

## **TERMS AND CONDITIONS**

### **1. DEFINITIONS**

- 1.1 The Company means Emblum Pty Ltd trading as My Timber, ABN: 84921218958.
- 1.2 The Customer means the business customer/consumer of the Company.
- 1.3 The Manufacturer means the manufacturers of Goods and/or the wholesalers and their distributors.
- 1.4 The Contract means any contract for sale of Goods by the Company to the Customer.
- 1.5 The Goods means any goods forming the subject of the contract including parts and components of or materials incorporated in them.
- 1.6 The Window Furnishings means such specified Goods as shutters, blinds, awnings, zip tracks, and other types of window coverings including sliding shutter doors.

### **2. APPLICATION**

- 2.1 These Terms and Conditions ("Terms") apply to all contracts for the sale of Goods by the Company.
- 2.2 No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless confirmed by the Company in writing.

### **3. QUOTATIONS**

- 3.1 All Quotations by the Company are subject to acceptance within 21 days.
- 3.2 The Company reserves the right to withdraw a Quotation at any time before it has been accepted by the Customer. No Quotation issued by the Company shall constitute an offer to supply Goods.
- 3.3 Verbal Quotations for stock availability from suppliers are correct at the time given by the Company, but unless confirmation of an order by the Customer is given immediately the Company cannot guarantee stock availability.
- 3.4 Quotations are only valid in writing and signed by authorised Company personnel, or in the form of an official pro-forma invoice.
- 3.5 Quotations consist of one (1) free pre-quote, one (1) free on-site inspection, and one (1) free written Quotation. For variations to the Quotation the Company reserves the right to charge the Customer a fee of \$50 per version/alteration.
- 3.6 The Company reserves the right to increase a quoted amount in the event that the Customer requests, either verbally or in writing, a variation by addition to the work agreed/covered by the Quotation.

### **4. PRICES**

- 4.1 Prices are determined at the time of order and, prior to payment of the deposit, are subject to change without notice.

### **5. PAYMENTS**

- 5.1 All invoices issued by the Company shall be paid by the Customer within the terms expressed in the said invoice unless otherwise agreed in writing by the Company.
- 5.2 A deposit of 20% of the invoice price, declared within any Quotation (other than a Windows Furnishings quotation - see Window Furnishings Clause 10.5 of these Terms), must be paid by the Customer to secure the price and placement of an Order.
- 5.3 The payment of such a deposit of the quoted invoice by the Customer is confirmation and acceptance of the details and/or conditions contained in the invoice,

and that the Customer has read and understands the Terms of this agreement and agrees to be bound by them.

- 5.4 Customised products shall not be delivered before 75% of total payment of quoted invoice, plus any variations, is made.
- 5.5 Full payment of any invoice for Supply Only Goods must be paid prior to delivery of Goods.
- 5.6 Payment of quoted invoice plus any additional variation is to be made to the Company without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement.
- 5.7 In the event of late payment, the Company may charge a monthly interest on the amount outstanding before and after judgement at the rate of 1.5 percent above the Base Rate of the Reserve Bank of Australia in force from the due date until the date of payment. In addition, invoices unpaid for more than 30 days after the invoice date will incur a surcharge of either \$75.00 or 5 percent of the outstanding amount, whichever sum is greater.
- 5.8 Payments can be made by direct debit, cash, cheque or credit card. Such other cards as American Express and/or Diners Club are not accepted by the Company.
- 5.9 If any amount of an invoice is disputed then the Customer shall inform the Company of the grounds for such dispute within seven (7) days of delivery of the goods and shall pay to the Company the value of the invoice less the disputed amount in accordance with these payment terms. Once settlement of the dispute has been agreed, any sum then outstanding shall also be payable in accordance with these payment terms.
- 5.10 Should the Customer continue to exceed the Company's trading terms, the debt will be passed on for collection. The Customer will be liable for all expenses associated with the recovery of outstanding amounts, including but not limited to legal fees on a full indemnity basis.

### **6. DESCRIPTION**

- 6.1 Any display sample or description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description or sample.
- 6.2 Where a display sample of the Goods is shown to and inspected by the Customer, the parties hereto accept that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

### **7. FLOORING**

- 7.1 The acceptance by the Company of the Customer's order for flooring Goods (Engineered Timber, Laminate, Cork, Bamboo, Vinyl Plank) is made solely on the basis that the Terms as listed constitute the only binding Terms of the sale between the Customer.
- 7.2 Because timber is a natural product:
  - (i) Variations in colour, texture, and other natural features will vary from board to board and batch to batch. The Manufacturer's warranty does not cover variations in colour or variations between the samples and the installed floor;
  - (ii) Variations between sample and delivered material is not considered a product failure and cannot lead to replacement or warranty claim;

(iii) Bows in timber, both concave and convex, are not considered a product failure and cannot lead to replacement or warranty claim.

- 7.3 The limited warranty does not cover labour costs to repair or replace incorrect, damaged or visible defective material. Any defective, missing or incorrect items must be reported to the Company immediately for inspection and replacement. If installation has commenced it must cease until an inspection by the Company has been carried out.
- 7.4 The Manufacturer and/or the Company declines any responsibility for material failure resulting from or connected with site conditions or installation methods.
- 7.5 The Company can provide a suitable installer to install the flooring system. Installers are contractors to the Company. While all care is taken at the time of installation, no responsibility is accepted by the Company.

### **8. INSTALLATION OF FLOORING**

- 8.1 The Quotation provided before installation of flooring is subject to on-site inspection. If the Customer requires alterations and/or additions that necessitate the use of additional labour or material, such as floor levelling, the extra charges will be added to the final payment invoice.
- 8.2 All invoices for installation works are payable: (i) 10% non-refundable deposit prior to installation, (ii) remaining balance, including any variations, immediately on completion of installation.
- 8.3 Scheduled dates of installation may be subject to unexpected changes.
- 8.4 All floors shall be installed in accordance with the Manufacturer's specifications unless otherwise directed by the invoiced Customer, in which case no Manufacturer's or installation warranty shall apply.
- 8.5 Customers are responsible for removing furniture and breakables, fixtures (including balustrades), disconnecting electric appliances such as ovens and fridges, as well as any wiring of other installations below one (1) metre off the floor level. These shall be secured above that height. Customers are responsible to restore them after completion of the installation works.
- 8.6 Floor covering such as carpet, vinyl, tiles and glued furniture, fixtures and appliances must be removed and floor must be free of oil, wax, and glue. The floor space also needs to be level before installation can occur. If the Customer requests the Company/installer to provide this service the additional cost is to be included in any quotation prior to commencement of the installation.
- 8.7 Neither the Company nor the installer are responsible for rectifying insufficient door clearance and are not liable for accidental damage as a result of remedy work carried out in good faith.
- 8.8 The Customer is to provide permanent power, light, and running tap water (toilet facilities) prior to commencement of work.
- 8.9 Car park for delivery truck must be provided within five (5) metres of the property, as all the products will be unloaded by hand. Delivery trucks are not to be expected to drive on sand.
- 8.10 When an on-site inspection is not done before installation commences the Company

has the right to request large view picture with higher definition of the property.

8.11 Installation duration may vary due to availability of product, structure of the area to be installed, accessibility, and other kinds of unforeseen condition. Extra time should be allowed beforehand to avoid any interruptions to the process of work.

8.12 Due to the character of the work, some small chips or marks occur on walls, skirting, and doors. The Company or agreed installer is not liable to repair any such damages.

8.13 Flooring will not be installed if the moisture level on the concrete slab and walls near covering areas are too high (see below).

8.14 Acoustic underlay (Impact underlay) is a must for upper level properties.

8.15 Neither the Company nor its contracted installers are accredited to remove asbestos. If asbestos is found on the job site it must be removed by accredited authorities, at additional cost to the Customer. When the site is declared safe by those authorities, the installation will be commenced or continued, as the case may be.

### **9. 'SUPPLY ONLY' FLOORING**

9.1 Prior to installation, the Customer and/or their installer must inspect all material to ensure that there are no visible defects and that all materials match the work order. The Customer/installer assumes sole responsibility for product inspection and acceptance of quality.

9.2 The Manufacturer and/or the Company makes no warranty or guarantee of the quality of the chosen installer's work or of a particular installation performed by them. The Manufacturer and/or the Company disclaims all liability for any errors or improprieties in the installation of its products by an installer.

9.3 It is the sole responsibility of the installer/Customer to ensure that site conditions are acceptable for the installation of the flooring:

(i) Floor must be level, and according to Australia Flooring Industry standard, a 3mm over any 3000mm radius is maximum acceptable deviation;

(ii) Floor surface must be clean, dry, smooth and level, while the indoor humidity should be between 40-65% RH;

(iii) Fitted flooring requires a minimum 10mm expansion gap between the floor boards and any internal or external wall structure. Floors up to 6m wide or where extra allowance for expansion is required (e.g. moist locations) cramping pressure needs to be considered along with providing an intermediate expansion joint;

(iv) All installation of flooring systems must be to Manufacturer's specifications. Tongue and Groove flooring systems are to be glued as per Manufacturer's specifications, and all Uniclic and 5G flooring systems are not to be glued as per Manufacturer's specifications.

9.4 The Manufacturer and/or the Company declines any responsibility for material failure resulting from or connected with site conditions or installation methods.

### **10. WINDOW FURNISHINGS**

10.1 Each window Shutter and each window Blind and each Awning ("Window Furnishings") is considered a Custom Order by the Company as it is a made-to-measure item with a nil non-deficit return policy.

10.2 The non-deficit return policy also applies to Customers who seek, for whatever reason, to change the original quoted order, including upgrades or non-standard items, after the product has been delivered and/or installed.

10.3 The Company will ensure all care and skill is taken by the Manufacturer according to the specifications set out in the Customer's Order.

10.4 The Manufacturer's warranty does not cover slight variations in colour or variations between the samples and the installed product. Neither does it cover any Customer complaint if windows or frames are not square.

10.5 Payment of invoices by the Customer for Custom Orders shall be:

(i) A deposit of 50% of the invoiced amount to confirm order.

(ii) An additional deposit of 25% of the invoiced amount on advice from the Company that the Custom Order has arrived in the Company's showroom, so installation can be scheduled.

(iii) Immediate final payment of the remaining balance of quoted works, plus any variations, is to be made on installation of the Window Furnishings

10.6 The Company can provide a suitable installer to install the Window Furnishings. Installers are contractors to the Company.

While all care is taken at the time of installation, no responsibility is accepted by the Company.

10.7 It is the sole responsibility of the Customer to ensure that site conditions are acceptable for the installation of each Window Furnishings.

### **11. DELIVERY OF GOODS**

11.1 Adequate labour etc. must be provided for unloading, as required.

11.2 Goods are delivered to ground floor only. Delivery agents are contractors to the Company.

11.3 The Company can refuse delivery to a Customer site if it is deemed dangerous to the driver/delivery agent.

11.4 The Company has no responsibility or liability for the on site storage and security of such Goods.

11.5 When delivering to site the driver/delivery agent can refuse delivery in the absence of a signature for receipt from an authorised person as proof of delivery.

11.6 Any period or date of dispatch quoted is an estimate only and the Company shall not be liable for any delay in delivery.

11.7 If a delivery is refused or unaccepted, re-delivery will be charged at twice the charged amount.

11.8 A \$75 handling fee will be charged on all returned goods.

### **12. CANCELLATION**

12.1 The Company does not normally give a refund if the Customer changes their mind or makes a wrong decision about goods.

12.2 If a Customer's order has already been supplied on-site by the Company and the Customer wishes to make a non-defect return of the products, a 25% handling fee of the cost of the flooring system will be charged.

12.3 All products returned must be fit for resale. Delivery cost incurred in the return of non-defect products to the Company will be met by the Customer.

### **13. TITLE**

13.1 Legal and beneficial ownership of the Goods will not pass to the Customer until such time as the Goods have been paid in full in cash or cleared funds.

### **14. CLAIMS AND RETURNS**

14.1 Subject to the Competition and Consumer Act and the Australian Consumer Law, no claim for defects in the manufacture of goods can be made by the Customer once the goods are (i) cut, or (ii) installed, or (iii) cut and installed.

14.2 Any complaint on the standard of workmanship of an installation must be submitted in writing and sent to the Company within seven (7) days of completion of installation. It must clearly state and explain the problems and expected resolution.

14.3 Before any complaints or dispute is considered or addressed by the Company or agreed installer, all the invoices/outstanding fees must be paid in full. The Company or agreed installer takes no responsibility for any damage made by the Customer or the Customer's tradesperson.

14.4 A valid warranty claim will be addressed on affected area only with the same or similar product of equal value.

### **15. WARRANTY**

15.1 All Goods supplied are covered by such Warranties as are specified by the Manufacturer and supplied subject to the product standards detailed by the Manufacturer.

15.2 Such Warranties are to the original Customer who purchased the Goods.

15.3 All Warranties do not apply until full payment of invoice has been made by the Customer.

### **16. WARRANTY EXCLUSIONS**

16.1 The following Warranty exclusions apply:

- Flooring installed in full bathrooms with a shower or tub.
- Man-made or acts of God including but not limited to, leaking or broken plumbing, fire, flood, earthquake, or standing water during or after construction.
- Damage caused by negligence, accidents, misuse or abuse but not limited to, not taking proper precautions to protect furniture legs and feet with felt protectors, dirty or improper casters, moving heavy objects without a dolly and/or protective plywood beneath.
- Damage caused by vacuum cleaner beater bar or hard heads.
- Damage caused by appliances, furniture and castors.
- Damage caused by cutting from sharp objects.
- Reduction in gloss, scratches or indentation due to sand, pebbles, or other abrasives, pets, insects, construction traffic, spike-heeled shoes, or failure to maintain the floor as required.
- Preparation materials and fasteners including, but not limited to, uneven subfloor surfaces, floor deflection or voids in the subfloor.
- Noises (squeaks, etc.) associated with anything other than the mis-manufacture of the flooring.
- Naturally occurring wood characteristics such as variations in grain, colour, mineral streaks, knots and checking.

- Changes in colour due to exposure to sunlight and age.
- Natural expansion and contraction resulting in separation between boards or damage caused by low (i.e. Dry conditions) or excessive humidity.
- Colour, shade or texture variations between samples, printed colour photography or replacement flooring and the actual material.
- Colour variations between flooring and/or samples and other flooring or wood products, with which the Customer may wish to match (e.g. cabinets, stair railings, trims, etc.)
- Surface checking (fine surface split) as a result of the wood/bamboo losing moisture.
- Products designated as “thrift”, “antique”, “tavern”, “bargain”, “cabin grade”, “seconds”, “economy grade”, “rustic”, “closeout”, “off-goods” or “non-standard”, are sold ‘as is’.
- Floors installed in other than owner-occupied or tenant-occupied residences.
- Commercial installations of residential products covered by a residential warranty.
- Construction or installation-related damage.
- Floors damaged or adhesive breakdown caused by subfloor moisture or water damage, including without limitation, due to broken or leaking water pipes, flooding, wet-mopping spills or weather conditions.
- Installation defects, including installations made: (i) In violation of applicable state or local housing or building codes, or (ii) Contrary to written instructions furnished with the product.

### **17. FORCE MAJEURE**

17.1 The Company will not be liable for any breach of contract due to any matter or thing beyond the Company’s control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident).

### **18. GOVERNING LAW AND JURISDICTION**

18.1 These Terms and the Contract are governed by the laws of New South Wales, Australia and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia, in respect of any dispute arising.

18.2 If any provision of these Terms is found to be invalid or unenforceable by a court of law, such invalidity or unenforceability will not affect the remainder of these Terms, which will continue in full force and effect.

### **19. GENERAL**

19.1 These Terms and Conditions may be amended at any time without notice.

19.2 All Goods and services provided by the Company and its representatives are provided in good faith. Final responsibility for the choice of material, fabric, colour, and/or product, rests solely with the Customer.

**THESE ADDITIONAL NOTES FORM PART OF THE TERMS AND CONDITIONS AND ARE TO BE READ IN CONJUNCTION WITH THEM**

### **1A. ACKNOWLEDGEMENTS**

The Customer acknowledges and agrees...

1A.1 Timber is a natural material and variations in colour, texture, and other naturally occurring features occur between pieces and batches of the same species. Sanding and finishing also causes variation in appearance.

1A.2 Care should be taken in making a selection based on a single sample. In all cases, timber flooring supplied in job lot quantities will contain some variations from job to job and from the samples on display

1A.3 Timber flooring while dried during production continues to take-up and give up moisture during its life, depending on weather, aspect, and local conditions. In so doing, some movement and change to the surface of the floor are to be expected and will be apparent. This is normal and may include checking and fine cracks on and between boards and changes in colour.

1A.4 Wide engineered timber floors including A, B, C, D grades (it is so called “Mixed Grade”) in one plank means knots, grains, colour variation, and minor cracks are to be expected.

1A.5 Timber flooring and Bamboo flooring are natural material and will change colour over time and with exposure to sunlight. Such changes are normal and the Company or installer does not take any responsibility for such changes.

1A.6 The hollow sounding areas and occasional squeaking boards can occur due to undulations in the sub floor and this is not a defect in the flooring. The Company or installer may elect to remedy the hollow sounding areas at the installer’s discretion and at the Customers cost.

1A.7 The Company or installer has the right to stop the installation process when clients make complaints from reasons above.

### **2A. RADIANT HEAT**

2A.1 Engineered flooring products are approved and warranted over radiant heated subfloors provided that the floors are installed in strict accordance with the installation guidelines pertaining to radiant heated subfloors: Solid wood products are not warranted.

2A.2 The following guidelines must be applied throughout the life of the floor in order to reduce the affects of radiant heat on engineered wood floors. Even when these guidelines are followed it is still possible your flooring may experience some cracks (checking) on the surface, gapping between boards, or delamination of boards. These symptoms are not covered by Warranty. The temperature and humidity levels described below must be maintained otherwise any warranty, expressed or implied, will be voided.

- To minimise the effect rapid changes in temperature will have on the moisture content of the wood flooring an outside thermostat should be installed. If one is not present, it is suggested the Customer consider installing such. Unlike conventional heating systems, radiant systems work most effectively and with fewer traumas to the wood floor if the heating process is gradual, based on small incremental increases in relation to the outside temperature.

- Prior to installation proper moisture testing must be performed. Moisture content between substrate and wood flooring should

not exceed 4% for engineered wood products

- Radiant heating system must be in operation and running continuously at least 6 days prior to installation.

- For glue down installations turn system off immediately prior to installation and after the flooring is installed, slowly raise the temperature to the preferred comfort level (over at least a five (5) day time frame) beginning two days after installation or at the onset of colder weather conditions.

- The radiant heat system must be controlled and the surface temperature of the flooring must never be allowed to exceed 25°C. The proper humidity level must be maintained within your home at all times during the year. Use of a humidification system may be required to maintain proper humidity levels to avoid excessive drying of the wood flooring.

- Seasonal gapping should be expected.