



Goods and Services Terms and Conditions

Agreement

THESE TERMS AND CONDITIONS FORM A LEGAL AGREEMENT (THE "AGREEMENT") BETWEEN YOU ("YOU" OR "BUYER") AND FLOORING² DBA FLOORING2 (THE "SELLER").

THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. **PLEASE READ IT CAREFULLY.**

THIS AGREEMENT REQUIRES YOU TO GIVE UP THE RIGHT TO A JURY TRIAL TO RESOLVE DISPUTES.

BY PLACING AN ORDER FOR GOODS AND/OR SERVICES FROM SELLER, YOU AFFIRM THAT YOU ARE OF LEGAL AGE TO ENTER INTO THIS AGREEMENT, AND YOU ACCEPT AND ARE BOUND BY THIS AGREEMENT. YOU AFFIRM THAT IF YOU PLACE AN ORDER ON BEHALF OF AN ORGANIZATION OR COMPANY, YOU HAVE THE LEGAL AUTHORITY TO BIND ANY SUCH ORGANIZATION OR COMPANY TO THIS AGREEMENT.

YOU MAY NOT ORDER OR OBTAIN PRODUCTS OR SERVICES FROM THIS WEBSITE IF YOU (i) DO NOT AGREE TO THESE TERMS, (ii) ARE NOT THE OLDER OF (X) AT LEAST 18 YEARS OF AGE OR (Y) LEGAL AGE TO FORM A BINDING CONTRACT WITH SELLER, OR (iii) ARE PROHIBITED FROM ACCESSING OR USING THIS WEBSITE OR ANY OF THIS WEBSITE'S CONTENTS, GOODS OR SERVICES BY APPLICABLE LAW.

1. Sale of Goods; Services

As further described in the estimate, quote, price list, or similar document entered into between the Parties (the "Quote"), Seller shall sell to Buyer and Buyer shall purchase from Seller the goods described in the Quote (the "Goods"), and Seller shall perform for Buyer and Buyer shall pay Seller for the installation and related services ("Services") described in the Quote, with delivery to the delivery location ("Job Site") and in the quantities and at the price(s) set forth in the Quote (the "Price"), upon the terms and conditions contained in this Agreement.

2. Delivery

Seller estimates delivery of the Goods and performance of the Services will occur by the date set forth in the Quote, provided that such time of delivery is an estimate only. Any changes Buyer wishes to make to the scheduled date for delivery of the Goods and performance of the Services must be made in writing to Seller no later than 5pm (Pacific time) of the business day before such scheduled date. Any later-requested changes may, in Seller's sole discretion, be subject to a change fee of up to \$250.

If for any reason Buyer fails to accept delivery of any of the Goods by the Delivery Date, or if Seller is unable to deliver the Goods or perform the Services at the Job Site owing to any act or omission of Buyer or its representatives, including without limitation the failure to provide appropriate instructions, documents, licenses, or authorizations, access to the Job Site premises/unit(s), or to prepare such premises/unit(s):

- (i) Buyer shall be subject to an additional fee of up to \$250; and
- (ii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Change of Scope; Flooring Disclaimers

Unless otherwise stated in the Quote, the Services include the supply and installation of the Goods (including new metal transitions), the removal and replacement of existing appliances, toilets, and base molding, as well as basic floor prep and cleanup. Buyer acknowledges and agrees that it is Buyer's sole responsibility to check all water lines and fittings for leaks before using and that Seller is not liable for any damage due to leaking water lines, fittings, or appliances.

Floor leveling and/or repair is not included in the Services and, if required in Seller's sole determination, will be performed and billed to Buyer at extra cost. Seller will provide Buyer with photos of the floor leveling and/or repair performed along with the invoice for such extra costs.

Buyer acknowledges and agrees that flooring installation is a construction process and minor scrapes, scuffs, and other marks to walls are likely and touchup/wall repair by Buyer may be necessary. Seller is not liable for any such installation-related damage.

4. Title and Risk of Loss; Liens

Title and risk of loss pass to Buyer upon delivery of the Goods at the Job Site. In the event Seller, in its sole discretion, requires a lien from Buyer regarding the Goods and/or Services, Buyer will assist Seller in creating, executing, filing, and perfecting the lien, including, without limitation, by executing the required documents. Buyer will be responsible for Seller's costs of filing, perfecting and releasing liens, and Seller will include those costs in invoices to Buyer, which will be subject to Section 7 below.

5. Taxes

All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, real property, personal property, or other assets.

6. Payment Terms

Seller shall issue an invoice to Buyer following delivery of Goods to Buyer and performance of the Services. Buyer shall pay all invoiced amounts due to Seller in accordance with the payment terms set forth in the Quote. Buyer shall pay interest on all late payments at the lesser of the rate of 2% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, collector and attorneys' fees. In addition to all other remedies available under this Agreement or at law (which the Seller does not waive by the exercise of any rights hereunder), the Seller shall be entitled to suspend the provision of any Services/delivery of any Goods if the Buyer fails to pay any amounts when due hereunder and such failure continues for seven (7) days following written notice thereof.

7. No Setoff

Buyer shall perform its obligations under this Agreement without setoff, deduction, recoupment, or withholding of any kind for amounts owed (or to become due and owing) or payable to it by Seller or Seller's affiliates, whether under this Agreement, applicable law, or otherwise, and whether relating to Seller's or its affiliates' breach, bankruptcy, or otherwise.

8. Warranty Disclaimer

EXCEPT AS REQUIRED BY APPLICABLE LAW, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY OF TITLE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

Products manufactured by a third party ("Third-Party Product") may constitute, contain, be contained in or incorporated into, or attached to, or packaged together with, the Goods. For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

9. Limitation of Liability

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (iv) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES HEREUNDER.

10. Compliance with Law

Buyer is in compliance with and shall comply with all applicable laws, regulations, and ordinances. Buyer has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

11. Indemnification

Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, managers, members, accountants, advisors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including

attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and of pursuing any insurance providers, incurred by Indemnified Party, relating to any claim of a third party arising out of or occurring in connection with the Goods, the Services, or Buyer's negligence, willful misconduct, or breach of this Agreement. Buyer shall not enter into any settlement without Seller's and any other applicable Indemnified Party's prior written consent.

12. Insurance

The terms of this Section 13 apply to Buyers who procure Services, and therefore do not apply to Buyers who only purchase Goods and no Services from Seller. During the term of this Agreement and for a period of 12 months thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) with limits no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate, "Professional Liability" or "Errors and Omissions" insurance with limits of not less than \$1,000,000 per claim during the term of this Agreement, and worker's compensation insurance as required by applicable law, with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

13. Termination

In addition to any other remedies that may be available to Seller under this Agreement, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (c) becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

14. Confidential Information

The terms and conditions of this Agreement and the transactions contemplated hereby and all non-public, confidential, or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or medium, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement are confidential, may be used solely for the purpose of this Agreement and the transactions contemplated hereby, and may not be disclosed or copied unless authorized by Seller in writing. Upon Seller's request, Buyer shall promptly return all Seller documents and other materials received by Buyer from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

15. Entire Agreement

This Agreement, including and together with the Quote and any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

16. Survival

Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement; and (b) Sections 1, 4 – 12, 13 (for the period set forth therein), and 14 - 31 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement.

17. Notices

All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other party at its address set forth in the Quote (or to such other address as the receiving party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) on receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

18. Severability

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

19. Amendments

No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party.

20. Waiver

No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

21. Cumulative Remedies

All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties, or otherwise.

22. Assignment

Buyer shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Seller. Any purported assignment, transfer, delegation, or subcontract in violation of this Section shall be null and void. No assignment, transfer, delegation, or subcontract shall relieve Buyer of any of its obligations hereunder. Seller may at any time assign, transfer, delegate, or subcontract any or all of its rights or obligations under this Agreement without Buyer's prior consent.

23. Successors and Assigns

This Agreement is binding on and inures to the benefit of the parties to this Agreement and their respective permitted successors and permitted assigns.

24. No Third-Party Beneficiaries

This Agreement benefits solely the parties and their respective permitted successors and assigns, and nothing in this Agreement, express or implied, confers on any other individual or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

25. Choice of Law

This Agreement and all related documents, including all exhibits, schedules, attachments, and appendices attached hereto and thereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the State of Washington, United States of America, (including its statutes of limitations and without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Washington).

26. Choice of Forum

Each party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the federal and state courts in Seattle, King County, Washington. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in such courts. Each party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

27. Waiver of Jury Trial

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

28. Force Majeure

Neither party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of the Buyer to make payments to Seller), when and to the extent such failure or delay is caused by or results from events or acts beyond the reasonable control of the impacted party ("Impacted Party"), including, without limitation, the following force majeure events ("Force Majeure Event(s)": (i) acts of God; (ii) flood, fire, earthquake, epidemic or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or

other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date

of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; (viii) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (ix) other events beyond the reasonable control of the Impacted Party.

The Impacted Party shall give notice to the other party, within thirty (30) days of the Force Majeure Event, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ninety (90) days following written notice given by it under this Section 29, either party may thereafter terminate this Agreement upon thirty (30) days' prior written notice.

29. Relationship of the Parties

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

30. Further Assurances

Buyer shall, and shall cause its affiliates to, from time to time at Seller's request and Buyer's sole expense, furnish Seller such further information or assurances; execute and deliver such additional documents and instruments; and take such other actions and do such other things, as may be necessary or appropriate to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.