

Contract Conditions – Timber Flooring Works

1. WORKS & CONTRACT SUM

a) The Contractor must carry out and complete the Works in a proper and tradesperson like manner, in accordance with the Contract Documents and using materials that are suitable, new (or otherwise agreed in the contract) and free of structural defect. Unless otherwise agreed, the Contractor must supply everything necessary to carry out the Works.

b) The Owner must pay the Contract Sum to the Contractor in the manner and at the times stated in the Contract.

2. COMMENCEMENT (Material availability needs to be considered)

a) The Owner must give the Contractor possession of the Site by the Date for Commencement.

b) The Contractor must commence the Works by the Date for Commencement or within 21 days after receiving all necessary materials, consents, approvals and permits to carry out the Works, whichever is later.

3. SITE CONDITIONS

a) On becoming aware of the existence of a Latent Condition, the Contractor must promptly give the Owner a written notice containing details of the Latent Condition, including the Contractor's estimate of any work (including plans and designs) and the cost required to overcome the Latent Condition.

b) On giving the Owner a notice under Clause 4(a): (i) The Works are deemed to have been varied to include the work required to overcome the Latent Condition; and (ii) unless otherwise stated in the Contract, the cost to the Contractor, together with the Contractor's Margin applied to that total cost, is to be added to the Contract Sum and included by the Contractor in the next progress claim.

4. INSURANCE

a) The Contractor must effect and maintain the following insurance policies:

(i) Work Cover or any other insurance required by law;

(ii) in respect of third party personal injury or property damage, public liability insurance for an amount not less than \$5 million per occurrence;

b) If the Works comprise of the alteration, addition or repair of an existing building, the Owner must effect and maintain a policy of insurance over any existing building affected by the Works and their contents:

(i) For an amount not less than their full replacement value; and

(ii) Covering against any loss or damage.

c) Where requested in writing by the other party, a party liable to insure must provide satisfactory evidence as to the existence, maintenance and terms of any insurance policy.

5. PAYMENT

a) The Contractor is to submit its progress claims to the Owner at the times set out in the Contract and on the Works reaching Practical Completion.

b) A progress claim is to contain:

(i) Details of the value of work carried out by the Contractor up to and including the date the Contractor submits its claim;

(ii) Details of all monies due to, or claimed by, the Contractor arising out of, or in connection with, the Contract;

c) On receipt of a progress claim (including a final claim) the Owner must, subject to the Contract:

(i) Pay the Contractor the amount of the claim within the time for payment set out in the Contract; or

(ii) Where the Owner disputes the value of the progress claim:

(a) within 5 days give the Contractor a written notice setting out the amount in dispute and particulars of the dispute; and

(b) Pay the Contractor the amount of the progress claim which is not disputed by the Owner, within the time for payment set out in the Contract.

d) The Contractor is entitled to interest after the date of default in any payment to the Contractor under this Contract, including payment of any part of a progress claim wrongfully withheld by the Owner, either at the rate set out in the Contract or at the rate of 10% per annum plus the Reserve Bank of Australia annual rate for 90 day bills, calculated on a daily basis, whichever is higher.

e) The Owner acknowledges that there is no entitlement to set-off any claim or amount against, or reduce, any progress payment (including payment of the final claim) to the Contractor under the contract.

f) The amount of each progress payment is to be calculated having regard to the value of Works earned out by the Contractor from the date of its last claim (or in the case of the first progress claim, commencement of the Works) to the date of its current claim.

6. VARIATIONS.

a) The contractor must not vary the works or omit any part of the works except in accordance with the Contract.

b) The parties may agree to a Variation of the works provided that the agreement must be in written form by the Contractor for variations.

i) If the variation requires additional work to be carried out before the Variation is carried out.

ii) If the variation is an omission from the works, within the shortest practical time.

c) The parties written agreement to vary the Works must:

i) State the scope of work the subject of the Variation:

iii) State the price of the Variation or how the price of the Variation is to be calculated; and

iv) Be approved by the Owner and the Contractor.

d) The Contract Sum is to be adjusted by the price of a Variation and the adjustment is to be included by the Contractor in the next progress claim.

7. EXTENSION OF TIME

a) The Contractor is entitled to an extension of the Date for Practical Completion if the progress of the Works is delayed as a result of any of the following:

(i) Variations to the Works;

(ii) Obtaining the signed agreement of the Owner to a Variation to the Works;

(iii) A strike, lockout, civil commotion or industrial action affecting:

(a) any persons carrying out the Works; or

(b) the manufacture or supply of materials to be used in the Works;

(vii) A shortage, or delay in the delivery of materials to be used in the Works; or

(viii) Any other matter, cause or thing beyond the control of the Contractor.

b) The Contractor must, within a reasonable time of the delay concluding, give the Owner a notice in writing setting out:

(i) The reason for the delay;

(ii) The period during which the carrying out of the Works was delayed; and

(iii) The extended Date for Practical Completion.

c) Where a delay is a result of any of the causes listed in Clause 9(a):

(i) The Contractor is entitled to be paid by the Owner for any increase in the cost of carrying out the Works, including supervision and off-site costs, arising directly or indirectly out of the delay; and

(ii) The cost to the Contractor is to be added to the Contract Sum and included by the Contractor in the next progress claim.

8. PRACTICAL COMPLETION

a) The Contractor must ensure that the Works reach Practical Completion by the Date for Practical

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Completion. This is defined as 'after application of final coat of finish'.

b) After reaching Practical Completion, the Contractor is to give the Owner possession of the Site and the Works on payment of all monies due to the Contractor, including payment of all outstanding progress claims.

c) If the Owner, for any reason takes possession of, occupies or uses the Works, or any part of the Works, prior to the Contractor giving the Owner possession under Clause 8(b) or without the written consent of the Contractor, the Works are deemed to have reached Practical Completion in that date and the Owner is deemed to have accepted that the Works have been completed in accordance with Clause 1 (a).

d) All goods delivered for our installations remains the property of the Contractor until final settlement for the job is made.

9. DISPUTE RESOLUTION

a) If either party has any difference of dispute in connection with, or arising out of the Contract, that party must give the other party a written notice of dispute adequately identifying and providing details of the dispute.

b) Notwithstanding the existence of a dispute, the parties must, subject to the Contract, continue to perform the Contract.

c) If expert opinion is required it may be referred to relevant bodies. It may be requested of the Australian Timber Flooring Association by contacting 07 5492 8696 or writing to ATFA, 11 Oleander Avenue, Shelly Beach Qld 4551 for a 'without prejudice dispute resolution procedure'. If the 'without prejudice resolution procedure' is unsuccessful, then the dispute may be referred to a Consumer Tribunal, within your jurisdiction, for resolution.

d) In spite of anything else in these conditions and the contract document, the Contractor, will not, in any event be liable to the purchaser for any claim for alternative accommodation, disruption, inconvenience, removal/storage of furniture, loss of opportunity, revenue, profit or anticipated profit whether arising in contract, negligence or otherwise.

10. DEFECTS LIABILITY PERIOD

a) The Contractor must, at its own cost, rectify any part of the Works that is agreed by both parties to be faulty or defective, and remove and replace any materials not in accordance with this Contract as directed in writing by the Owner after Practical Completion and before the expiration of the Defects Liability Period (30 Days).

11. SPECIAL CONDITIONS

If applicable, the Special Conditions below shall take effect as express terms of the contract. Special conditions prevail over these general conditions to the extent of any inconsistency.

12. STATUTORY WARRANTIES

The contractor warrants that:

a) The works will be carried out in a proper and workmanlike manner and in accordance with the description and specifications set out in the contract.

b) All materials to be supplied by the contractor for use in the works will be suitable for the purpose at the time of installation, for which they are to be used and, unless otherwise specified in the contract, those materials will be new.

c) The works will be carried out in an appropriate and skilful way, with all reasonable care and will be completed by the date (or within the period) specified by the contract.

d) Material warranties are solely those of the manufacturers for the material specified, owner agrees to look solely to those manufacturers for all warranty claims. Owner further agrees that contractor shall not be responsible for any consequential damages as a result of the failure or misuse of any product.

SPECIAL CONDITIONS RELATING TO TIMBER FLOORING

- This is not a sale by sample. Specie variation. The samples shown are indicative of the species, characteristics and colours presently being supplied to us. It should be noted that timbers of any description will vary in grain and colour depending on the age of the tree and the district of supply. Prior inspection and confirmation of supply is suggested.
- Expansion and contraction of flooring is not considered a defect. The Contractor cannot accept any liability for this seasonal movement. Environmental conditions as well as building design vary and similarly, air conditioning, internal heating, direct sunlight, site conditions and damp substrates can contribute to excessive movement. Liability from neglect, low maintenance and abuse by the purchaser or tenant cannot be accepted.
- The quotation is based on the assumption that the substrate will be clean and in a satisfactory condition to accept the flooring. It is the responsibility of the purchaser to notify us and remove any curing agent or plasticizer used in construction prior to the commencement of the installation.
- Moisture content of a concrete slab may need to be tested by electronic meter and if less than 5.5% it will be deemed to be satisfactory. If over 5.5% it will be necessary to suspend work until dried or seal the slab at the purchasers cost to inhibit moisture ingress to the timber in order to protect the floor.
- The substrate should be level to within 3mm measured over a 3 metres straight line, outside of this, it may require the use of a levelling compound at the purchaser's expense.
- Termination. If either party is in breach of this contract, the party not in breach may give the other party a written request to remedy such breach. If the breach is not remedied within 10 days, the party not in breach may end this contract by giving written notice to that effect.
- The area the Works is to be carried out in must be clean and free from obstructions such as furniture and other trades.
- Scope of Works does not include take up or disposal of existing floorcoverings.
- On completion it may be necessary for the Owner to engage the services of a Painter to paint and fill skirting boards, architraves, walls and doors.
- Failure to make payment on time / as per our terms and conditions may result in the Contractor initiating the services of a collection agency. Any costs involved in the collection process will be the Owners responsibility
- It is the responsibility of the Owner to notify the Contractor of the existence and precise location of any services, cables, pipes or conduits beneath the floor and adjoining walls. Any direct or indirect damage caused by the failure to report the assets presence is the responsibility of the Owner.

DEFINITIONS

In this Contract, unless the context otherwise requires:

"Contract Sum" means the amount payable to the Contractor by the Owner under the Contract as adjusted in accordance with the Contract and includes GST. "Latent Condition" means any physical condition on or below the site, or the area surrounding the site, which differs materially from the physical conditions which could reasonably have been expected by the Contractor at the time the Contract was entered into. "Start Date" means the date the Contractor physically commences the Works on the Site. "Practical Completion" means the stage when the Works are completed except for minor defects or omissions that do not prevent the Works from being capable of being used for their intended purpose.