

Terms and conditions for Account Applications (Account Terms)

1. Contents of Application

1.1 You represent and warrant that, as at the date Your Account Application is submitted to Floorworld and as at each day that a credit account is provided to You, the contents of Your Account Application are complete, true and correct in every particular and are not misleading or deceptive in any way.

1.2 You must immediately notify Floorworld in writing as soon as You become aware of any matter or thing which renders any item described in the preceding clause incomplete, untrue, incorrect, misleading or deceptive.

2. Acceptance or rejection of Account Application

Floorworld may in its absolute discretion accept or reject Your Account Application and, to the maximum extent permitted by law, is under no obligation to provide reasons for any such rejection.

3. Binding contract

3.1 On Floorworld agreeing to receive and consider Your Account Application, these Account Terms and the Trade Terms constitute a binding contract between the parties.

3.2 The contract referred to in the previous paragraph continues until the first to occur of Floorworld rejecting Your Account Application and the expiry or sooner termination of the contract in accordance with the "Suspension or termination" clause in the Trade Terms.

3.3 If You are a corporation and a change occurs so that a person or entity who is not presently able to do any of the following things becomes able to do one or more of the following things (whether directly or indirectly or through one or more intervening persons, companies or trusts):

(1.a.i) control the composition of more than 50% of Your board of directors;

(1.a.ii) be in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of Your members; or

(1.a.iii) hold or have a beneficial interest in more than 50% of Your issued share capital,

then You need to have notified Floorworld in writing at least 7 days prior to that change and Floorworld may terminate or suspend the Contract in accordance with the "Suspension or termination" clause in the Trade Terms if You fail to notify Floorworld in accordance with this clause or Floorworld does not otherwise approve the relevant change.

4. General

The "General" and "Definitions" clauses in the Trade Terms apply equally to these Account Terms.

5. Privacy

5.1 For the purposes of Floorworld applying its credit policy and ongoing credit management of Your account with Floorworld, You consent to Floorworld collecting and using Your personal information in accordance with any privacy policy of Floorworld Pty Ltd ACN 051 233 964 (being the franchisor of the Floorworld business) (**Franchisor**) published from time to time at <https://www.floorworld.com.au/home/privacy-policy>. Floorworld agrees to comply with that privacy policy.

5.2 Without limiting the previous clause, You acknowledge and agree that Floorworld may:

(1.a.i) obtain from a credit reporting agency a credit report containing personal credit information about You; and

(1.a.iv) exchange information about You with credit reporting agencies, trade referees and other persons listed in credit reports relating to You, for the purpose of:

(1.a.iv.A) assessing any Account Application submitted by You;

(1.a.iv.B) notifying other credit providers of a default by You;

(1.a.iv.C) exchanging information with other credit providers; and

(1.a.iv.D) assessing Your creditworthiness,

and You acknowledge and agree that the information that may be exchanged may include anything about Your creditworthiness, credit standing, credit history or credit capacity that credit providers are permitted to exchange under the *Privacy Act 1988* (Cth) and any other applicable law.

5.3 You agree to Floorworld being given a credit report relating to You to assist Floorworld in collecting payments that are overdue in respect of any commercial credit provided to You by Floorworld.

5.4 You acknowledge and agree that Your personal credit information may be used and retained by Floorworld or the Franchisee for any one or more of the following purposes (and any other purposes agreed between You and Floorworld from time to time or otherwise required or permitted by law):

the supply of Products by Floorworld;

(1.a.v) the marketing of Products by Floorworld or the Franchisor;

(1.a.vi) analysing, verifying and/or checking Your credit, payments and/or status in relation to the supply and payment of Products;

(1.a.vii) processing of any payment instructions, direct debit facilities and/or credit facilities requested by You; and

(1.a.viii) enabling the daily operation of Your account with Floorworld and/or the collection of amounts outstanding in that account.

5.5 Floorworld may give information about You to a credit reporting agency to obtain a credit report about You and to allow the credit reporting agency to create or maintain a credit information file containing information about You.

5.6 That information may include:

(1.a.i) personal particulars (including Your name, gender, address, date of birth, employer's name and drivers licence number);

(1.a.ix) details concerning any Account Application submitted by You and the credit limit requested;

(1.a.x) advice that Floorworld is a current or potential credit provider to You;

(1.a.xi) details of any overdue account or other outstanding moneys owing which are overdue by more than 30 days;

(1.a.xii) advice that Your overdue account or any other outstanding moneys are no longer overdue in respect of any default that has been reported;

(1.a.xiii) information that, in Floorworld's opinion, You have committed a serious credit infringement (that is, fraudulent or showing an intention to not comply with Your credit obligations);

(1.a.xiv) advice that cheques drawn by You for \$100 or more have been dishonoured more than once; and

(1.a.xv) advice that credit provided to You by Floorworld has been paid or otherwise discharged.

General Terms and Conditions of Trade

1. Application of these Trade Terms

1.2 These Trade Terms apply to all Products and/or any Services supplied (or to be supplied) by or on behalf of Floorworld to You, and form part of the Contract.

1.3 If there is any inconsistency between the terms set out in any document issued by You or on Your behalf to Floorworld, and these Trade Terms, then these Trade Terms prevail to the extent of the inconsistency.

1.4 You are taken to have acknowledged and accepted these Trade Terms by doing any one or more of the following:

(4.a.i) ordering Products and/or any Services from or through Floorworld;

- (4.a.ii) taking delivery of Products;
- (4.a.iii) making and/or facilitating payment to Floorworld in respect of ordered Products and/or Services;
- (4.a.iv) submitting an Account Application; or
- (4.a.v) by agreeing to any other document provided by Floorworld that incorporates these Trade Terms by reference.

2. Prior contracts terminated

The Contract terminates and supersedes all prior contracts between You and Floorworld in respect of the sale and purchase of Products and/or Services, other than any rights or obligations that have already arisen under those prior contracts.

3. Product ordering process

3.1 Any Quote given by Floorworld to You:

- (1.a.i) is subject to change or withdrawal by Floorworld at any time before a Quote is accepted by you, or before any Purchase Order relating to the Quote is accepted by Floorworld in accordance with these Trade Terms; and
- (1.a.ii) will be taken to have been rejected by You if You do not within 30 days after the date of the Quote notify Floorworld that You accept the Quote, submit to Floorworld a Purchase Order corresponding to the Quote, or pay to Floorworld a Deposit in respect of the Products and/or any Services which are the subject of the Quote.

3.2 If a Purchase Order is submitted to Floorworld, it cannot be cancelled or varied, or delivery deferred, without Floorworld's prior consent.

3.3 Floorworld is not bound by a Purchase Order until it is accepted by Floorworld by giving written notice to You of that acceptance.

3.4 To the maximum extent permitted by law, Floorworld is not obliged to accept any Purchase Order.

3.5 If You cancel any Purchase Order after it was accepted by Floorworld (other than a cancellation due to a major failure as referred to in the "Liability" clause), Floorworld may refund to You any Deposit paid in connection with that cancelled Purchase Order, but subject to Floorworld's rights set out in the "Suspension or termination" clause.

4. Price

4.1 Subject to the other provisions of this "Price" clause, all Prices for Products and/or Services supplied (or to be supplied) by or on behalf of Floorworld to You are as set out in the relevant Quote, Purchase Order or Invoice for the Products, or as otherwise notified to You by Floorworld from time to time.

4.2 Any Price or other terms specified in a Quote, Purchase Order or Invoice may be varied by Floorworld notifying You at any time before the Quote is accepted by You in writing, before you pay to Floorworld a Deposit in respect of the Products and/or Services which are the subject of the Quote, or before a Purchase Order is accepted by Floorworld (whichever is earlier).

4.3 If under the preceding paragraph Floorworld varies the Price or other terms specified in a Quote, Purchase Order or Invoice, then You will be given an opportunity to cancel the relevant Purchase Order.

4.4 All Products and/or Services ordered after notification of any Price variation under this "Price" clause will be subject to that variation, and any submission by You of a Purchase Order (or any confirmation of a Purchase Order under this "Price" clause) will be taken to be an acceptance by You of the Price variation.

4.5 Unless otherwise expressly stated in the Contract, Prices do not include any taxes, duties, levies, other government fees and charges, any delivery, packaging, freight, insurance, installation costs, or any bank, credit card or other merchant or financial institution charges, fees, levies or other costs (together **Additional Charges**). Unless otherwise expressly stated in the Contract, all Additional Charges must be paid by You to Floorworld in the same way and at the same time as the Price for those Products and/or Services.

5. Invoicing and Payment Terms

5.1 Floorworld will provide an invoice to You for the amount payable for all Products and/or Services under the Contract (**Invoice**).

5.2 Unless otherwise specified in any Quote, Invoice or any other document forming part of the Contract, You must pay to Floorworld the full Price for the Products and/or Services (less any Deposit already paid) before those Products and/or Services are delivered and/or provided to you, except to the extent that the next paragraph applies.

5.3 If Floorworld supplies Products and/or Services under the Contract at a time when you have an Approved Credit Limit, then to the extent that the sum of all amounts (including the amount of the Invoice relating to those Products and/or Services) owing by You to Floorworld at that time (whether under the Contract or otherwise and whether or not actually payable at that time) does not exceed the Approved Credit Limit, then You must pay Floorworld the full amount of the Invoice relating to those Products within 30 days after the date of that Invoice.

5.4 All payments to Floorworld must be made without set-off or counterclaim and by cash, electronic funds transfer, credit card or by any other method specified in the relevant Invoice.

6. Delivery

6.1 Delivery of the Products will be effected by Floorworld when Floorworld (or a carrier organised by Floorworld) delivers the Products to the Premises. You must comply with the reasonable requests and/or directions of Floorworld or its carrier in relation to the delivery and unloading of the Products at the Premises.

6.2 Any dates or times quoted for delivery (**Delivery Date**) are estimates only. Floorworld will not be liable to You for any delay in delivery of the Products. Any delay in delivery does not entitle You to terminate the Contract.

6.3 If You do not or are unable to take delivery of the Products on the Delivery Date, then Floorworld may charge You a reasonable fee for redelivery and/or storage of the Products and You must pay that charge to Floorworld on demand. If you do not or are unable to take re-delivery of the Products within 14 days after the Delivery Date, then Floorworld may terminate the Contract for those Products (and forfeit any moneys You have already paid to Floorworld in respect of those Products) or store those Products at Your risk and expense.

6.4 You must sign (or ensure that Your duly authorised representative signs) Floorworld's copy of any delivery docket accompanying each delivery of Products, as confirmation that the relevant Products have been delivered in good order and condition.

6.5 You must inspect the Products promptly upon delivery and, if any defects, quality issues or other non-conformance with the Contract are identified by You, You must provide Floorworld with written notice of those issues within 7 days after the date of delivery. If You fail to give that notice within that 7 day period, then to the maximum extent permitted by law, the Products are deemed to have been accepted by You.

7. Risk

Risk in the Products will pass to You at the time delivery is taken to have occurred in accordance with the "Delivery" clause.

8. Title and PPSA

8.1 Capitalised terms used in this "Title and PPSA" clause that are not otherwise defined in these Trade Terms have the meaning given in the PPSA.

8.2 You agree that legal title and property in the Products is retained by Floorworld (and that Floorworld retains a Security Interest in those Products and all Proceeds relating to those Products) until payment is received in cleared funds from You of all amounts owing to Floorworld in relation to those Products.

8.3 You acknowledge and agree that the Contract constitutes a Security Agreement under the PPSA and secures

Floorworld's right to receive the Price of all Products sold under the Contract and all other amounts from time to time owing by You to Floorworld under the Contract or any other contract.

8.4 In exercising any of its rights under this "Title and PPSA" clause and in addition to any rights Floorworld may have under Chapter 4 of the PPSA, Floorworld may, without notice, enter any premises where it suspects the relevant Products and/or any Proceeds in respect of those Products may be located and remove them without committing a trespass, and You authorise Floorworld to enter onto those premises to take possession of those Products and/or Proceeds for that purpose at any time.

8.5 You agree to waive any right to receive any notice or statement from Floorworld under the PPSA, except to the extent that the giving of that notice or statement is required by the PPSA and cannot be excluded by agreement.

8.6 The Security Interests arising under this "Title and PPSA" clause attach to the relevant Products when You obtain possession of those Products.

9. Provision of Services

9.1 In relation to any Services, the date(s) on which those Services will be provided by (or on behalf of) Floorworld will be the date(s) determined by the Contract or as otherwise agreed by Floorworld and You. If for any reason (other than the negligence or wilful default of Floorworld or any employee, officer, agent or subcontractor appointed by Floorworld to provide those Services) the Services are unable to proceed on the required date, then Floorworld may delay the provision of those Services until Floorworld and You have agreed on any necessary variations to the Price resulting from that change or delay.

9.2 Unless otherwise specified in any Quote, Invoice or any other document forming part of the Contract, all Prices associated with the Services have been quoted based on the assumption that:

(2.a.i) those Services will be provided during the hours of 7.30am to 5pm on normal business days (in the place where those Services are to be provided);

(2.a.ii) those Services will be provided at the Premises; and

(2.a.iii) You will provide Floorworld and its employees, officers, agents, contractors and representatives with ready access to the Premises to carry out the Services.

9.3 Any variation to these assumptions may result in additional costs being incurred by Floorworld, and Floorworld may delay the provision of the relevant services until Floorworld and You have agreed on any necessary variations to the Price as a result of those additional costs.

10. Health and Safety

10.1 You represent and warrant that the Premises comply with the standards set out in or required under any applicable laws relating to occupational health and safety.

10.2 You must ensure:

(2.a.i) that the Premises are prepared for the performance of the Services and, where the area is not prepared for the Services, an additional charge may be payable by You to cover additional services required to be provided by Floorworld, including the removal and replacement of furniture and levelling or ramping; and

(2.a.ii) the sub-floor meets the required Australian Standard for the provision of the Services before the Services are carried out.

10.3 Testing for moisture content, PH and planeness may be carried out (if deemed required), before the Services commence. If testing determines that further floor preparation (or other preparation of the environment in which the Product is to be installed) is required then this will be quoted for separately by Floorworld.

11. Suspension or termination

11.1 If You suffer an Insolvency Event, cancel any Purchase Order that Floorworld has already accepted (other than a cancellation due to a major failure as referred to in the

"Liability" clause), or fail to pay to Floorworld any amount when due under the Contract, then Floorworld may (at its sole discretion and without limiting its other rights and remedies):

(1.a.i) terminate the Contract; or

(1.a.ii) suspend performance of its obligations under or in connection with the Contract until the amount outstanding is paid in full, and charge interest on the amount outstanding at the rate of 1.25% per month.

11.2 Any interest charges will be calculated from and including the date on which the relevant payment became due until but excluding the date on which the relevant payment is made, and is payable by You to Floorworld on demand.

11.3 On termination of the Contract, the Contract is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before, the termination.

11.4 On termination of the Contract, Floorworld may exercise any one or more of the following rights (in addition to any other rights it may have under the Contract or at law):

(4.a.i) suspend deliveries of further Products to You;

(4.a.ii) withdraw any credit facilities which may have been extended to You and require immediate payment of all moneys owed to Floorworld by You from time to time (and You must comply with that requirement);

(4.a.iii) retain some or all of any Deposit paid by You in relation to the Contract but only to the extent required to reimburse Floorworld for any reasonable costs (including freight charges, restocking costs, time costs for providing any associated Quote, storage costs, interest incurred and other similar costs) it has incurred in connection with the Contract;

(4.a.iv) issue an Invoice for, and demand immediate payment of, Products and/or Services ordered by You but not delivered and/or provided (and You must comply with that demand); and

(4.a.v) exercise any rights that Floorworld has under the "Title and PPSA" clause, the PPSA and any other applicable law.

11.5 Despite any other provision of the Contract, this "Suspension or termination" clause, the "Price", "Invoicing and Payment Terms", "Risk", "Title and PPSA", "Liability", "General" and "Definitions" clauses of these Trade Terms, survive termination of the Contract.

12. Liability

12.1 Floorworld's goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

(1.a.i) to cancel your service contract with us; and

(1.a.ii) to a refund for the unused portion, or to compensation for its reduced value.

12.2 You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

12.3 The Products supplied to You by Floorworld may also come with limited warranties from the manufacturers of those Products and, to the maximum extent permitted by law, those warranties are the only warranties given to You in respect of those Products. Floorworld has no authority to make any representations or warranties in relation to those parts and consumables and it can only pass on information in relation to those Products which is published in materials or other data provided by the manufacturer of the relevant Products and which is in the public domain. Further information on any such

manufacturer warranties is accessible at: <https://www.floorworld.com.au/home/warranties>.

12.4 Subject to this "Liability" clause and to the maximum extent permitted by law, Floorworld is not liable to You or to any other person for:

(4.a.i) any loss or damage of any kind caused by or resulting from any act or omission by You or any of Your representatives, agents or contractors;

(4.a.ii) any loss of profits or anticipated profits, economic loss, loss of business opportunity, loss or damage resulting from wasted management time or any special, incidental, indirect or other consequential loss or damage, even if Floorworld was notified of the possibility of that potential loss or damage and irrespective of whether it is due to negligence, breach of contract or any other cause; or

(4.a.iii) any amounts in respect of any loss or damage of any kind that exceeds the Price of the Products and/or Services to which the loss or damage relates.

12.5 Any representation, warranty, guarantee, condition or undertaking that would be implied in the Contract by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

12.6 Notwithstanding the other provisions of the Contract, Floorworld does not exclude, restrict or modify any warranty, guarantee, condition, representation, undertaking or other right under any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute or cause any part of the Contract to be void (**Non-excludable Condition**).

12.7 To the maximum extent permitted by law, the liability of Floorworld for a breach of a Non-Excludable Condition is limited, at Floorworld's option, to, in the case of goods:

(7.a.i) the replacement of the goods or the supply of equivalent goods;

(7.a.ii) the repair of the goods;

(7.a.iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(7.a.iv) the payment of the cost of having the goods repaired, or in the case of services:

(7.a.v) the supplying of the services again; or

(7.a.vi) the payment of the cost of having the services supplied again.

12.8 You may return Products supplied by Floorworld in accordance with the "Returns Policy" accessible via the Franchisor's website at: <https://www.floorworld.com.au/home/return-policy>.

13. Force Majeure

Where any failure or delay by Floorworld in the performance of its obligations under the Contract is caused, directly or indirectly, by a Force Majeure Event, Floorworld is not liable for that failure or delay and Floorworld's obligations under the Contract are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.

14. GST

14.1 In this "GST" clause, capitalised terms have the meanings given to those expressions in the GST Act, and "Supplier" means any party treated by the GST Act as making a Supply under or in connection with the Contract.

14.2 Unless otherwise expressly stated, all Prices or other sums payable under or in connection with the Contract are exclusive of GST.

14.3 If GST is imposed on any Supply made under or in connection with the Contract, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply.

14.4 Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with the Contract.

15. General

15.1 Headings are used for convenience only and do not affect the interpretation of the Contract.

15.2 Wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".

15.3 If any provision of the Contract is or becomes invalid, void, illegal or unenforceable, then the validity, existence, legality and enforceability of the remaining provisions will not be affected.

15.4 A failure or delay by Floorworld in exercising any right conferred on Floorworld under the Contract does not operate as a waiver of the right.

15.5 The Contract is governed by and must be construed in accordance with the laws in force in Victoria. You submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to the Contract.

16. Definitions

In this document:

Account Application means any "Floorworld Account Application" as submitted by You to Floorworld;

Australian Consumer Law means the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Approved Credit Limit means the dollar amount specified by Floorworld in its notice to You accepting any Account Application, which dollar amount may be varied from time to time by Floorworld by giving written notice to You;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the state or territory in which Floorworld is trading with You;

Contract means the contract between or involving You and Floorworld for the supply of Products and/or any Services by or on behalf of Floorworld to You, to which these Trade Terms apply, and is taken to incorporate each Quote given by Floorworld to You for the supply of Products and/or Services (to the extent that Quote is accepted by You), each Purchase Order received from You (to the extent that Purchase Order is accepted or taken to have been accepted by Floorworld), each Invoice issued by Floorworld to You and any Account Application accepted by Floorworld;

Controller means, in relation to a person:

(1.a.i) a receiver, receiver and manager, administrator or liquidator (whether provisional or otherwise) of that person or that person's property; or

(1.a.ii) anyone else who (whether or not as agent for the person) is in possession, or has control, of that person's property to enforce an encumbrance;

Corporations Act means the *Corporations Act 2001* (Cth);

Deposit means part of the Price for Products and/or Services which may be payable to Floorworld in advance as set out in a Quote, Purchase Order or Invoice for the relevant Products and/or Services;

Force Majeure Event an event or occurrence that is beyond the reasonable control of Floorworld, including the failure or inability of any manufacturer to supply any goods or services required by Floorworld in order to supply Products to You;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvency Event means, in relation to a party to the Contract, any one or more of the following events or circumstances occurring in relation to the party:

(1.a.i) being in liquidation or provisional liquidation or under administration;

(1.a.iii) having a Controller or analogous person appointed to it or any of its property;

- (1.a.iv) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (1.a.v) being unable to pay its debts or being otherwise insolvent;
- (1.a.vi) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (1.a.vii) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; and
- (1.a.viii)** any analogous event or circumstance under the laws of any jurisdiction;

Invoice has the meaning given in the "Invoicing and Payment Terms" clause;

Price means the purchase price payable by You to Floorworld for a Product and/or Services;

PPSA means the *Personal Property Securities Act 2009 (Cth)*;

Premises means the premises where the Products are to be installed as stated in the relevant Quote, Invoice or other document forming part of the Contract for the relevant Products;

Products means any products supplied (or to be supplied) by Floorworld to You;

Purchase Order means an order for Products and/or Services that is in the form specified by Floorworld from time to time;

Quote means a written quotation given by Floorworld to You for the supply of Products and/or Services to You;

Services means any services required to install or otherwise use the Products at the Premises;

Trade Terms means these "General Terms and Conditions of Trade"; and

You means the person or entity specified in (or contemplated by) a Contract as being the buyer of the Products.