

TERMS AND CONDITIONS**1. ACCEPTANCE**

- 1.1 **Parties:** These Terms are between STEPHEN BILLY WHITMARSH (trading as FAIR DINKUM FLOOR COVERINGS (ABN 95 806 709 940)), its successors and assignees (referred to as “we” and “us”) and you, the person, organisation or entity described in the Quote (referred to as “you”). These Terms apply to all Services provided by us to you.
- 1.2 **Acceptance:** You have requested the Services set out in the Quote. You accept these Terms by:
- (a) signing and returning the Quote;
 - (b) confirming in writing including by email that you accept the Quote;
 - (c) accepting the Quote online;
 - (d) allowing us to proceed with the Services; or
 - (e) making part or full payment for the Services.
- 1.3 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms.
- 1.4 **Deposit:** If the Quote indicates that we require a Deposit, we will not commence performing the Services until you have paid the Deposit or the first instalment of our Fee.
- 1.5 **Cancellation:** To the extent permitted by law, cancellation of the Services will result in part of your Deposit being forfeited proportionate to any out-of-pocket expenses reasonably incurred by us up to the time of withdrawal. Where we have already ordered materials specific to the Services that must be returned, you will be required to pay for any return or restocking costs in full, or if we have already ordered materials specific to the Services that cannot be returned or re-used, you will be required to pay for the material costs in full. If no deposit has been paid, this amount will be payable by you within 7 days of receipt of an invoice for that amount. You can collect the materials from us once paid in full.

2. SERVICES

- 2.1 We agree to perform the Services with due care and skill.
- 2.2 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.
- 2.3 We may provide the Services to you using our employees, contractors and third party

providers, and they are included in these Terms.

- 2.4 When you engage third parties that are neither our employees nor our direct contractors we have directly appointed, their services or products fall under your oversight. We bear no liability for the outcomes or quality of the services or products provided by these independent third parties.
- 2.5 **Timeframe:** Any period of time allowed for completion of Services is an estimate only and is subject to change. To the extent permitted by law, we will not be liable for any delays. Both Parties must take all reasonable steps to minimise any delay to the Services.

3. PRICE, INVOICING AND PAYMENT

- 3.1 You agree to pay us the amounts set out in our Quote, including any Deposit required. All amounts are stated in Australian dollars. All amounts exclude Australian GST unless otherwise stated in our Quote. Payment may be made by way of payment methods as set out in our Quote and/or invoices when purchasing our Services.
- 3.2 You agree to pay our Invoices by the payment date set out on the Invoice. If you do not pay by the payment date (including any other services we have provided to you), we may cease to provide the Services to you until we receive payment.
- 3.3 We may charge interest at a rate equal to the Reserve Bank of Australia’s cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the payment date.
- 3.4 If invoices are unpaid after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us at your expense.
- 3.5 We reserve the right to report bad debts to independent credit data agencies.

4. VARIATIONS

- 4.1 The Fee and Services can only be varied by written agreement between us, including by email.
- 4.2 We may at any time, in writing, inform you of the need for us to perform a Variation.
- 4.3 You may at any time, in writing request a Variation to the Services.
- 4.4 Variations will not invalidate these Terms or be regarded as a repudiation of these Terms by us.
- 4.5 If in our reasonable opinion a Variation requires additional time to perform the Services, then we will amend the term of this Agreement after consultation with you.
- 4.6 If in our reasonable discretion we need to charge an additional fee for a Variation

(Additional Fee), then we will provide a written quote for the Additional Fee to you prior to commencing performance of the Variation. If:

- (a) you accept the quote for the Additional Fees then these Terms are amended to incorporate the Variation but otherwise remain the same; or
- (b) you do not accept the quote for the Additional Fee where we informed you of the need for us to perform a Variation then we may terminate these Terms immediately.

4.7 If we are unable to accommodate the Variation requested by you, we may consult with you to find a feasible adjustment. Should a mutually agreeable solution not be reached, we reserve the right to invoice for Services performed to date and terminate these Terms.

5. YOUR OBLIGATIONS AND WARRANTIES

5.1 You warrant that:

- (a) there are no legal restrictions preventing you from agreeing to these Terms;
- (b) you will cooperate with us, and provide us with information that is reasonably necessary to enable us to perform the Services as requested from time to time, in a timely manner;
- (c) the information you provide to us is true, correct and complete;
- (d) you will at all times comply with our Requirements;
- (e) you will not infringe any third party rights in working with us and receiving the Services;
- (f) before attempting to resolve any issues yourself or using a third party, you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that the Parties will use all reasonable efforts to resolve your concerns;
- (g) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
- (h) You will ensure that, if the Services are to be performed on a property, you are authorised to occupy the premises and obtain the Services;
- (i) You will ensure that if the Services are to be performed on a property, that at all times the property is safe and that all facilities provided by you for the purposes of enabling the Services to be performed are also safe, including restraining any pets;

- (j) You will ensure that we have free and unimpeded access to the place in which the Services are to take place and that you will do all things to ensure that we are not delayed by matters within your control;
- (k) You accept that we have the right to impose stand down charges and recover additional costs incurred where work is delayed by reason not in our control and where we are unable to reasonably reschedule services; and
- (l) you will not employ, canvass, solicit, entice, induce or attempt to employ our employees or contractors.

6. WORK HEALTH & SAFETY

6.1 You agree and acknowledge that:

- (a) Whilst works are being carried out the property is considered a work site and therefore must comply with all legislation and must follow the following conditions.
- (b) An approximate age of the property must be advised to ascertain potential risk.
- (c) Disclosure of the presence of asbestos, where known by you, within the work site must be made prior to the commencement of works.
- (d) All work areas must be free of potential hazard to us and any of our representatives.
- (e) Any representative of ours can refuse to complete the Services if they believe that the working environment is in breach of company policy and/or legislation.

7. FEEDBACK AND DISPUTE RESOLUTION

7.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.

7.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
- (b) If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complaining Party will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve

the dispute and will be equally responsible for the costs of the mediator.

- 7.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 8. RISK**
- 8.1 Risk of damage to or loss of the goods passes to you on delivery to your premises and you must insure the goods on or before delivery.
- 8.2 If any of the goods are damaged, lost or destroyed following delivery but prior to title passing to you, we are entitled to receive all insurance proceeds payable for the goods. The production of these Terms by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.
- 8.3 If you request that we deliver the goods to an unattended location, then such goods shall be left at your sole risk.
- 9. RETENTION OF TITLE**
- 9.1 Title in any goods we supply to you does not pass to you until they have been paid for in full, even if we have installed them.
- 9.2 To the extent allowed by law, if you fail to make a due payment, we may enter the site or your premises and take reasonable action to remove the goods without us being liable to you for damage to the site, premises of the goods caused by such removal.
- 10. TERM AND TERMINATION**
- 10.1 If either Party commits a remediable breach of these Terms and does not remedy the breach at its cost within a reasonable time after receiving written notice of the breach from the other Party, then the Parties agree to engage in the dispute resolution process set out in clause 9.2 in the first instance. If the dispute is not resolved after following that process, then either Party may terminate these Terms at any time upon written notice to the other Party.
- 10.2 We may terminate these Terms immediately, at our sole discretion, if:
- you commit a non-remediable breach of these Terms;
 - you fail to provide us with clear or timely instructions to enable us to provide the Services;
 - we, acting reasonably, consider that our working relationship has broken down including a loss of confidence and trust;
 - for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe; or
 - you fail to pay an invoice by the due date.
- 10.3 You may terminate these Terms immediately upon written notice to us if:

- we commit a non-remediable breach of these Terms; or
 - you, acting reasonably, consider that our working relationship has broken down including a loss of confidence or trust.
- 10.4 On termination of these Terms in accordance with clause 10.2 or clause 10.3 you agree that any Deposit or payments made are not refundable to you to the extent of all Services provided prior to termination, including Services which have been performed and have not yet been invoiced to you.
- 10.5 On termination of these Terms, you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and/or Intellectual Property.
- 10.6 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and/or Intellectual Property.
- 10.7 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 10.8 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 11. INSOLVENCY**
- 11.1 If either Party:
- being a person, becomes bankrupt or makes an assignment of its estate for the benefit of its creditors;
 - being a company, becomes insolvent, has a liquidator, provisional liquidator, administrator or receiver appointed or takes or has taken or instituted against it any action which may result in the liquidation of the company or if it enters into any Subcontract with its creditors,
- the other Party may, without issuing a notice to show cause, terminate the Agreement by written notice.
- 12. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 12.1 **Service Standard:** We will provide the Services with due care and skill, the Services will be fit for the purpose that we advertise, and we will supply the Services within a reasonable time.

- 12.2 **ACL:** to the extent that you are considered a 'consumer' under the ACL, Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 12.3 **Statutory Rights:** Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for the Services is governed solely by the ACL and these Terms.
- 12.4 **Warranties:** Except for your Statutory Rights, we exclude all express and implied warranties representations and guarantees and all material and work is provided to you without warranties, representations and guarantees of any kind. For products not manufactured by us, the warranty shall be the current warranty provided by the manufacturer. To the extent permitted by law, we shall be under no liability whatsoever. We take no responsibility for materials supplied by you.
- 12.5 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services, where it is affected by your delay in response or supply of incomplete or incorrect information.
- 12.6 **Referrals:** We may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or their failure to advise or provide services.
- 12.7 **Availability:** To the extent permitted by law, we exclude liability for:
- (a) the Services being unavailable; and
 - (b) any Claims for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Services or the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 12.8 **Disclaimers:** To the extent permitted by law we disclaim all responsibility and liability for:
- (a) products or services you purchase from a third party; and
 - (b) damage caused to your property other than due to our negligent act or omission;
 - (c) personal injury caused to you or any third party other than due to our negligent act or omission;
 - (d) any faults in work performed by us that has been tampered with, serviced or worked on by a third party;
 - (e) any errors or damage caused where you have failed to provide us with accurate plans as requested;
 - (f) variations in materials from any samples or online representations;
 - (g) any inaccuracies as a direct or indirect result of incorrect measurements or plans provided to us;
 - (h) any Additional Fees that arise unexpectedly due to unforeseen variations that we could not have reasonably anticipated;
 - (i) any delays due to reasons out of our control, including but not limited to inclement weather and material delays and shortages;
 - (j) naturally occurring damage, ageing and discolouration; and
 - (k) any damage to grass caused by foot traffic or machinery.
- 12.9 **Limitation:** To the extent permitted by law, our total liability arising out of or in connection with the Services, however arising, including under contract, tort including negligence, in equity, under statute or otherwise, is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates. Our total liability to you for all damages in connection with the Services will not exceed the price paid by you under these Terms and pursuant to the Quote for the 12-month period prior to the act which gave rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made.
- 12.10 This clause will survive the termination of these Terms.
- 13. INDEMNITY**
- 13.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - (b) your breach of these Terms;
 - (c) any misuse of the Services by you, your employees, contractors or agents; and

- (d) your breach of any law or third party rights.
- 13.2 We are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information provided to you by us that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) our breach of these Terms;
- (c) any defect or omission in the Services from or by us, our employees, contractors or agents; and
- (d) our breach of any law or third party rights in connection with our provision of the Services to you.
- 13.3 your breach of any law or third party rights.
- 13.4 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 13.5 This clause will survive the termination of these Terms.
- 14. GENERAL**
- 14.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 14.2 **Publicity:** You consent to us stating that we provided Services to you, including but not limited to taking photographs/videos of our work and mentioning you on our website, social media platforms and in our promotional material, unless you give us written notice that you withdraw your consent in this regard.
- 14.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 14.4 **GST:** If and when applicable, GST payable on the Fee for the Services will be set out on our invoices. You agree to pay the GST amount at the same time as you pay the Fee.
- 14.5 **Relationship of Parties:** These Terms are not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.
- 14.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 14.7 **Severance:** To the extent permitted by law, if any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 14.8 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their obligations under these Terms if such delay is due to any circumstance beyond their reasonable control.
- 14.9 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to the relevant address in the Quote. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 14.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of New South Wales and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.
- 14.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between the Parties and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.
- 14.12 **Special Conditions:** The Special Conditions will prevail to the extent of any inconsistency with these Terms.
- 15. DEFINITIONS**
- 15.1 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales, Australia.
- 15.2 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate,

- future or contingent, whether based in contract, tort or statute, whether indirect, incidental, special, consequential and/or incidental, and whether involving a third party or a Party to the Terms or otherwise.
- 15.3 **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 15.4 **Deposit** (if any) set out in the Quote.
- 15.5 **Expenses** (if any) are set out in the Quote.
- 15.6 **Fees** are set out in the Quote.
- 15.7 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 15.8 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
- 15.9 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).
- 15.10 **Party and Parties** means a party or parties to these Terms.
- 15.11 **Quote** means the Quote to which these Terms are attached.
- 15.12 **Requirements** means any instructions, directions, care guidelines or other instructional information provided to you by us.
- 15.13 **Services** are set out in the Quote.
- 15.14 **Special Conditions** means the special conditions, if any, detailed in the Quote.
- 15.15 **Terms** means these terms and conditions.
- 15.16 **Variation** means:
- (a) when advised by us to you, necessary amended or additional services, including but not limited to changes to the Quote, Services, or Fees. or Expenses; or
 - (b) amended or additional services as requested by you.