

GENERAL TERMS AND CONDITIONS OF FCZ Pty Ltd / MARDEGAN AUSTRALIA

All contracts and agreements entered between the Supplier and the Purchaser are subject to the "General Terms & Conditions of Sale" appearing herein.

1. DEFINITIONS

- 1.1. The following words shall have where the context so permits the following meaning:
- 1.2. "Sales Order" means the agreement between the Supplier and the Purchaser comprised of the Quotation, the Purchase Order, and these General Terms and Conditions of Sale;
- 1.3. "Carrier" means the subcontractor(s) appointed by the Purchaser to deliver the product or goods.
- 1.4. "Date of Delivery" means the date upon which the Goods are dispatched from the Supplier's Premises to the Delivery Point;
- 1.5. "Delivery Point" means the address nominated by the Purchaser as the place for delivery of Goods mentioned in the Sales Order;
- 1.6. "Goods" means all Goods or Services supplied by Mardegan Australia to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other);
- 1.7. "Date of Cancellation" means the date upon which the Supplier receives a notice of cancellation from the Purchaser;
- 1.8. "Price" means the price the Supplier charges the Purchaser for the supply of the Goods as indicated in the Sales Order;
- 1.9. "Purchaser" means the person, firm or corporation to whom the Sales Order is issued;
- 1.10. "Purchase Order" means the purchase order provided to the Supplier by the Purchaser, evidencing the Purchaser accepts the Quotation;
- 1.11. "Quotation" means a document provided by the Supplier to the Purchaser specifying the price the Supplier will charge the Purchaser for the supply of the Goods & Service;
- 1.12. "Stipulated Period" means the period specified on the Quotation as the period for which the quoted price shall apply;
- 1.13. "Supplier" means FCZ Pty Ltd/ Mardegan Australia ABN 41 619 813 160;
- 1.14. "Supplier's Premises" means the premises from which the Supplier ordinarily conducts its business.

2. QUOTATIONS

UNLESS otherwise stated in a Quotation, the Supplier will not alter any quoted price within the Stipulated Period. However, as quoted prices are based on the supplier's estimated cost of production to manufacture or supply at the time of quotation, after the Stipulated Period the Supplier may alter the quoted prices without notice to the Purchaser. A quotation is not an offer by the Supplier to sell and may be withdrawn without notice. Any Sales Orders given in respect of a quotation is not binding on the Supplier until accepted by the Supplier in writing. Unless otherwise expressly stated, prices quoted do not include cartage costs for delivery from the Supplier's Premises to the Delivery Point. The price specified in the Quotation relates only to the type and quantity of

goods identified in the Quotation. The Supplier reserves the right to alter the price if the quantity of Goods specified in the Sales order differs from the quantity of Goods specified in the Quotation.

3. ENTIRE AGREEMENT

The Sales Order embodies the whole of the agreement and understanding between the Supplier and the Purchaser with respect to the supply of the Goods and is the only document which will be recognized by the Supplier as authority for undertaking to supply the goods. The Sales Order constitutes the entire agreement between the parties and supersedes all previous negotiations and communications. The supplier's Terms and Conditions shall prevail where inconsistencies exist with the Terms and Conditions contained in the Purchaser Order. The supplier reserves the right to decline, by written notice to the Purchaser, to fulfil any Sales order in whole or in part, at any time prior to the delivery of the goods or performance of the services, in which case the Supplier will be under no obligation in respect of the Sales order. The Sales Order may only be varied by written agreement between the parties.

4. VARIATIONS TO SPECIFICATIONS

Prior to the commencement of manufacture of the Goods, the Purchaser may, by notice in writing, request the supplier to vary the colour or specifications of the Goods which request the supplier may or may not grant in its unfettered discretion. If the Supplier denies such request then the Purchaser must accept and pay for the goods as specified in the relevant Order. The Supplier shall not vary the colour or specifications of the goods unless and until requested to do so in writing by the Purchaser. If any such request causes a change in the cost or time required for the manufacturer and/or supply of the Goods then an equitable adjustment shall be made to the Price and/or the terms of the Sales Order. The Purchaser is not entitled to request the Supplier to vary the colour or specifications of the goods after the commencement of manufacture of the Goods.

5. DEPOSIT

- 5.1. At the time of the Sales Order, the Purchaser must pay a non-refundable deposit to the Seller so that the Seller may commence work on the Sales Order.
- 5.2. The amount of the non-refundable deposit amount will be within the discretion of the Supplier who will determine this amount based on the business' reasonable costs as well as time spent on the job. The non-refundable deposit amount will not fall under \$3,000 and not exceed an amount of 10% of the Sales Order.

6. CANCELLATION

- 6.1. The Purchaser may, prior to the commencement of the manufacture of Goods, by notice in writing to the Supplier, cancel the Sales Order. In the event of cancellation, the Purchaser shall be required to pay to the Supplier actual out-of-pocket expenses, non-refundable deposit and any other reasonable expenses incurred by the Supplier prior to the Date of Cancellation.
- 6.2. Without prejudice to any other remedies that the Supplier may have, if at any time the Purchaser is in breach of any obligation (including those relating to payment) under these terms and conditions, the Supplier may suspend or terminate the supply of Goods to the Purchaser.

Supplier will not be liable to the Purchaser for any loss or damage the Purchaser suffered because the Supplier has exercised its rights under this clause.

- 6.3. Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Purchaser. On giving such notice the Supplier shall repay to the Purchaser any money paid by the Purchaser for the Goods. Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 6.4. In the event that the Purchaser cancels delivery of Goods, the Purchaser shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 6.5. Cancellation of orders for Goods made to the Purchaser's specifications will not be accepted once an order has been placed.

7. PRICE

- 7.1. The Price is expressed in Australian dollars and shall be determined by the Supplier pursuant to an agreed price payable per item or square meter and linear meter rate or Supplier's price list. Unless otherwise stated in the Sales Order, prices shall not include Goods and Services Tax (GST) which will be charged to the Purchaser's account where applicable. If GST is to be included, it shall be stated separately.
- 7.2. Supplier reserves the right to change the Price if a variation to Supplier's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties such as floor preparation, rotten floor boards, cleaning, extra rooms, additional Goods required, take-up and disposal of old floor coverings, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, inaccurate measurements provided by the Purchaser or as a result of increases to Supplier in the cost of Goods and labour) shall allow the Supplier the right to halt all Services until such time as Supplier and the Purchaser agree to changes to the plans and/or specifications as outlined in the quotation to incorporate such variances. Variations will be charged for on the basis of Supplier's quotation, and will be detailed in writing, and shown as variations on Supplier's invoice. The Purchaser shall be required to respond to any variation submitted by Supplier within ten (10) working days. Failure to do so will entitle Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

8. TERMS OF PAYMENT

- 8.1. Payment is required to be made by the Purchaser in the following order for a specified product:
 - a) A non-refundable deposit as determined by the Supplier;
 - b) 50% of Sales Order once goods arrive for production; and
 - c) 50 % minus the non-refundable deposit at loading.

- 8.2. In the case of custom-made hand-painted goods, full payment (100% of the Sales Order) is required on confirmation of order, and no cancellations or returns are accepted (see clause 6.5).
- 8.3. The Supplier shall invoice the Purchaser for payment of each delivery made by the Supplier or for goods not delivered but available for the Purchaser to take possession at the Supplier's Premises. Payment to the Supplier is not subject to the Purchaser receiving payment for the Goods. The Purchaser must make all payments to the Supplier without deduction, set-off, or counter-claim and no amounts are to be deducted from any payments as security retentions or for any other reason unless the Supplier agrees to such deduction in writing.
- 8.4. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction) or by any other method as agreed to between the Purchaser and Supplier.
- 8.5. The Purchaser shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Purchaser by Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

9. DEFAULT IN PAYMENT

Any delay or default by the Purchaser in payment of any monies due to the Supplier is a substantial breach of the Terms and Conditions of the Sales Order. The Supplier may without prejudice to its other rights power or remedies provided by law, withhold deliveries on the relevant Sales Order and all other Sales Orders placed by the Purchaser until the due payment are made. Recurring payment default may lead to the Purchaser's account with Supplier being closed and any further Sales Order placed by the Purchaser will only be processed when pre-paid in cash. A failure or delay by the Supplier to exercise a power or right under this paragraph 8 does not operate as a waiver of that power or right or a waiver of the breach which gave rise to that power or right.

10. COMPLETION OF GOODS

The Purchaser's obligation to pay for the goods is not conditional on the Purchaser's willingness and/or readiness to take delivery of the Goods. If the Goods are manufactured and completed by the Supplier and the Purchaser(s) is not ready to take delivery of the goods, then the Purchaser is required to pay for the goods and for all costs incurred in or about the storage of the Goods.

11. WARRANTY

The Supplier acknowledges that there are certain conditions and warranties implied at law or by statute in the Sales Order, which cannot be excluded, restricted or modified by agreement ("Non-Excludable Rights"). Subject to the above, the Supplier disclaims and expressly excludes all conditions and warranties expressed or implied, and all rights and remedies conferred on the Purchaser by statute, law, equity, trade, custom or usage or otherwise. Where so permitted, the liability of the Supplier for the breach of a Non-Excludable Right is limited, at the Supplier's option, to replacement of the goods or the refund of the price paid by the Purchaser.

The RESIDENTIAL MAINTENANCE GUIDE & PRODUCT WARRANTY DOCUMENT are part of these sales conditions, which are listed in a separate section. The COMMERCIAL PRODUCT WARRANTY is defined separately for each project in each case.

12. VARIATIONS IN COLOUR, TEXTURE & FINISH

- 12.1. The Supplier shall make every reasonable endeavour to match the colour, texture and finish of the Goods to the colour, texture and finish to any materials which the Supplier provides to the Purchaser both on its website and as samples of the Goods. However, at the time of making an order the Purchaser is deemed to acknowledge that naturally occurring products such as wood, may vary in both colour and texture and that the supplier cannot and does not accept any claim for liability relating to any such variations of the Goods.
- 12.2. All Supplier's products are made to order and have manufactured according to the Purchaser's specifications, so cannot be returned for a refund or credit as these products are customised or ordered to suit the specific project. It is a reasonable business expectation that the cost of customization has been accepted by the Purchaser upon the order placement with Supplier.

13. DELIVERY

- 13.1. As all products are tailor-made normal delivery time for any orders after completion of order is 12 to 16 weeks. Express delivery is available against additional cost upon agreement.
- 13.2. These transit times are estimates only and may be extended by many factors beyond Supplier's reasonable control such as Customs and Quarantine processing requirements, weekends and public holidays, varying ship or flight schedules and other origin-specific or destination-specific factors. Supplier does not guarantee any transit times or represent that any transit times will be achieved.
- 13.3. All goods shall be delivered by the Supplier to the kerb side in front or reasonably (at the Supplier discretion) located in the vicinity of the Delivery Point and such delivery shall be deemed to be delivery of the Goods to the Delivery Point. The forgoing notwithstanding, the Purchaser may request and the Supplier may agree in writing to deliver the goods to a location other than a kerbside in front of a reasonably located within the vicinity of the Delivery Point provided always that the Purchaser shall bear all liability (whether with respect to loss or damage to person, property, or to the Goods) arising from and in respect of delivery and the Purchaser hereby agrees to indemnify and keep indemnified the Supplier with respect to any such liability. A receipt or delivery docket for the Goods signed by any person at the Delivery Point shall be conclusive proof that the Goods were delivered in accordance with the Sales Order. If the Delivery Point is unattended or if the supplier cannot otherwise affect delivery of the goods to the Delivery Point then the Supplier may at its option leave the Goods at the Delivery Point or store the Goods at such location as the Supplier may elect. If the Supplier stores the goods, the Purchaser shall pay or indemnify the Supplier for all cost incurred in or about the storage and the supplier shall be at liberty to re-deliver them to the Purchaser from the place of storage at the Purchaser's expense. The Purchaser must ensure that the Delivery Point is easily accessible to the Supplier. If the Delivery Point is not easily accessible to the Supplier and then the Purchaser must bear any additional costs reasonably incurred by the

Supplier in unloading the Goods.

- 13.4. Interstate and International orders will depend on Carrier's schedule and no liability is taken for direct, indirect or consequential loss or damage caused by delay or any other cause. The delivery date represents the time the order is ready to leave the Supplier premises. The Supplier does not accept orders under penalty for late delivery. The Supplier reserves the right to deliver orders in whole or by instalment and each instalment shall be deemed to be sold under a separate contract. Any failure on the part of the company to deliver within the time stated shall not entitle the Purchaser to repudiate the contract in whole or in part.
- 13.5. Any time quoted for delivery is an estimate only and the Supplier shall not be liable for any loss or damage howsoever arising as a result of or in consequence of any failure to deliver or delay in delivery arising from any circumstances whatsoever UNLESS such failure or delay is due to the Supplier's negligence or wilful default and the Purchaser notifies the Supplier in writing of such loss or damage within TWO (2) days from the Date of Delivery. The Purchaser shall not be relieved of any obligation to accept or pay for Goods because of any delay in delivery. If the Supplier determines that, it is or may be unable to deliver within a reasonable time or at all, the supplier may cancel the Sales Order and in the event of such cancellation, the Purchaser shall not have any claim against the supplier for any damage, loss, cost or expense whatsoever.
- 13.6. Subject to clause 13.5 it is Supplier's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 13.7. The Purchaser must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Purchaser is unable to take delivery of the Goods as arranged then Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

14. SHORT OR WRONGFUL DELIVERY

Within TWO (2) days of delivery of the Goods the Purchaser must notify the Supplier in writing of any Claim the Purchaser may have alleging that the Goods are not in accordance with the Sales Agreement and any Claim not notified within the time aforesaid shall be deemed to be absolutely waived.

15. EXAMINATION OF GOODS

At the time it takes possession of the Goods, the Purchaser must examine and shall be deemed to have examined the goods. The Supplier shall, except as may otherwise be provided by law, not be liable for any claim in respect of damaged Goods UNLESS particulars of such claim are notified to the Supplier in writing within TWO (2) days after the arrival of the Goods at the Delivery Point. The Supplier must separate and hold the Goods subject to such claim available for the inspection by the Supplier. The forgoing notwithstanding, the Purchaser must confirm that it accepts the quantity, colour and quality of any Goods it takes delivery of by signing the delivery docket which the Supplier provides to the Purchaser at any time it supplies the Goods. The delivery docket, so signed, shall be conclusive evidence that the Purchaser has reviewed and is satisfied with the quantities, colour and quality of any Goods described in the delivery docket and the Purchase shall be stopped from the making any statement or claim to the contrary. Where the Goods are collected by a courier or other

agent of the Purchaser, the Purchaser warrants that its agent has authority to sign the docket on the Purchaser's behalf.

16. CHANGE IN CONTROL

The Purchaser shall give Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Purchaser and/or any other change in the Purchaser's details (including but not limited to, changes in the Purchaser's name, address, contact phone or fax number/s, or business practice). The Purchaser shall be liable for any loss incurred by Supplier as a result of the Purchaser's failure to comply with this clause.

17. COLLECTION COST

The Purchaser agrees to indemnify the Supplier with all legal costs, charges, expenses and disbursements incurred in the collection or attempted collection of monies due.

18. ACCEPTANCE

18.1. The Purchaser accepts and acknowledges that supply of certain species of timber may be restricted from time to time due to lack of resource and circumstances beyond Supplier control.

18.2. The Purchaser accepts that it shall be the sole responsibility of the Purchaser (or the Purchaser's agent) to ascertain prior to placement of any order with Supplier any specific standards, requirements or ratings (e.g. Fire and Slip ratings) that any Goods to be supplied by Supplier are expected to comply with (particularly in respect of any application that the Goods are to be used for, or any specific end result that the Purchaser expects the Goods to achieve), and must advise Supplier of the same (in writing) when placing any order. Under no circumstances whatsoever will any liability be accepted by Supplier should Goods supplied subsequently prove to be unsuitable for the end result that the Purchaser is trying to achieve or does not meet any standard or rating that the Purchaser is required to comply with, except where it can be clearly determined that the Goods supplied did not meet the Purchaser's requirements as were specified in the Purchaser's order.

18.3. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

19. REFUND, REPAIR OR REPLACEMENT

19.1. If a product is faulty, refer to clauses 11 and 29 for more details on the Supplier's refund and replacement policy, and clause 21.1(g) and Residential Maintenance Guide & Product Warranty Document below for the Supplier's repair policy.

19.2. Otherwise there is not refund or replacement if you change your mind.

20. RISK

20.1. All Goods being delivered shall be at the Purchaser's risk. The Supplier will not be liable for any damage or loss whatsoever arising out of or in connection with the carriage of goods unless the damage or loss is a result of the Suppliers negligence or wilful default.

- 20.2. Risk of damage to or loss of the Goods passes to the Purchaser on Delivery and the Purchaser must insure the Goods on or before Delivery.
- 20.3. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Purchaser, Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Supplier is sufficient evidence of Supplier's rights to receive the insurance proceeds without the need for any person dealing with Supplier to make further enquiries.
- 20.4. If the Purchaser requests Supplier to leave Goods outside Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Purchaser's sole risk.
- 20.5. The Purchaser acknowledges and accepts that:
- (a) Supplier web site displays images of natural products. Whilst every effort has been made to reproduce flooring samples and images, the colours shown are only as accurate as your display will allow. Colour variations will occur for which Supplier accepts no responsibility.
 - (b) Goods supplied may:
 - (i) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
 - (ii) mark or stain if exposed to certain substances; be damaged or disfigured by impact or scratching; and
 - (c) skirting Boards/Kick Boards may exhibit some markings on these surfaces due to the necessity of high speed sanding equipment to be operated right up to the skirting to achieve the best possible result; and
 - (d) coatings may reject Polyurethane with some chemical substances for example, old wax, polish, oils and even natural resins in timber. Any subsequent recoats necessary to rectify this occurrence may be charged for; and
 - (e) beadings, trim and/or silicone is not included unless specified in the quotation; and
 - (f) different types of old floor coverings for example "Antichi Saponi", old coatings or wax may produce a "two tone" effect in some older timbers, which cannot be sanded out; and
 - (g) movement between boards may stretch polyurethane and cause an opaque line;
 - (h) gaps between boards may cause 'quilting'; and
 - (i) swirling marks from rotary equipment is a normal part of the sanding process and can be visible under certain lighting; and

(j) some existing stains and markings (such as black marks around nails and water marks) on the floorboards cannot be removed; and

(k) cupping of timber can occur after sanding and polishing due to moisture levels in timber; and

(l) edge bonding is a consequence of timber shrinkage and the boards been stuck together with the polyurethane and is not a result of the services provided by Supplier.

20.6. Timber is a hygroscopic material subject to expansion and contraction, therefore, Supplier will accept no responsibility for gaps that may appear in the flooring during prolonged dry periods or swelling and/or cupping caused by moisture and periods of high humidity.

20.7. Supplier shall not be liable for any damage or inconsistencies in the floor boards caused by air-conditioning, air flow, sun exposure, and dust in the air, heating or large expanses of glass windows without curtains or blinds, or any other site conditions that affect the completed condition of the floors.

20.8. Whilst Supplier will take all due care to avoid contamination of the finished surface, the Supplier accepts no responsibility for contamination by natural contaminants such as dust or hair which may be present at the worksite.

20.9. Supplier will only inspect or view a timber floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects.

21. INSTALLATION OF GOODS

Supplier prefers the Goods installed by Suppliers' s dedicated Team. In all cases, the Purchaser must follow the installation instructions provided by the Supplier and its provisions.

Any other provision of the Sale Agreement notwithstanding, any liability of Supplier with respect to any aspect of the Goods including but not limited to their colour, texture, size, quality or their fitness for purposes, will cease when the Purchaser uses the Goods, sells or otherwise parts with possession of the Goods, and/or installs or affixes the Goods (or allows the Goods to be installed or affixed) in or to any surface, place, or product.

Purchasers Responsibilities:

21.1. It is the Purchasers responsibility to;

(a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and

(b) remove all existing floor coverings, tacks and staples; and

(c) fully disclose any information that may affect Supplier's installation procedures (including, but not limited to, disclosing known breaks or tears in the membrane, extensions of existing

slabs, thickened beams, curing compounds that may have been used or the use of concrete over 25mpa);

- (d) ensure the sub-floor is adequately ventilated and is structurally sound; and
- (e) ensure that the levels of a sub-floor are satisfactory as the floor coverings can only follow the contours of the sub-floor and will not correct unevenness; and
- (f) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Purchaser. All care taken but no responsibility accepted by Supplier in this regard; and
- (g) provide adequate dustsheets to protect the Customers furniture and décor. Supplier will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbing walls should be temporarily covered by the Purchaser, until the coatings are dry; and
- (h) extinguish all naked flames prior to coating including but not limited to pilot lights heaters etc; and
- (i) supply a 15 amp/240 volt electrical power source to within 20 metres of the project; and
- (j) ensure that full and final lighting as designed for the completed project is fully operational prior to sanding works commencing, and are made available for use at no cost for the duration of the project. Any costs incurred by Supplier will be invoiced to the Purchaser should this requirement not be met; and
- (k) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Purchaser to adhere to the installation schedule agreed to between Supplier and the Purchaser, any additional costs will be invoiced to the Purchaser as an extra; and
- (l) Supplier is not insured to remove furniture or fittings and will not do so, nor is Supplier licensed to move gas or electrical appliances.

21.2. The Purchaser agrees to indemnify Supplier against any claims howsoever arising from the provisions in clause 21.

22. CONTRACTORS & SUBCONTRACTORS

The Supplier takes no responsibility for the workmanship or quality of work performed by contractors and subcontractors recommended to the Purchaser.

23. TITLE

23.1. Supplier and the Purchaser agree that ownership of the Goods shall not pass until:

- (a) the Purchaser has paid Supplier all amounts owing to Supplier; and
- (b) the Purchaser has met all of its other obligations to Supplier.

23.2. Receipt by Supplier's of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

23.3. It is further agreed that:

- (a) until ownership of the Goods passes to the Purchaser in accordance with clause 22.1 that the Purchaser is only a bailee of the Goods and must return the Goods to Supplier on request.
- (b) the Purchaser holds the benefit of the Purchaser's insurance of the Goods on trust for Supplier and must pay to Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Purchaser must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Purchaser sells, disposes or parts with possession of the Goods then the Purchaser must hold the proceeds of any such act on trust for Supplier and must pay or deliver the proceeds to Supplier on demand.
- (d) the Purchaser should not convert or process the Goods or intermix them with other goods but if the Purchaser does so then the Purchaser holds the resulting product on trust for the benefit of Supplier and must sell, dispose of or return the resulting product to Supplier as it so directs.
- (e) the Purchaser irrevocably authorises Supplier to enter any premises where Supplier believes the Goods are kept and recover possession of the Goods.
- (f) Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Purchaser shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Supplier.
- (h) Supplier may commence proceedings to recover the Price of the Goods

24. PALLETS

Title to any pallets provided by the Supplier with the Goods passes to the Purchaser with the Goods, and the Purchaser must bear the cost of their storage and/or disposal. The Purchaser must not refuse to accept any such pallets or return (or seek to return) such pallets to the Supplier.

25. ADVICE

The Purchaser must not rely on any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Goods, including use and application of the Goods and the Supplier shall bear no liability or responsibility for any damage, loss (direct or indirect) or any consequential loss suffered by the Purchaser as a result of reliance upon the advice, recommendation, information, assistance or service for delivery to the Purchaser.

26. INDIRECT LOSS

Notwithstanding any other provisions of this Sales Order to the contrary, the Supplier shall not be liable for any loss or damage to the purchaser arising from or caused or contributed to by the negligence of the Supplier, its servants or agents, nor shall the Supplier be liable for special, incidental, indirect or consequential loss or damage suffered by the Purchaser as a result of a breach by the Supplier of its obligation or otherwise including but not limited to economic or moral loss, loss of profits or revenue costs arising from such breach.

27. WAIVER

A waiver by the Supplier of the breach of any provision of the Sales Order shall not constitute a waiver of any other breach of such provision or any other provisions.

28. INSTALLMENTS

The Supplier reserves the right to deliver the Goods by instalments. Failure of the Supplier to deliver any instalment shall not entitle the Purchaser to cancel the balance of the Sales Order. In the event of the Purchaser making default in respect of any instalment, the Supplier may elect to treat the default as a breach of contract relating to each other instalment.

29. DEFECTS, WARRANTIES & RETURNS, COMPETITION & CONSUMER ACT 2010 (CCA)

- 29.1. The Purchaser must inspect the Goods on delivery and must within two (2) days of delivery notify Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Purchaser must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Purchaser must allow Supplier to inspect the Goods.
- 29.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 29.3. Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 29.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 29.5. If the Purchaser is a consumer within the meaning of the CCA, Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 29.6. If Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, Supplier may refund any money the Purchaser has paid for the Goods.

29.7. If the Purchaser is not a consumer within the meaning of the CCA, Supplier's liability for any defect or damage in the Goods is:

- (a) limited to the value of any express warranty or warranty card provided to the Purchaser by Supplier at Supplier's sole discretion;
- (b) limited to any warranty to which Supplier is entitled, if Supplier did not manufacture the Goods;
- (c) otherwise negated absolutely.

29.8. Subject to this clause 29, returns will only be accepted provided that:

- (a) the Purchaser has complied with the provisions of clause 29.1; and
- (b) Supplier has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Purchaser's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

29.9. Notwithstanding clauses 29.1 to 29.8 but subject to the CCA, Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Purchaser failing to properly maintain or store any Goods;
- (b) the Purchaser using the Goods for any purpose other than that for which they were designed;
- (c) the Purchaser continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Purchaser failing to follow any instructions or guidelines provided by Supplier;
- (e) fair wear and tear, any accident, or act of God.

29.10. Supplier may in its absolute discretion accept non-defective Goods for return in which case Supplier may require the Purchaser to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

29.11. Notwithstanding anything contained in this clause if Supplier is required by a law to accept a return then Supplier will only accept a return on the conditions imposed by that law.

30. INSPECTION

The Purchaser or its designated agent at the Suppliers works carries out any inspection or test agreed upon prior to the acceptance of the Goods by the Purchaser, must unless otherwise agreed.



The Purchaser must bear the cost of any specialized inspection or tests it requires. In the cause of any such inspection the Supplier accepts no responsibility in any defects in the Goods, which are identified once the Goods in question have left the Suppliers Premises.

31. CONTRACTING

The Supplier reserves the right to contract the production or supply of the whole or any part of the Goods or of any materials or services to be supplied.

The Supplier will be in a separate agreement with the Contractor.

The Supplier will be reimbursed from time to time for reasonable and necessary expenses incurred by the Contractor in connection with the providing of services or production. The Supplier may require the Purchaser to pay if the product requires any repairs or additional changes to the products done by the contractor.

The Supplier shall not be held reliable for any breach of the terms or by the contractor.

32. LAWS, REGULATIONS, PERMITS ETC

- 32.1. The supplier shall obtain all Permits, licenses and give all notices required to be given and shall pay all fees, deposits and taxes required to be paid under all rules (federal, state or municipal) in any way effective or applicable to the manufacturer and/or supplier of the Goods.
- 32.2. The Purchaser and Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services.
- 32.3. The Purchaser shall obtain (at the expense of the Customer) all licenses, permits, approvals etc. that may be required for the Goods/Services.
- 32.4. The Purchaser agrees that the site where Services are being supplied will comply with any work, health and safety laws and any other relevant safety standards or legislation.

33. SEVERANCE

If any provision of the Sales Order shall be determined to be void by any court of competent jurisdiction, then such a determination shall not affect any other provision hereof and each such other provision shall remain in such full force and effect.

34. FORCE MAJEURE

If the Supplier is rendered unable, wholly or in part, by force majeure to carry out its obligations under the Sales Order, then the Supplier shall give to the Purchaser written notice of the force majeure with reasonably full particulars thereof whereupon:

- 34.1. The obligations of the Supplier so far as it is affected by the force majeure shall be suspended for a period not longer than the continuance of the force majeure; and

34.2. Any period or periods referred to in the Purchase Order within which a particular obligation, responsibility, or duty is to be performed shall be extended by a period equal to that during which the force majeure continues. The Supplier shall use reasonable diligence to mitigate the effect of the force majeure. The term “force majeure” as employed in this Sales Order shall mean any cause which is not within the reasonable control of the Supplier and without limiting the generality of the foregoing, shall in so far as the same is not within such control, include any one or more of Act of God, strike, lockout, or other labour difficulty, act of the public enemy, war, blockade, revolution, riot, global pandemic, insurrection, civil commotion, lightning, storm, flood, earthquake, explosion, action, demand, order, restraint, restriction, requirements, prevention, frustration or hindrance by or any government or any government or authority or other duly constituted authority or statutory corporation or local government authority, embargoes and unavailability of essential equipment.

35. NOTICES

All notices, other documents and communications required or permitted to be given to the Supplier shall be in writing and shall be sent by e-mail in the first instance and then by ordinary pre-paid post to:

FCZ Pty Ltd / Mardegan Australia
403/10, Third Avenue, Palm Beach, 4221 QLD
Ph: 0487 710 329
E-mail: zoltan@eusolutions.com.au

36. GOVERNING LAW

These “General Terms and Conditions of Sale” shall be governed and construed according to the laws of the time being in force in the State of Queensland and the parties respectively hereby submit to the jurisdiction of the Courts thereof and all Courts competent to hear appeals there from.

37. PURCHASERS DISCLAIMER

The Purchaser hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to him by any servant or agent of Supplier and the Purchaser acknowledges that he buys the Goods relying solely upon his own skill and judgement and that Supplier shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Purchaser and shall not be transferable to any subsequent Purchaser.

38. INTELLECTUAL PROPERTY

38.1. Where Supplier has designed, drawn or developed Goods for the Purchaser, then the copyright in any designs and drawings and documents shall remain the property of Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.

38.2. The Purchaser warrants that all designs, specifications or instructions given to Supplier will not cause Supplier to infringe any patent, registered design or trademark in the execution of

the Purchaser's order and the Purchaser agrees to indemnify Supplier against any action taken by a third party against Supplier in respect of any such infringement.

- 38.3. The Purchaser agrees that Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Supplier has created for the Purchaser.
- 38.4. The Website, the products and all of the related products of the supplier are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through International treaties. Unless otherwise indicated, all rights (including copyright) in the products and compilation of the Website (included but not limited to text, graphics, logos, button icons, vide, images, Website, scripts, design elements, and interactive elements) are reserved by the Supplier or its contributors.
- 38.5. The Supplier retains all rights, title and interest in and to the Website and all related products. Nothing you do on or relation to the Website will transfer any:
- 38.5.1. Business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
 - 38.5.2. a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
 - 38.5.3. a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process), to you.
- 38.6. You may not, without the prior written permission of Supplier and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the products or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website, which are freely available for re-use or are in the public domain.

39. WEBSITE USAGE

- 39.1. The Supplier may change, suspend or discontinue any aspect of the Services at any time, including the availability of any feature, database, or content available at the Website. The Supplier may also impose limits on certain features and services or restrict your access to parts or the entire Website without notice or liability to you or any other person.
- 39.2. To the extent permitted by law, the Supplier is not liable, and excludes all responsibility for, any direct, indirect, punitive, incidental, special or consequential damages that result in any way from your use of or inability to use the Website or your reliance on or use of the Services accessible through the Website, or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission, or any failure of performance, whether or not the damages are caused by any negligence on the part of the Supplier, its agents, officers or employees.



39.3. You agree to indemnify the Supplier from and against any loss, cost or expense incurred arising from any claim, suit, demand, action or proceeding by any person against the Supplier arising from your use of the website.

40. GENERAL

40.1. The Purchaser agrees that Supplier may amend these terms and conditions by notifying the Purchaser in writing. These changes shall be deemed to take effect from the date on which the Purchaser accepts such changes, or otherwise at such time as the Purchaser makes a further request for Supplier to provide Goods to the Purchaser.

40.2. Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorizations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.



RESIDENTIAL MAINTENANCE GUIDE & PRODUCT WARRANTY DOCUMENT

Congratulations on your recent purchase of Mardegan Legno engineered timber floor! At Mardegan Legno, we understand that this is a long-term investment & the proper care and installation of your timber floor will ensure you get the most out of its function.

Your Mardegan Legno floor comes with a 25-year (Lifetime) structural warranty. We warrant to the original purchaser that the product will not delaminate or warp subject to the conditions of the warranty and general exclusions as noted below.

CONDITIONS OF WARRANTY:

1. Prior to installation of timber flooring, timber should be inspected to ensure that it is not faulty & is fit for purpose. Mardegan Legno will not warrant any timber flooring deemed unusable, faulty or not fit for purpose.
2. Due to variable climate conditions, timber flooring planks may display slight bows and twists once removed from its packaging. This is not considered a structural defect unless the timber planks cannot be assembled.
3. All timber flooring has provisions for filling & patching of natural characteristics using appropriate coloured fillers. This is not considered a defect. All assessment and final approval for replacement or rectification work that may need to occur for faulty planks or floor installations must be formally approved by Mardegan Legno prior to any repair activity. Costs associated with any rectification or re-supply will only cover replacement flooring materials for amounts as determined in a formal notice of agreement between Mardegan Legno and the purchaser. Items such as temporary accommodation, re-painting, external contractors for removal and re-fit will not be covered by warranty provisions. Some provisions for reasonable costs may be assessed on a case by case basis and will be administered in-line with consumer law.
4. Under-floor heating-This warranty covers under-floor heating applications provided the sub-floor temperature does not exceed 26 °C during the life of the floor and that the relative humidity levels are maintained between 35% and 60%. The sub floor heating system must be used as per instructions listed out in the install guide provided.
5. Air conditioning- This warranty covers air conditioning use provided the relative humidity levels are maintained between 35% and 60%.

6. The warranty is available to the original purchaser only and for the original installation. It is not transferable or assignable and will expire upon the sale or relocation of the installed product or the installation location. In new developments where a builder or developer makes the purchase, the new owner of the dwelling must contact Mardegan Australia within 60 days of the property transfer of title to obtain their floor warranty.

7. Apart from the warranties implied by the Trade Practices Act 1974 (Cth) as amended from time to time all other warranties express or implied whether arising by virtue of statute or otherwise are excluded.

8. Floor areas with less than 10% of the surface area that could be related to high traffic wear or incidental damage will not be covered by this warranty.

The limited warranties are subject to the following:

General Exclusions:

- Mardegan Legno recommends that all timber must be installed using a professional timber flooring installer & strictly in accordance with the Mardegan Legno Maintenance & Installation Guide. Any timber flooring installed outside of the guidelines listed on the Mardegan Legno Installation Guide will not be covered by this warranty.
- Incidental scratching, chipping and indentations from external sources would be considered site related and therefore not covered by warranty provisions. Please cover the flooring with adequate protection if construction is still occurring at the site.
- Please avoid using masking tape on the surface of the planks as some adhesive tapes when removed may harden and be difficult to peel off without damaging the coating. Also, cover the flooring with adequate cover sheets before sanding or painting to stop fine dust from settling into the micro-bevel of the flooring. It may prove difficult to remove after installation, ideally, the painting should be finished prior to installing.
- Moisture ingress from internal or external sources that results in coating or plank deformity is not covered by warranty provisions
- Accidental damage during installation or throughout the products lifecycle will not be covered by warranty provisions
- Planks that have been installed that may display imperfections outside of natural grading specifications would be deemed as acceptable and suitable for installation. These matters need to be taken up with the installer / contractor. Warranties do not cover workmanship and installation selection and site suitability.

- Floor performance issues that may arise as a direct or indirect result of moisture ingress along with the incorrect use of heating and cooling systems will not be covered by warranty provisions. Note; Evaporative cooling systems need to be operated as per the manufacturer's guidelines. Please consult with the home builder, system installer or manufacturer to better understand operating methods
- Unusual or man-made disasters including leaking or broken plumbing, fire, flood, earthquake storms, overflowing water or liquids, during or after installation will not be warranted.
- The use of improper cleaning products including steam mops, bleach, ammonia and other floor stripping products. Please ensure that you have read & understood the Mardegan Legno Maintenance Guide.
- Damage caused by pets.
- Damage caused by insufficient protective measures or sharp objects including stiletto heels, and heavy furniture that is likely to cause marks and indentations on the floor.
- Improper alterations to the original timber flooring will not be warranted. Improper installation includes the likes of any alterations made, repairs and reinstallations to Mardegan Legno's original timber flooring. Use of the timber flooring outside of its intended purpose will not be covered by this warranty.
- Mardegan Legno timber floors are made from timber and may contain variations in colour and grain. Natural characteristics such as knots and surface checking are to be expected. Use of stain, filler or putty for defect correction during or after installation should be accepted as normal. Exposure to sunlight may also cause colour variation, as may partial exposure due to placement of rugs, furniture etc. No warranty is offered against these natural characteristics.
- Faulty or defective workmanship on the part of the installer. This includes areas that are not glued adequately.
- Noises (squeaks etc) associated with anything other than the manufacture of the flooring.

*Disclaimer: Mardegan Legno has used its reasonable endeavours to ensure the accuracy and reliability of the information contained herein and, to the extent permitted by law, will not be liable for any inaccuracies, omissions or errors in this information nor any actions taken in reliance on this information. Products must be installed in accordance with relevant installation recommendations and industry best practices.