

# TERMS & CONDITIONS OF SALE

## M.J.STURGESS & CO. PTY LTD (ACN 009 753 164) – APRIL 2006

### 1. GENERAL

Any reference to "the Company" is a reference to M.J.Sturgess & Co. Pty. Ltd. (ACN 009 753 164) trading as MJS Floorcoverings. Any order placed by a purchaser will be taken to be an order incorporating these Terms and Conditions even if any inconsistencies are introduced in the purchaser's order or acceptance, unless expressly agreed to by the Company in writing. The possible supply of certain product ranges may be limited to certain geographical areas due to current distribution agreements.

### 2. PRICES

The applicable prices will be those at the date of delivery. Prices are subject to change without notice due to market fluctuation, amendments to tariff and taxation rates and movements in international exchange rates.

### 3. GST

Where applicable relevant Government charges will be added.

### 4. QUOTATIONS

Prices quoted are based on the Company's supplier costs. The quotation may be altered without notice to the purchaser if there is any increase in the Company's buy price between the date of quotation and the date of delivery. All goods will be charged at the prices ruling at the date of delivery unless the Company agrees otherwise in writing. All prices quoted are FOB Brisbane, Sydney, Melbourne, Hobart warehouses, unless otherwise specified in the handling and delivery conditions, and are exclusive of any applicable delivery, installation, storage, maintenance, stamp duty or other taxes or charges which may be levied from time to time by any government (domestic or foreign) upon the merchandise sold by the Company.

### 5. PAYMENT

Standard terms are nett 30 days from statement date and therefore payment must be made without deduction within 30 days of the date of the statement, but the Company reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery if, at any time, the credit worthiness of the purchaser is, in the Company's opinion, unsatisfactory. If the purchaser has not paid for the goods within 30 days of the payment being due, the Company may, at its option, rescind the contract and resell or dispose of the goods without prejudice to any claims for damages against the purchaser. Alternatively, after 90 days, the Company, at its discretion may charge a 5% interest fee plus another 1.5% per month thereafter. The Company may, at its discretion, charge a commercial stocking/storage fee for any order not taken within 30 days from the end of the month of the original required date. These fees would be calculated at \$3.00 per roll and/or \$8.00 per pallet per week or part thereof.

### 6. CLAIMS FOR WRONGFUL DELIVERY

Any claim by the purchaser for short or wrongful delivery of goods must be notified to the Company in writing within 14 days of delivery of the goods. Any claim which the purchaser does not notify within that time (time being of the essence) will be taken to have been absolutely waived.

### 7. CANCELLATION

If the purchaser cancels any order or refuses to accept all or any of the goods in an order other than in circumstances permitted in these Terms and Conditions, the purchaser will be liable for any resulting damage or loss suffered by the Company. If the goods have been or are in the process of being manufactured or produced specifically for the purchaser, the purchaser will pay to the Company as liquidated damages the full contract price of the goods and any costs incurred by the Company less the current scrap value of the goods as determined by the Company. Imported materials are firm and non-cancellable.

### 8. DESCRIPTION

Any description of the goods is given by way of identification only and the use of that description does not constitute a sale by description.

### 9. SALE BY SAMPLE

The purchaser acknowledges that no sale made under these terms constitutes a sale by sample. Samples may vary from actual production.

### 10. SPECIALS

Products listed as clearance lines, end of batch runs or seconds are deemed as specials and are non-returnable. No claims will be recognised for these types of specials.

### 11. IMPLIED TERMS

All conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise are expressly excluded to the maximum extent permitted by law.

### 12. EXPRESS WARRANTY

The Company warrants that the goods are free from defects caused by faulty workmanship and material as disclosed by the manufacturers' data and specification sheets and warranty statements.

### 13. LIABILITY

So far as the law permits, the liability of the Company for a breach of a condition or warranty is limited, at the Company's option, to:

- the replacement or repair of the goods;
- the supply of equivalent goods; or
- the cost of replacing or repairing the goods or of acquiring equivalent goods (where product fault is not obvious) in accordance with manufacturers' product warranty.

The purchaser agrees to release, hold harmless and indemnify the Company to the maximum extent permitted by law from and against any liability whatsoever and howsoever arising (including, without limitation, from negligence or willful misconduct on the part of the Company or others) in connection with the sale of goods by the Company.

### 14. INDIRECT LOSS

So far as the law permits, the Company is not liable in any way for any indirect or consequential loss or loss of profit including, without limitation, any loss by reason of delay, defective or faulty materials

or workmanship, negligence or any act or matter or thing done, permitted by the Company.

### 15. DELIVERY

- Refer Handling/Delivery details on the Price List.
- Delivery times are between 7.00 a.m. and 5.00 p.m. Monday to Friday (except public holidays).
- Customer must provide adequate unloading facilities and manpower (incl. forklift if required)
- Pickups can be made:
  - Full cartons/rolls – 4 hours notice
  - Cuts – order by 10.00 am pickup next day between 7 a.m. and 5 p.m.
- The Company is not liable for any failure to deliver or delay in delivery for any reason including, without limitation:
  - act of God, lightning, fire, flood, explosion;
  - strike, lock-out or other labour difficulty;
  - breakage or accident or other damage to machinery;
  - unavailability or shortage of stock from the Company's suppliers; or
  - failure or inability to obtain licences or the effect of any applicable laws, orders, rules or regulations of any government or competent authority.
- If the Company determines that it is or may be unable to deliver within a reasonable time or at all the contract may be cancelled by the Company. If the contract is cancelled, the purchaser will have no claim against the Company for any damage, loss, cost or expense.

### 16. RISK AND PROPERTY

- The risk of loss of, or damage to, the goods will pass to the purchaser on delivery and the purchaser will insure the goods until sold by the purchaser.
- Property in, and ownership of, the goods will not pass from the Company to the purchaser until payment in full of the purchase price of the goods and all other amounts owing to by the purchaser (the money owing).
- Until property passes to the purchaser:
  - The Company, its employees or agents, are entitled to enter the purchaser's premises between 9.00 a.m. and 5.00 p.m. to inspect the goods;
  - unless otherwise notified in writing by the Company and subject to paragraph (f), the purchaser is authorised to sell the goods in the ordinary course of the purchaser's business; and
  - If payment for the goods is not made by the purchaser to the Company on the due date, the purchaser must deliver the goods to the Company on demand. If the purchaser does not comply with such a demand, the Company, its employees or agents, are entitled:
    - to enter the purchaser's premises at any time to do all things necessary in order to take possession of the goods and the purchaser;
    - must procure the consent of all other persons having any interest in the premises where the goods are situated to entry of those premises by the Company, its employees or agents; and
    - indemnifies the Company against any claim, loss, liability, cost and expense that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the goods are situated; and
    - with or without taking possession of the goods, to sell them as the Company sees fit.
  - The purchaser acknowledges that the goods are not intended to become affixed to any of its premises and must ensure that the goods may be removed from those premises without causing damage of any kind to the premises.
  - The purchaser's right to hold and sell the goods will immediately cease if an administrator or a controller within the meaning of section 9 of the Corporations Law or similar officer is appointed to all or any assets or undertaking of the purchaser or an order is made or resolution passed for the appointment of an administrator or the winding up of the purchaser or the purchaser is deregistered. In any such case, and without the need for notice or demand by the Company, the purchaser acknowledges any sale or purported sale of the goods will not be in the ordinary course of the purchaser's business and the proceeds of any goods sold in such circumstances will, to the extent of money owing, be held on trust for the Company by the administrator, controller or similar officer as the case maybe, or if there is no such officer, by the purchaser.
  - Any provision of this Clause 16 which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Clause 16 nor affect the validity or enforceability of that provision in any other jurisdiction.

### 17. COSTS

The purchaser must pay to the Company the costs and expenses incurred by the Company of legal advisers (on a solicitor and client basis), mercantile agents and other agents acting on the Company's behalf in respect of:

- any enforcement of these Terms and Conditions;
- recovery or attempted recovery of money owing by the purchaser to the Company;
- repossession of the purchaser's goods pursuant to these Terms and Conditions.

### 18. CHARGING

In consideration of the Company entering into a contract with the purchaser, as security for any amount payable under the contract and the performance of the purchaser's obligations under these Terms and Conditions, the purchaser hereby charges any interest in real property, both freehold and leasehold, which it holds now or in the future in favour of the Company.

### 19. PERFORMANCE AND REPRESENTATIONS

The purchaser acknowledges that neither the Company nor any person purporting to act on its behalf have made any representation or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the

goods for any particular purpose or any other matter.

### 20. INSTALLMENTS

The Company reserves the right to deliver by installments and each installment will be taken to be sold under a separate contract. Failure of the Company to deliver any installment will not entitle the purchaser to cancel the balance of the order. If the purchaser defaults in payment for any installment, the Company may elect to treat the default as a breach of contract relating to each other installment.

### 21. RETURNS

Goods delivered to the purchaser may be returned on the following basis:

- Factory damaged or defective goods may be returned to the Company, and a credit or replacement will be provided to the Customer if the Company is liable for the damage or defect under any implied term for express warranty contained in these Terms and Conditions.
- Other than in accordance with paragraph (a), non-stock items, non-current ranges, specials (colour/gauge not outlined in current year marketing literature and/or not regularly made), made to order goods or goods, in the Company's opinion, that are not fit for sale (age, damage, cut lengths, etc.) cannot be returned to the Company following delivery to, or pick up by, the Customer.
- Other than in accordance with paragraph (a), prior written approval is received from the Company. Goods suitable for return will be accepted given they are approved by the Company's Credit Controllers and:
  - the freight cost is borne by the customer; and
  - a charge of 20% of the invoice value or \$200, whichever is the greater, is agreed to be levied on the customer's account.
- Other than in accordance with paragraph (a), prior written approval is received from the Company quoting an authorisation number

### 22. WAIVER

Failure by the Company to insist on strict performance of any term, warranty or condition of the contract will not be taken as a waiver of it or of any rights the Company may have and no waiver will be taken as a waiver or any subsequent breach of any term, warranty or condition.

### 23. MITIGATION OF LOSS

The purchaser shall notify the Company immediately of any effect in the goods of which it becomes aware and will take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect. If the purchaser transforms the goods and sells the transformed goods, the purchaser undertakes to the Company that it will impose on the acquirer of the transformed goods an obligation to notify immediately the purchaser and the Company of any defect in the transformed goods of which it becomes aware after delivery and to take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect.

### 24. NOTICES

- Any notice to be given by the purchaser to the Company must be sent by prepaid mail or facsimile transmission to the Company's address. No notice will be taken to have been given until it is actually received at the Company's address.
- Any notice (including any demand, consent, approval, request, court document or other communication) to be given by the Company to the purchaser must be in writing and may be given to the purchaser in any of the following ways, and in each case is deemed to be served by:
  - hand delivered, on the date of delivery;
  - sent by facsimile transmission, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted;
  - sent by prepaid ordinary mail within Australia on the date that is 2 Business Days after the date of posting; or
  - sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries on the date that is 10 Business Days after the date of posting.

### 25. GOVERNING LAW

Each contract is governed by and is to be construed in accordance with the laws of Queensland, and the purchaser submits to the non-exclusive jurisdiction of the courts of that State.

### 26. ACCEPTANCE

26.1 The Applicant (and in the case where the Applicant is a company any director of the Applicant) is taken to have exclusively accepted and is immediately bound (and in the case of a company and director - jointly and severally) by these terms and conditions if the Applicant places an order for or accepts delivery of the Goods.

26.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Applicant and the Company.

26.3 Electronic signatures facilitated by DocuSign shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the *Electronic Transactions Act 2000* (NSW & SA), the *Electronic Transactions Act 2001* (ACT), the *Electronic Transactions Act 2000*, the *Electronic Transactions Act 2003* (WA), the *Electronic Transactions (Northern Territory) Act 2000*, Section 14 of the *Electronic Transactions (Queensland) Act 2001* and Section 7 of the *Electronic Transactions Act 2000* (TAS), whichever is applicable, or any other applicable provisions of that Act or any Regulations referred to in that Act.