepancies in quantity and specification) and duly notified to the Supplier.

4.5 Failure by the Buyer to check or inspect, upon Delivery, compliance with the Goods and Services will be deemed conclusive evidence the Delivery is accurate and accepted by the Buyer in all material respects.

5. Installation

5.1 If the Buyer has contemplated the installation of any Goods, in connection with the Goods and Services, at the Buyer Premises, the Buyer recognises that:

5.1.1 the Buyer may choose to install the Goods themselves; or

5.1.2 engage the Supplier or its nominated third-party contractor to install the Goods.

5.2 The Buyer acknowledges and irrevocably agrees that installation of any Goods by the Buyer in connection with **clause 5.1.1** is the sole responsibility and risk of the Buyer and the Buyer indemnifies the Supplier against any and all damage, loss or liability associated with personal installation of the Goods.

5.3 The Buyer acknowledges and irrevocably agrees that installation of any Goods by the Supplier or its nominated third-party contractor in connection with **clause 5.1.2** will require notification and confirmation by the Buyer (to the Supplier) of the exact location and zone for installation of the Goods.

5.3.1 If the Buyer fails to accurately notify and confirm (to the Supplier) the exact location and zone for installation in connection with **clause 5.3**, and the Supplier installs the Goods in the incorrect location and zone as a result of the Buyer's failure, the Buyer warrants they accept this is not the fault of the Supplier and will personally pay the ancillary costs associated with rectifying the installation.

5.4 Inclusive of both modes of installation in accordance with **clause 5.1**, the Buyer acknowledges and accepts that the Supplier is not responsible for any costs, damages or liability if the Goods are considered by the Buyer to be unsuitable after the time by which the Goods have been installed.

5.4.1 Confirmation by the Buyer of the Goods and Services, indicated by acceptance of this Agreement, irrevocably constitutes acceptance by the Buyer of the Goods and Services which cannot be revoked after the time of installation (if applicable).

5.5 The Supplier provides to the Buyer a two (2) year warranty on all Goods installed by the Supplier in accordance with this **clause 5** (this warranty does not apply where the Goods have not been expressly installed by the Supplier).

6. Special Conditions

6.1 The Parties agree that any material special conditions associated with the Goods and Services and agreed between the Parties (e.g. conditions of installation) are to be listed in the table in **Annexure A** and acknowledged by both Parties (**'Special Condition(s)'**).

6.2 Unless otherwise indicated in this Agreement, or as expressed in any Associated Document(s) (as the circumstances may be), the Special Condition(s) form a legally binding condition(s) of this Agreement and are to be acknowledged and honoured by both Parties.

7. Cancellations & Returns

7.1 The Supplier is not required to refund the Buyer for any cancelled or returned Goods unless expressly provided in this **clause 7**.

7.2 The arrangement for Goods and Services between the Parties may be cancelled by the Buyer at any time prior to the dispatch of Goods by the Supplier, however:

7.2.1 if the cancellation relates to Goods that have been custom made/cut by the Supplier (to be determined by the Supplier in its sole discretion), the Buyer irrevocably agrees to pay a fee of 15% of the Payment Price to the Supplier in connection with the cancellation.

7.3 The Supplier will use all reasonable and practical endeavours to mitigate loss in this regard.

7.4 The Buyer may return any Goods associated with the Goods and Services within 30 days from the date of Pick-up or Delivery (as the circumstances may be) and in doing so acknowledges that:

7.4.1 if the Goods are a stock or original product (to be determined by the Supplier in its sole discretion), the Supplier will provide a full refund of the Payment Price; and

7.4.2 if the Goods have been custom made/cut (to be determined by the Supplier in its sole discretion), the Buyer will incur a re-stocking fee of 20% of the Payment Price.

8. Force Majeure

8.1 The Supplier shall not be liable in any way for any delay in Delivery (where applicable) where such delay occurs by reason of any cause whatsoever beyond the Supplier's reasonable control, including without limiting the generality thereof:

8.1.1 restrictions of Government or other statutory authorities;

8.1.2 wars, fires, epidemics, failure or fluctuation in any electrical power supply, storm, flood, earthquake, accident, labour dispute, plant breakdown, materials or labour shortage, the change or introduction of any law or regulation; or

8.1.3 an action or omission of any supplier or other third party or any failure of any equipment owned or operated by them.

9. Risk

9.1 If the Buyer has agreed to Pick-up, all risk in relation to the Goods shall pass from the Supplier to the Buyer upon the Buyer collecting of the Goods from the Supplier Premises.

9.2 If the Parties have agreed to Delivery of the Goods, all risk in relation to the Goods shall pass from the Supplier to the Buyer upon Delivery of the Goods to the Buyer Premises.

10. Retention of Title

Until the Payment Price, as indicated on the Invoice, has been paid in full by the Buyer to the Supplier, the following applies:

- 10.1 the Supplier retains legal and equitable title in any Goods associated with the Goods and Services;
- 10.2 notwithstanding that title in the Goods remains with the Supplier until payment has been received in full, the Buyer may sell such goods, install the Goods or otherwise use the Goods in the ordinary course of business;
 - 10.2.1 as between the Buyer and any third-party purchaser, the Buyer sells as principal and not as agent of the Supplier;
 - 10.2.2 the proceeds of sale of each item of Goods must be held by the Buyer in a separate fund on trust for the Supplier and the Buyer is under a duty to account to the Supplier for such proceeds; and
 - 10.2.3 the creation of, or any failure of, any such trust shall not in any way limit the obligation of the Buyer to pay an amount to the Supplier for Goods supplied;
- 10.3 until the Goods are sold or otherwise installed, the Buyer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of the Supplier, store them in such a way they are clearly identified as the property of the Supplier and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier;
- 10.4 the Supplier is irrevocably entitled at any time and from time to time before sale and/or manufacturing or construction of the Goods by the Buyer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Supplier or otherwise and whether those rights are conferred by common law, contract, statute or in any other way.
- 10.5 This retention of title and ownership is effective whether or not the Goods have been altered from their Delivered form, or commingled with other goods.

11. Limitation of Liability and Indemnity

- 11.1 If You are not a '**Consumer**' (as defined in the Australian Consumer Law), We shall not be liable in any circumstances:
 - 11.1.1 for any damages to any property of whatsoever kind situated in, or on adjacent to the Premises resulting from Goods and Services Delivered or performed in accordance with this Agreement (as the circumstances may be);
 - 11.1.2 for any defects in the Goods and Services unless You provide Us written notice within seven (7) days of the date of Pick-up or Delivery specifying the defect, notice of which shall be a condition precedent to any right to recovery by You;
 - 11.1.3 for any loss arising from delay;
 - 11.1.4 for any consequential loss; and
 - 11.1.5 for any loss arising from the Goods being handled by a third-party post Pick-up or Delivery.
- 11.2 To the maximum extent permitted by law, You hereby indemnify and forever holds Us harmless from all loss caused or contributed to by any negligent and/or wilful act or

omission or any breach of this Agreement by You, or by Us arising from the Goods and Services in accordance with this Agreement.

12. Australian Consumer Law Guarantees – Limitation of Liability

12.1 If You are a Consumer and any of the Goods supplied by Us are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, You agree that Our liability for a failure to comply with a consumer guarantee under the Australian Consumer Law in relation to those Goods (other than a guarantee under sections 51, 52 and 53), is limited to, at Our option, to one or more of the following:

12.1.1 the replacement of the Goods or the supply of equivalent goods;

12.1.2 the repair of the Goods;

12.1.3 the payment of the cost of replacing the Goods or of acquiring equivalent goods;
or

12.1.4 the payment of the cost of having the Goods repaired.

12.2 If You are a Consumer and any of the Services supplied by Us are not services of a kind ordinarily acquired for personal, domestic or household use or consumption, Our liability for a failure to comply with a consumer guarantee under the Australian Consumer Law in relation to those Services is limited to, at Our option:

12.2.1 the supply of the Services again; or

12.2.2 the payment of the cost of having the Services supplied again.

13. Severance

If any part of this Agreement is, or becomes void or unenforceable, that part is or will be severed from this Agreement, with both Parties agreeing that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

14. Waiver

A right may only be waived in writing, signed by the Party giving the waiver, and no other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.

15. No Implied Terms

To the maximum extent permitted by law (which includes Australian Consumer Law), all terms, conditions or warranties that would be implied into this Agreement or in connection with the supply of the Goods and Services by law, statute, custom or international convention (including those relating to quality or fitness for purpose) are excluded.

16. Governing Law

This Agreement will be governed by, and interpreted in accordance with, the laws for the time being in force in South Australia. The Parties submit to the exclusive jurisdiction of the Courts of South Australia and the Federal Court of Australia (Adelaide Registry).

17. Adverse Interpretation

This Agreement is not to be interpreted against the interests of a Party merely because that Party proposed this Agreement or some provision in it or because that Party relies on a provision of this Agreement to protect itself.

Annexure A – Special Conditions

Special Condition	Responsible Party(ies) (ie Buyer and/or Supplier)
<p>[INSERT BUYER INDIVIDUAL/ATF] (Buyer)</p> <p>.....</p> <p>Signature Name</p>	<p align="center">Date signed</p> <p align="center">/ /</p>
<p>[INSERT BUYER ENTITY] (Buyer)</p> <p>.....</p> <p>signature of director 1 name of director 1</p> <p>.....</p> <p>signature of company secretary/director 2 name of company secretary/director 2</p>	<p align="center">Date signed</p> <p align="center">/ /</p>
<p>Floorsafe Australia Pty Ltd (Supplier)</p> <p>.....</p> <p>signature of director 1 name of director 1</p>	<p align="center">Date signed</p> <p align="center">/ /</p>

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signature of company secretary/director 2

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name of company secretary/director 2

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