

**DATED 7 May 2015**

**WHITTLE FLOORING  
COMPANY LIMITED**

**CONDITIONS OF SALE**

**These Conditions govern all transactions between Whittle Flooring Company Limited (“Company”) and customers for its products to the exclusion of all and any conditions that any such customer shall seek to apply to all or any transactions between it and the Company.**

## **Interpretation**

- 1.1 In these conditions the followings words and phrases where the context so admits have the following meaning:
- ' **Company**' means Whittle Flooring Company Limited;
- "**Buyer**" means the person, persons or company to whom or which the Company agrees to supply Goods
- "**Contract**" means the contract made between the Company and the Buyer whether made in writing or orally or partly in writing and partly orally;
- "**Delivery Point**" the place where delivery of the Goods is to take place under the Contract pursuant to condition 6.1;
- "**Goods**' includes any services agreed to be supplied by the Company to the Buyer
- 1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.4 In these Conditions headings will not affect the construction of these Conditions.

## **2 Formation of Contract**

- 2.1 The Company's quotations are not binding on the Company and the contract will only come into being upon acceptance by the Company of the Buyer's order and the following conditions shall be deemed to be incorporated in the Contract.
- 2.2 All terms and conditions appearing or referred to in Buyer's order or otherwise stipulated by the Buyer shall have no effect. Any variation of the Contract must be confirmed in writing by the Company.
- 2.3 Tenders submitted by the Company shall remain open for acceptance for a period of 30 days from the date of the tender, unless in the tender some other period is specified or accepted or the tender is withdrawn by the Company.
- 2.4 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is

valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

- 2.5** The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

### **3 Variation**

- 3.1** THE Company and the Buyer shall at the time of the Contract agree details of the necessary:

3.1.1 times and quantities for the procurement by the Company of all relevant materials

3.1.2 planning of production by the Company  
and the Company and the Buyer shall be bound thereby

- 3.2** PROVIDED ALWAYS that if the Buyer thereafter:

3.2.1 seeks to increase the quantity of Goods to be delivered within the relevant time the Buyer shall indemnify the Company in respect of all extra costs charges and expenses incurred by the Company in ordering extra materials and/ or in making necessary alteration to the planning of production by the Company and the Company shall not be liable for any delay in delivery of such increased quantity of Goods; or

3.2.2 requests delivery of the Goods at a slower rate than specified in the Contract the Buyer shall be liable to pay the Company interest on unpaid Buyer's money from the date delivery was due until the date actually delivered at a rate of 4% over the current base rate of Royal Bank of Scotland PLC.

### **4 Description**

- 4.1** Subject to 4.2 the description of the Goods shall be that set out in the Company's Quotation.

**4.2** Where at the request of the Buyer the description of the Goods set out in the Company's Quotation is varied such variation shall be confirmed by the issue of an Acknowledgement of Order by the Company and for the purpose of the Contract the description of the Goods shall be the description set out in the Company's Acknowledgement of Order.

- 4.3** The Company's obligation shall be to supply Goods which conform with the Contract description and the Buyer alone shall be responsible for ensuring and shall bear all

risks connected with the Contract description not correctly describing the Goods or the specification or tolerances to which the Goods should be manufactured.

**4.4** Goods are supplied to design and materials specifications stipulated by Buyer. Accordingly Buyer is responsible by inspection:

4.4.1 of processes during manufacture at the Company's works; and

4.4.2 of Goods upon delivery to Buyer's works

for ensuring the Goods are manufactured to dimensional tolerances called for in Buyer's specification and that Goods delivered are compliant with such specification.

**4.5** All descriptive matter and advertising issued by the Company is for general informational and promotional purposes only and all such publications illustrations and drawings as shall be included in such of the Company's material is expressly agreed by Buyer not to form part of the Contract

## **5 Price**

**5.1** The Price for the goods shall the Price set out in the Company's Acknowledgement of Order

**5.2** THE Company shall be entitled to increase the cost of the Goods by an amount representing:

5.2.1 any increase in the cost of materials (whether due to currency fluctuations or otherwise) which may occur between the date of the Contract (or of any subsequent variation of the terms of the Contract) and the date upon which the Company ought reasonably to have taken steps to purchase such materials for the purpose of fulfilling or performing the Contract (or of any such variation thereto) and

5.2.2 any increase in the cost of labour and wages paid by the Company to its employees at any time during the proper fulfilment or performance of the Contract

**5.3** Where under condition 5.2 the price for the Goods is varied the price, as varied, shall be binding on both parties and shall not give either party any option of cancellation.

- 5.4 There shall be added to the price for the Goods any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods (whether initially charged on or payable by the Company or the Buyer).
- 5.5 If Goods are sold "ex works" or "delivered Delivery Point" and the Company arranges or undertakes the carriage, freight, insurance and any other transport costs beyond the its works or the Delivery Point, as the case requires, such costs shall be for the Buyer's account and shall not affect the provisions of the Contract as to the passing of risk.
- 5.6 Quotations in a currency other than sterling are based on the rate of exchange at the time of quoting and, unless otherwise stated, the price may be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.

## **6 Delivery**

- 6.1 As regards Goods for delivery in Great Britain the Company will at its own expense and at its own risk deliver the Goods to the Buyer at the Delivery Point.
- 6.2 If the Buyer fails to specify the delivery point or requires the Company to deliver the Goods to an address other than the Delivery Point condition 5.6 shall apply.
- 6.3 The Company shall provide the Buyer with such invoices advice notes delivery notes and other documents as the Buyer shall from time to time reasonably require and the Buyer shall forthwith upon delivery of the Goods return to the Company a delivery note or other appropriate form of receipt duly signed by the Buyer his or its servant or agent.
- 6.4 The dates for delivery of the Goods are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery or performance.
- 6.5 The Company will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform No delay shall entitle the Buyer to reject any delivery or performance or any further instalment or part of the order or any other order from the Buyer or to repudiate the Contract or the order;
- 6.6 Where the Contract provides for delivery elsewhere than at the Company's works, risk will pass at the Delivery Point and the Company will entertain a claim by the Buyer in respect of loss or damage in transit only if the Buyer: gives written notice to the Company within 5 days of non-delivery or within seven days of the delivery of the Goods in any other case; and where the Goods are transported by an independent freight carrier, complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.
- 6.7 Unless Condition 6.6 applies, the risk in the Goods passes to the Buyer when the Goods are despatched from the Company's works and the Company accepts no responsibility

for any damage or loss in transit. In such cases claims for damage or loss in transit should be made on the carrier and any conditions imposed by the carrier in relation to claims for damage or loss in transit should be complied with.

- 6.8** Where Condition 6.6 applies the Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for off loading the Goods from the Company's or carrier's transport.
- 6.9** If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorizations:
- 6.9.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 6.9.2 the Goods will be deemed to have been delivered; and the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

## **7 Packaging**

- 7.1** Unless otherwise specified, packing cases and packing materials will be charged extra but, where stated to be returnable, will be credited in full on return to the Company's works carriage paid in good condition, within one month of receipt by the Buyer.
- 7.2** Where not returnable, the Buyer will dispose of all packing in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.
- 7.3** The Company uses all reasonable endeavours to ensure, where necessary, suitability of packing before despatch, in normal circumstances this will be completely adequate, but no claim will be accepted by the Company for breakage or damage in transit on the ground of alleged unsuitability of packaging.

## **8 Payment**

- 8.1** THE Buyer shall within a period of 30 days from the end of the month of delivery of all or any of the Goods pay to the Company the agreed cost of such Goods actually delivered as aforesaid and shall, in addition (and within a period of 30 days from the end of the month of delivery of such Goods or from the date of delivery of notice in writing by the Company to the Buyer containing a calculation of any increase in the cost of materials and/or labour and wages made in accordance with the provisions of Condition 3 hereof whichever shall last occur) pay the said amount of increase in the

cost of materials and/or labour and wages calculated as aforesaid PROVIDED ALWAYS that if the Buyer shall fail to pay the said cost of the Goods actually delivered or the said increased costs or any part thereof within the periods hereinbefore specified the Company shall thereupon be at liberty to withhold delivery to the Buyer of any other of the Goods the subject matter of the Contract (or of the Goods the subject matter of any other Contract made between the Company and the Buyer) without being in breach of or incurring any liability under the Contract (or under any such other Contract as aforesaid) until all payments then due shall have been paid in full by the Buyer.

- 8.2** All payments shall be made without deduction or set-off. When deliveries are spread over a period, each consignment will be invoiced as despatched and each month's invoices will be treated as a separate account and be payable accordingly. Where contract work is to be performed over a period in excess of one month, the value of work carried out shall be ascertained by the Company at the end of each month and (unless the Contract otherwise expressly provides) a sum equal to such value (or any percentage thereof specified in the Contract) shall be invoiced and such invoice shall be paid in accordance with the foregoing provisions of this clause. Failure to pay any invoice in accordance with the foregoing terms or other terms specified in the Contract shall entitle the Company to suspend further deliveries and work both on the same order and on any other order from the Buyer without prejudice to any other right the Company may have. The Company also reserves the right to charge interest on overdue accounts, such interest to be calculated on a day-to-day basis on the amount outstanding at the rate of Four per cent above the arithmetic average for each day of the published base rate of Royal Bank of Scotland plc.
- 8.3** The Company reserves the right, where genuine doubts arise as to a Buyer's financial position or in the case of failure to pay for any Goods any delivery or instalment as aforesaid, to suspend delivery or performance of any order or any part or instalment without liability until payment or satisfactory security for payment has been provided.
- 8.4** Where Goods are to be delivered outside the United Kingdom, payment must be made against delivery of the Goods or shipping documents, FOB UK port unless credit arrangements within the United Kingdom approved by the Company have been made.

## **9 Title and Risk**

- 9.1** Risk in the Goods, subject to Condition 9.2 shall pass to the Buyer on the Company's Transport at the time when unloading commences at the Delivery Point.
- 9.2** Condition 9.1 shall apply subject to the provisions of clause 6.7 when the Buyer neglects or refuses to accept delivery
- 9.3** Notwithstanding that risk in the Goods shall pass to the Buyer in accordance with clause 9.1 title to the Goods (whether separate and identifiable or incorporated in or mixed with other Goods) shall remain with the Company until payment in full has been received by the Company:
- 9.3.1 for those Goods;
- 9.3.2 for any other Goods supplied by the Company;
- 9.3.3 of any other monies due from the Buyer to the Company on any account.
- 9.4** Until title to the Goods passes to the Buyer under 9.3, the Buyer shall:
- 9.4.1 keep the Goods separately and readily identifiable as the property of the Company;
- 9.4.2 not attach the Goods to real property
- 9.5** Any resale by the Buyer of Goods in which property has not passed to the Buyer shall (as between the Company and the Buyer only) be made by the Buyer as agent for the Company.
- 9.6** Goods shall be deemed sold or used in the order delivered to the Buyer.
- 9.7** At any time before title to the Goods passes to the Buyer (whether or not any payment to the Company is then overdue or the Buyer is otherwise in breach of any obligation to the Company), the Company may (without prejudice to any other of its rights):
- 9.7.1 retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so) which the Buyer hereby authorises;
- 9.7.2 require delivery up to it of all or any part of the Goods.
- 9.8** The Company may, at any time, appropriate sums received from the Buyer as it thinks fit notwithstanding any purported appropriation by the Buyer.
- 9.9** Each clause of this clause 9 is separate, severable and distinct and, accordingly, in the event of any of them being for any reason whatever unenforceable according to its terms, the others shall remain in full force and effect.



## **10 Warranty**

- 10.1** the Company warrants that it will (at the Company's choice) either repair or replace, or refund the full purchase price of any Goods which are accepted by the Company as being defective or not in accordance with the Contract or any express description or representation given or made by or on behalf of the Company in respect of the Goods within a period of one month from despatch of such Goods from the Company's works (the "**Warranty Period**") save that this warranty shall not apply where the defect or fault is attributable to defective materials supplied by third party;
- 10.2** Where the defect or fault in the goods is attributable to materials supplied by third parties the liability of the Company in respect of such defect shall be limited to the amount recovered by the Company from such third party in respect of the defective or faulty goods supplied to Buyer and Buyer accepts that Buyer will have no recourse or remedy against the Company for any greater loss than the amount which the Company shall succeed in recovering from such third party in respect of Buyer's loss or claim.
- 10.3** A claim in respect of any defect or failure to comply with the specification or in respect of any delivery or instalment of any Order or any part of it shall not entitle the Buyer to cancel or refuse delivery of or payment for any other Order, delivery or instalment or any part of the same Order, delivery or instalment.

## **11 LIMITATION ON COMPANY'S LIABILITY**

- 11.1** Subject to conditions 11.2 and 11.3 the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 11.1.1 any breach of these Conditions; and
- 11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

**11.2** All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

**11.3** Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

**THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 11.4**

**11.4** Subject to conditions: 11.2 and 11.3

11.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the lesser of the invoice value of the Goods the subject of the claim by the Buyer and £10,000; and

11.4.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

**11.5** The Buyer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the Goods or Services or any workmanship in relation to them (whether or not involving negligence on the part of the Company) shall, in all cases, be limited to repair, replacement, re-performance or refund of the purchase price as aforesaid; and

11.5.1 any condition or warranty implied by law shall cease to apply after the expiry of the Warranty Period; and

11.5.2 except to the extent that such exclusion is prohibited by any rule of law any other remedy which would otherwise be available in law is hereby excluded

## **12 Force Majeure**

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce),

or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials Provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

### **13 Termination**

If the Buyer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or (being a company) it shall pass a resolution or the court shall make an order that the Buyer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the Buyer or if the Buyer suffers the appointment or the presentation of a petition for the appointment of an administrator or if circumstances shall arise which entitle the court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the court to make a winding-up order or if the Buyer takes or suffers any similar action in consequence of debt or if the financial responsibility of the Buyer shall, in the opinion of the Company, become impaired or if the Buyer shall commit any breach of any part of the Contract, the Company may, without prejudice to its rights and remedies under these conditions, stop all Goods in transit and suspend further deliveries and by notice to the Buyer may terminate the Contract immediately.

### **14 Intellectual Property**

**14.1** THE Company reserves the right to and ownership of all designs specifications and drawings prepared by its servants or agents in connection with the Contract and the same shall remain the property of the Company and shall not pass to the Buyer.

**14.2** THE Buyer reserves the right to and ownership of all designs specifications and drawings prepared and supplied by the Buyer in connection with the Contract and the same shall remain the property of the Buyer and shall not pass to the Company.

### **15 Indemnity**

The Buyer shall indemnify and keep indemnified the Company against all actions proceedings damages costs claim and demands whatsoever resulting from any infringement or alleged infringement of any Letters Patent Registered Trade Mark or Registered Design or any claim for passing of in any part of the world arising from the use by the Company of any designs specifications or drawings supplied by the Buyer in the course of complying with the terms of the Contract.

### **16 Health & Safety**

- 16.1** ALL servants or agents of the Company and of the Buyer respectively will at all times whilst on the premises owned or occupied by the other of them comply with all security and safety regulations for the time being in force upon those premises and shall be deemed to have full knowledge of such regulations.
- 16.2** The Buyer agrees to pay due regard to any information or any revised information whenever supplied by the Company (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Buyer undertakes to take such steps as may be specified by the above information to ensure that, as far as reasonably practicable, the Goods will be safe and without risk to health at all times as mentioned above.
- 16.3** For these purposes, the Buyer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.

## **17 General**

### **17.1 Assignment And Subcontracting**

17.1.1 None of the rights or obligations of the Buyer under the contract may be assigned or transferred in whole or in part without the prior written consent of the Company.

17.1.2 The Company shall be entitled to subcontract any work relating to the contract without obtaining the consent of, or giving notice to, the Buyer

### **Communications**

**17.2** All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

17.2.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

17.2.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.

**17.3 Communications shall be deemed to have been received:**

17.3.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

17.3.2 if delivered by hand, on the day of delivery;

**17.4** if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

**17.5 Invalidity**

The invalidity, illegality or unenforceability of any provision of these conditions should not affect the other conditions.

**17.6 Third Party Rights**

A person who is not party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.;

**17.7 Entire Agreement**

17.7.1 The Company's Acknowledgment of Buyer's order shall in all cases represent the entire agreement arrangement and understanding between the Buyer and the Company with respect to the supply of the Goods and the Buyer acknowledges agrees and undertakes to the Company that the Buyer has not been induced to enter into this or any other contract between the Buyer and the Company except on the terms set out in these Conditions and there is no representation or warranty express or implied on the basis of or in reliance on which the Buyer has been induced to enter into the Contract which is not expressly set out in these Conditions.

17.7.2 The Buyer undertakes to indemnify and hold the Company harmless against all claims the Buyer shall make against the Company and all demands proceedings and expenses incurred by the Company in defending any claim made against the Company which are based to any extent on the provisions of sub condition 17.7.1 being agreed or adjudged not to apply to the agreement between the Company and the Buyer relating to the supply to the Buyer of the Goods which are the subject of the claim.

## **18 Proper law**

The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.