



E-mail: info@fiercefloors.com.au
Tel: 0429 991 950
ABN: 23 623 510 707
Fierce Floors PTY LTD

TERMS AND CONDITIONS OF SUPPLY OF SERVICES

All contracts and dealings between Fierce Floors (ABN 23 623 510 707) and the Customer, relating to the supply and application of products or services are subject to these Terms. Please read these Terms carefully before engaging FF to supply Services.

1 DEFINITIONS AND INTERPRETATION

1.1 The following expressions have the following meanings in these conditions:

“Confidential Information” means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties relating to business, intellectual property, technology or other affairs and includes the Contract, the Price and any pricing arrangements or discounts discussed or agreed by the parties.

“Contract” means a contract formed between FF and the Customer as provided by clause 2.1 for the supply of Services under these Terms.

“Customer” means the person who purchases Services from FF.

“Order” means an order from the Customer for supply of Services by FF, however made.

“Price” means costs, fees and charges payable by the Customer to FF for Services.

“Quote” means a document issued by FF setting out the description or specification of Services, particulars of the Order and an estimated Price.

“Services” means the supply, application and/or installation of:

- epoxy flooring; or
- line marking services,

by FF for the Customer as set out in the Quote and/or as otherwise directed or instructed by the Customer and agreed by FF.

“FF” means Fierce Floors (ABN 23 623 510 707).

“Terms” means the terms and conditions set out in this document, and as amended from time to time.

“Warranty” means the warranty in relation to the supply of Services as set out in clause 8.1.

1.2 References to the singular include the plural, and reference to a gender includes all other genders.

1.3 References to \$ or dollars are references to Australian dollars unless otherwise specified.

1.4 Reference to a person includes an individual, a firm, a corporation, a body corporate, a partnership, joint venture, an unincorporated body or association and any government agency.

1.5 Reference to a person includes a reference to the person’s executors, administrators, successors, and assigns. 1.6 Reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.

1.7 All headings are for reference purposes only and do not define, limit or in any way affect the meaning or interpretation of these Terms.

1.8 The word “include” (in all its parts, tense and variance) is not used as, nor is it intended to be interpreted as, a word of limitation, and does not limit what else is included.



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1.9 If a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

1.10 Any indemnity given by a party:

- (a) is not the exclusive remedy of the party holding the benefit of the indemnity, which party may at its option, in addition or in the alternative, pursue remedies at common law, in equity or under statute;
- (b) is a continuing indemnity;
- (c) will not be affected by any matter unless the party benefiting from the indemnity agrees in writing; and
- (d) includes legal costs and disbursements on a full indemnity basis.

2 APPLICATION OF THESE TERMS

2.1 These Terms represent a “master Contract” and apply to all Orders and supply of Services by the Customer. Each Order and any supply of Services to the Customer by FF are made under and subject to these Terms.

2.2 A Contract will be on these Terms to the exclusion of all other terms and conditions (including all correspondence and discussions between the parties and any terms or conditions, except when the Customer requests a variation of Services and FF accepts such requests and performs the Services in accordance with the variation).

2.3 FF may revise these Terms at any time by giving notice to the Customer and the revised Terms will be immediately effective for all Orders submitted and all Contracts made after such notice has been given to the Customer. For the avoidance of doubt, the revised Terms will not apply to then existing Orders but only to new Orders made by the Customer to FF.

2.4 If clause 2.3 applies, then the Customer shall be entitled to terminate its relationship with FF subject to the survival provisions and compliance with all provisions under these Terms, including in relation to payment for the Services in progress or supplied and Orders accepted by FF, and is not obliged to submit any new Orders to FF.

3 ORDERS

3.1 Upon receipt of an Order, FF will issue a Quote to the Customer. The Quote given by FF is valid for a period of 30 days from the date of its issuance and will expire after that period. A new Quote may be required once the original Quote expires.

3.2 If the Customer accepts the Quote, it should notify FF of such acceptance within 30 days of the date of the Quote. Acceptance of the Quote by the Customer will be deemed to be an offer by the Customer to FF to purchase Services from FF under these Terms.

3.3 By accepting the Quote, the Customer acknowledges that it has read, understood, and agreed to be bound by these Terms.

3.4 FF will be deemed to have accepted an Order from the Customer when FF acknowledges the acceptance of the Quote by the Customer.



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3.5 Once FF accepts an Order as provided by clause 3.4, a Contract will be formed between the parties on these Terms. A separate Contract is formed in relation to each Order.

3.6 The Quote is subject to clear and uninterrupted access to the site of installation and free from trades over 1 site visit and may include the following information:

- (a) name of the Customer and ABN;
- (b) site address;
- (c) Service and Service particulars;
- (d) supply and installation estimated dates (subject to clause 4); (e) estimated Price; and
- (f) any other information which FF may deem necessary to include.

3.7 FF may cancel the acceptance of any Order at any time before supply. The Customer may cancel an Order which has been accepted by FF only with FF's prior written consent.

3.8 If the Customer cancels the Order, or FF confirms the acceptance of the cancellation of the Order by the Customer, or FF cancels the Order because the Customer is unable to receive the supply of Services under the Order for any reason, FF may retain the deposit paid by the Customer and may charge the Customer, and the Customer shall pay to FF, any costs and expenses incurred by FF in relation to and in connection with the cancelled Order.

4 SUPPLY OF SERVICES

4.1 FF will supply Services in accordance with the Quote accepted by the Customer.

4.2 The Services will be scheduled for installation based on FF's workload at the time. Any installation dates indicated in the Quote or as otherwise advised by FF to the Customer are estimates only. Time shall not be of the essence for performance of the Services.

4.3 FF may provide the Services in stages or parts.

4.4 FF has the right to make changes to the Services if such changes are required by applicable laws, regulations or safety requirements. FF will notify the Customer of any changes to the Services in such event.

4.5 If FF advises the Customer that FF will be unable to supply Services for any reason, then upon receipt of such notice by the Customer, the Contract will be terminated without incurring any liability by FF.

4.6 Services will be provided by FF using reasonable care and skill and subject to the Warranty.

4.7 The Customer is obliged to pay for Services as provided by clauses 5 and 6.

5 PRICE

5.1 The Price payable for the Services is an estimate only and is subject to the provisions in clauses 7.1 and 7.2, the condition of the site of installation, availability of materials, labour and any other conditions beyond FF's control. 5.2 Subject to clause 5.1, the Price shall be:



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(a) as indicated in the Quote; or

(b) as varied by FF based on any variation of or changes to the Services or the Quote.

5.3 The Customer must pay additional charges of \$100.00 plus GST per hour per person for any additional works not provided for in the Quote and out of scope works. Such additional charges will form part of the Price.

5.4 The Customer must pay to FF all monies payable for Services supplied by FF, including the price, any additional costs and charges, GST and any other taxes, and any interest accrued on overdue amounts.

5.5 FF will charge the Price for the Services to the Customer as indicated by clauses 5.2 and 5.3.

5.6 A deposit of 30% of the estimated Price is payable by the Customer upon acceptance of the Quote.

5.7 All prices are stated exclusive of any applicable duties, charges, levies and taxes, unless stated otherwise.

5.8 GST:

(a) all prices quoted or listed are exclusive of GST unless expressly indicated to the contrary.

(b) where a payment or consideration for the Services is not expressed to include GST, the Customer must pay, in addition to the payment or consideration expressed and without deduction or set off, an amount in respect of GST applicable to the supply by FF to the Customer.

(c) payment of GST must be made at the same time as payment is due on the invoice for the Services.

(d) FF must issue the Customer with a correctly rendered tax invoice for any amount collected on account of GST.

6 PAYMENT

6.1 FF may issue a tax invoice to the Customer for the Price of the Services supplied upon completion of the Services. FF may issue tax invoices to the Customer for parts or stages of the Services on completion of any parts or stages of the Services.

6.2 The Customer shall pay FF's invoices in full by the date stated on an invoice or if no such date is stated, within fourteen (14) days of the date of each invoice issued by FF.

6.3 FF reserves the right to require full or partial payment in respect of Services in advance of supply of the Services.

6.4 All payments shall be made by an electronic funds transfer (EFT), or as otherwise agreed by the parties in writing, stating the invoice number and the Customer's name.

6.5 All invoices are payable in Australian dollars unless a different currency is stated on the invoice.

6.6 Payment must be made by the Customer to FF in full, without set-off or deduction of any kind.

6.7 FF may set off or deduct any money which FF may owe to the Customer against/from any money which the Customer owes to FF. FF may do this at any time, whether or not the Customer is in default and without giving any notice.



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6.8 FF may withhold or cancel supply of Services for non-payment of any amounts due and payable to FF by the Customer or for a breach of these Terms by the Customer.

6.9 All payments payable to FF under the Contract shall become due immediately upon termination of the Contract despite any other provision.

6.10 If the Customer fails to pay an amount on the due date, all amounts then owing to FF immediately and automatically will become due and payable.

6.11 Interest accrues and is payable by the Customer on any outstanding amounts and monies owing by the Customer to FF. Interest accrues from the date when monies become due and is payable at the annual rate which is 5% above the Reserve Bank of Australia's Cash Rate. Interest payable under this provision shall accrue daily and be capitalised monthly.

7 CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

- (a) provide free and uninterrupted access to the site for FF to bring all necessary equipment and supply Services. All areas are to be clean, clear and free from other trades prior to commencement of Services on the site. Additional charges will apply at \$100.00 + GST per hour per person or as advised by FF if cleaning of the surface areas is required;
- (b) remove all items, including any stock, equipment, machinery, furniture and plants. Additional charges will apply at \$100.00 + GST per hour per person or as advised by FF if items need to be removed;
- (c) provide access to power outlets 214v 15amp / 415v and to a three phase if required. Please note that that if the site is unpowered, extra charges will apply for the use of a generator per day;
- (d) isolate the fire extinguisher and all sensors for the period of the preparation stage;
- (e) provide waste bins for any rubbish left from the supply of the Services;
- (f) provide clear and unobstructed access to adequate water, electrical services and adequate lighting as may be required;
- (g) ensure that the substrate surface is free of obstructions and in a condition ready to receive the application of the Services. Additional charges will apply at \$100.00 + GST per hour per person or as advised by FF if the surface must be cleared or treated;

7.2 The Customer warrants and acknowledges that:

- (a) all information provided by it to FF in relation to the Order is true, complete and accurate in all material respects and will remain so throughout the duration of any Contract;
- (b) it has obtained and will maintain all necessary licences, permits and consents which may be required before the provision of Services;
- (c) it will co-operate with FF in all matters reasonably required for supply of Services;
- (d) following the supply of Services, it will regularly maintain and clean the epoxy flooring installed or lines marked by FF.

7.3 If the supply of Services or any other obligations by FF under the Contract is prevented or delayed by any act, omission, failure, breach or default by the Customer (Default):

- (a) FF may suspend the supply of the Services until such time that the Customer remedies such



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Default;

(b) FF may terminate this Contract in accordance with clause 14;

(c) FF will not be liable for any costs or losses arising in relation to or in connection with FF's delay, suspension or termination of the Services; and

(d) the Customer shall reimburse FF on written demand for any costs, expenses and losses arising directly or indirectly from the Default.

8 WARRANTY AND COMPLAINTS

8.1 Subject to clause 10, the Supplier provides the following warranty in relation to the supply of Services:

(a) the Services will be performed in accordance with the manufacturers' specifications and application procedures;

(b) in case of Services which constitute the installation of epoxy flooring, a 12 (twelve) month warranty is provided on workmanship and a five (5) year warranty is provided on the epoxy material, from the date of installation; and (c) in case of Services which constitute line marking, a three (3) month warranty is provided on workmanship and a 12 (twelve) month warranty is provided on the line marking material, from the date of installation, but such Warranty does not apply and excludes:

(d) minor imperfections in the finished surface, such as roller marks, reflective cracking, minor undulation or trowel marks;

(e) ordinary wear and tear;

(f) mechanical damage;

(g) fading of colour.

(g.1) colour bleeding caused by rust, knots or moisture;

(h) cracking and slab separation caused by factors outside FF's control, including when cracks in pavers or any surface after completion are the result of movement of existing slab sections, in the foundation or structural defects;

(i) if FF did not undertake the preparation stage (including pressure cleaning and diamond grinding as part of line marking Services);

(j) when FF did not supply the materials, labor and/or did not perform rectification works;

(k) damage cause by rising dampness;

(l) any surface that may absorb moisture and result in wood rot, termite damage, or delaminating due to the deterioration of underlayment;

(m) if the Customer uses the site and the floor earlier than specified by FF, including driving on the floor;

(n) if the substrate is waterproof;

(o) any damage, blistering, peeling, or any such condition caused by, initiated by, or relating to concrete osmotic pressure, or silicates extruding from or out of concrete;

(p) damage caused whole or in part from fire, cooking oil, flood, acts of God, negligence, acts or omissions of other workers or contractors;



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(q) if the Customer fails to adhere to regular maintenance and cleaning of the surface;
(r) any damage and defect (whole or part thereof) arising from any failure to the resurfacing system caused by: hydrostatic pressure, settling, movement, cracking, lifting, excessive or rising moisture, or failure of the foundation, corrosion, excessive wear and tear, tyre marks or oil, plant stains, application or construction of concrete or any other causes outside the FF's control.

(s) if the customer fails to have paid the full invoice amount on completion of a job

8.2 The defects covered by the warranty set out in clause 8.1 will be rectified in accordance with the rectification procedure set out in clauses 8.3- 8.5.

8.3 The Customer shall notify FF no later than within 7 (seven) days of any issue, defects, malfunctioning, failure, deterioration in the characteristics and/or performance of the Services and epoxy flooring of which the Customer becomes aware (Complaint).

8.4 FF will assess the Customer's Complaint and will advise the Customer of its determination of whether the Complaint is subject to the Warranty. FF may to inspect the site or request such details from the Customer as required in order to assess the Complaint and the Customer shall assist FF with such enquiries and provide such access to the site as required by FF in order to access the Complaint.

8.5 If FF determines that the Complaint falls within the Warranty, FF will rectify the defects covered by the Warranty. Unless otherwise specified, rectification works will be specific to the areas needing rectification, or as determined by FF. FF will use colours as specified on original Quote. If a custom match of the colour is required by the Customer, the Customer may be required to pay additional charges for such match of the colour.

8.6 If the condition of the surface for installation of Services is not suitable and FF has advised the Customer of such condition, and the Customer requires the Services to be performed on a surface that is not suitable, advisable or conducive to the application of products or carrying out of Services, despite the advice of the Supplier to the contrary:

(a) then the Warranty does not apply; and

(b) the Customer waives all warranties in relation to the Services and indemnifies FF from any claim, loss, damages, injury to person or property arising from FF performing the Services to the fullest extent at law.

9 INDEMNITY

9.1 The Customer indemnifies FF, its employees, officers, agents and contractors against any and all cost, expense, damage, judgment, liability or loss (including consequential loss, loss of profit and loss of expected profit) incurred directly or indirectly as a result of or in connection with any claim, demand or cause of action asserted or brought by a third party in relation to or arising from any negligent act or omission, unlawful conduct or other misconduct by the Customer, its officers, employees, agents and contractors relating to these Terms, any Contract and the Services.

10 LIMITATION OF LIABILITY

10.1 Nothing in this Contract shall be interpreted as an attempt to modify, limit or exclude terms or warranties which are imposed by statute (including but not limited to the Competition and



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Consumer Act 2010 (Cth)) and which cannot be modified, limited or excluded.

10.2 Other than as specifically set out in these Terms, and to the extent permissible by law, all representations and warranties implied by statute or law are excluded.

10.3 To the extent permitted by law, the liability of FF for breach of these Terms, Contract, Warranty, for negligence or other tort and for breach of statutory duty, implied term or warranty about the Services supplied, at the option of FF, to:

(a) in the case of the Services which constitute goods:

- (i) the replacement of the goods;
- (ii) the supply of equivalent goods;
- (iii) the repair of the goods;
- (iv) the payment of the cost of replacing the goods;
- (v) the payment of the cost of acquiring equivalent goods; or
- (vi) the payment of the cost of having the goods repaired.

(b) in the case of the Services which constitute services:

- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again.

10.4 To the extent permissible by law, FF shall have no liability to the Customer for:

- (a) loss of profit or anticipated profit;
- (b) loss of revenue;
- (c) loss of savings on overheads;
- (d) loss arising from any breach of contract committed by the Customer, including but not limited to any contract for the re-supply of Products by the Customer to a third party;
- (e) loss of goodwill;
- (f) loss arising from business interruption;
- (g) loss arising from or in connection with any contamination or pollution; and
- (h) exemplary damages.

10.5 The limitations and exclusions in clause 10 also apply to loss incurred in respect of personal injury and loss arising from wilful acts and omissions.

11 INTELLECTUAL PROPERTY

11.1 Nothing in these Terms conveys to the Customer any rights in any intellectual property of FF. The Customer's rights rest in contract only.

11.2 FF gives consent to the Customer to use photos of the Services supplied and FF details on social media and for referrals. The Customer shall remove such photos and details from social media if directed by FF.

11.3 The Customer must not, during or after the term of the Contract:

- (a) offer or sell any product or services using the intellectual property which is owned by FF; or
- (b) use any trade mark or other intellectual property of FF without FF's express priori consent.



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12 FORCE MAJEURE

12.1 The parties shall be excused for delays in performance or failure of performance (except payment of amounts due) to the extent arising from causes beyond such party's reasonable control, including without limitation, strikes, wars, fires, acts of terror or acts of God, such as floods and earthquakes. In the event of any such event or condition, the party whose performance is excused shall notify the other party as soon as practicable and shall make diligent efforts to perform its obligations at its earliest opportunity.

13 CONFIDENTIALITY

13.1 The Customer must not disclose confidential information of FF (including but not limited to any technical, commercial, economic and other information and data concerning FF's business, including without limitation the Price, Quote, formulas, product specifications, services, plans, programs, processes, products, costs, operations and customers) to a third party (including making any statements or public announcements) without the prior written consent of FF, except if the disclosure is:

- (a) legally compelled by a court or other authority of competent jurisdiction;
- (b) made to a legal adviser, patent attorney or other professional adviser to whom a copy of these Terms is supplied;
- (c) made with the prior written consent of FF, which may grant or withhold its consent in its absolute discretion.

14 CANCELLATION OR TERMINATION

14.1 If the Customer cancels or defers the commencement of the Services, FF will be entitled to:

- (a) charge the Customer costs and expenses incurred by FF as a result of such cancellation or deferral, including costs of procured materials, plant, labour and consequential loss;
- (b) retain all of or part of the deposit by the Customer without any liability of repaying such deposit to the Customer;
- (c) terminate the Contract; and
- (d) claim such unless approved in writing by the Supplier.

14.2 FF may, at its option, by notice in writing to the Customer, terminate a Contract with immediate effect if:

- (a) the Customer commits a breach of any other material clause in these Terms;

- (b) the Customer commits a breach of any other term or warranty which is not rectified to the reasonable satisfaction of FF within fourteen (14) days of the date of a notice by FF specifying the breach;
- (c) the Customer sells or intends to sell its business or company;



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(d) the Customer ceases or intends to cease carrying on or operating its business, or carries on its business at a loss, or ceases to pay its debts as they fall due;

(e) the Customer fails to make any payment due to FF when it falls due and such default continues for a period of fourteen (14) days; and

(f) the Customer becomes subject to or is threatened with an insolvency event.

14.3 The Customer may, at its option, by notice in writing to FF, immediately terminate a Contract if:

(a) FF becomes subject to or is threatened with an insolvency event;

(b) FF fails to supply Services to the Customer.

14.4 Upon expiry or termination of the Contract by either party for any reason, and notwithstanding any delay or previous waiver of the right to exercise such option, FF may demand the immediate payment to it in a lump sum by the Customer of:

(a) any remaining balance of the Price which has not been paid;

(b) all monies owing or which might become owing by the Customer to FF in respect of the Services provided to the Customer; and

(c) any interest incurred and applicable as provided by clause 6.11.

14.5 The exercise of rights under clause 14.1 is in the absolute discretion of FF and shall not affect or prejudice the rights of FF to exercise other rights and remedies available to it under these Terms, statute or common law.

15 GENERAL

15.1 The relationship between the parties is not one of exclusivity.

15.2 The Customer must comply and keep compliant with any laws and regulations relating to the use and supply of Services and performance of the Contract.

15.3 The Customer must not assign or novate the Contract without the prior written consent of FF, which it may give or withhold in its absolute discretion.

15.4 A party will not be deemed to have waived any right or remedy or the performance by the Customer of any obligation under the Contract unless it has expressly done so in writing signed by a director or secretary.

15.5 Every phrase, sentence, paragraph and clause in these Terms is severable the one from the other despite the manner in which they may be linked together or grouped grammatically and if any phrase,

sentence, paragraph or clause is found to be defective or unenforceable for any reason whatsoever the remaining phrases, sentences, paragraphs or clauses as the case may be, are of full force and

effect.

15.6 FF may exercise a right, remedy or power in any way FF considers appropriate. If FF does not exercise a right, remedy or power at any time, this does not mean that FF cannot exercise it later.

15.7 Any term of these Terms and the Contract survives the expiry, cancellation or termination of



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the Contract if required to give effect to it.

15.8 Nothing contained or implied in these Terms or the Contract will create a joint venture, partnership or principal and agency relationship between the parties and neither party will represent that it is a joint venture, partner, employee, principal or agent of the other party and neither party will have power to bind or obligate the other party in any manner whatsoever.

16 JURISDICTION

16.1 The Contract and all Orders will be governed by and construed according to the laws of the State of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State.

The Customer accepts these Terms.

I confirm that I am authorised by the Customer to give such acceptance.