

TERMS & CONDITIONS

We deliver most goods on our own dedicated transport fleet to ensure a speedy and problem free service: however in the unlikely event that goods are delivered wrong or damaged, it is the responsibility of the customer to ensure sufficient time is allowed for a replacement to be sent.

1. DEFINITIONS

In these terms and conditions, the following words shall have the following meanings:

“Buyer” shall mean any person, firm or company, to whom the Company supplies Goods or Services or with whom the Company enters into negotiations for the supply of Goods or Services.

“Company” shall mean Woodpecker Trading Company trading as Kenton Floors.

“Goods” shall mean products, articles or things which are supplied by or which are the subject of negotiations for supply by the Company to the Buyer.

“Services” shall mean services are supplied by or which are the subject of negotiations/or supply by the Company to the Buyer.

2. MAKING THE CONTRACT

2.1 The Company’s salesmen are not authorised representatives and are not authorised to accept confirm or vary any order nor to make any representation or promise on the Company’s behalf

2.2 Any estimate/quotation which comprises an invitation to treat is open for a period of 30 days only from the date thereof, provided that the Company has not previously withdrawn it. Any order issued by the Buyer is subject to acceptance by the Company and a contract will only be formed when the Company has accepted the Buyer’s offer to buy in writing. Any offer made by the Buyer must be confirmed in writing by the Buyer.

2.3 All orders are placed under these terms and conditions alone.

2.4 These terms and conditions exclude any other terms and conditions inconsistent therewith which a Buyer might seek to impose even though such other terms and conditions may be submitted in a later document and/or purport to exclude or supersede any terms or conditions with them or may be contained in any offer acceptance or counter-offer made by the Buyer.

2.5 All floors supplied by the Company must be fitted in accordance with BS8201 (1987).

2.6 No variation of these terms and conditions is permitted unless expressly accepted by a Director of the firm in writing.

3. CANCELLATION

3.1 No cancellation by the Buyer is permitted except where expressly agreed by a Director of the Company in writing.

3.2 The Buyer will in the event of agreed cancellation by the Buyer indemnify the Company fully against all expenses incurred up to the time of such cancellation together with by way of liquidated damages a sum of 33 1/3% of the contract price which shall be paid by the Buyer to the Company forthwith,

4. PRICE

4.1 All prices quoted are those ruling at the date of dispatch or supply.

4.2 Unless otherwise stated all prices quoted are nett, exclusive of VAT, and in the case of Goods ex works.

4.3 The Company reserves the right at any time prior to delivery of the Goods or supply of Services to adjust the price to take account of any increase in the cost of raw materials, labour or services or any currency fluctuations affecting the cost of imported materials or services.

5. TERMS OF PAYMENT

5.1 All sums become due and payable under these terms and conditions not later than 14 days from date of invoice.

5.2 Time for payment shall be of the essence.

5.3 The Company reserves the right to charge interest at 2.5 per centum per month on all overdue accounts, such interest being deemed to accrue on a day to day basis from the due date for payment under clause 5.1.

5.4 The Buyer shall have no right to set off, statutory or otherwise.

5.5 If the Buyer (being a Company) has a petition for its winding-up

or passes a resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver appointed or all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangement with its creditors or commits a material or serious breach of this Agreement (and in the case of such a breach being remediable fails to remedy it within 7 days of receiving notice to do so) he will be deemed to have repudiated the Contract.

5.6 The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any Order, supplying any Goods or Services.

5.7 The Buyer accepts that in the event of non payment within the payment period the Company will resort to legal action to recover the debt in this instance a 20% surcharge will be added to the outstanding amount to cover administration and agents fees.

5.8 Where the Buyer is a company the directors agree to guarantee payment personally, both jointly and severally, of any outstanding amounts due in the event of their company being unable to meet its financial commitments or becoming insolvent.

6. DELIVERY

6.1 Delivery will be deemed to have been effected when the Goods are ready for collection at the premises of the Company or as the case may be the premises of the suppliers to the Company in circumstances where the Goods are delivered direct from such suppliers.

6.2 Time of delivery is not of the essence.

6.3 The Company shall not be liable for any loss whatsoever or howsoever arising caused by its non-delivery or by the failure to make Goods ready for collection on the due date.

6.4 The Company reserves the right to make delivery by installments and to tender a separate invoice in respect of each installment.

6.5 When delivery is to be by installments or the Company exercises its right to deliver by installments under clause 6.4 hereof or if there be delay in the delivery of any one or more installments for whatever reason this will not entitle the Buyer to treat the contract as repudiated and/or to damages.

6.6 Deviations in quantity between the Goods delivered and Goods ordered representing not more than 10 per cent by value shall not give the Buyer any right to reject the Goods or to claim damages and the Buyer shall be obliged to accept and pay at the contract rate for the quantity of the Goods delivered.

7. SUPPLY OF SERVICES

7.1 Time for the supply of Services is not of the essence.

7.2 The Company shall not be liable for any loss whatsoever or howsoever arising caused by its failure to supply Services or any part thereof on the due date.

7.3 The Company reserves the right to supply Services by installments and to tender a separate invoice in respect of each installment.

7.4 When the supply of Services is to be by installments or the firm exercises its right to supply Services by installments under clause 7.3 hereof or if there be a delay in the supply of any one or more installments of Services for whatever reason this will not entitle the Buyer to treat the contract as repudiated or to damages.

7.5 Deviation in the quantity between Services supplied and the Services ordered representing not more than 10 per cent by value shall not give the Buyer any right to reject the Services or to claim damages and the Buyer shall be obliged to accept and pay at the contract rate for the quantity of the Services supplied.

8. RISK AND THE PASSING OF PROPERTY IN GOODS

8.1 Risk in the Goods shall pass to the Buyer when the Goods are delivered.

8.2 Notwithstanding risk in the Goods passing in accordance with clause 8.1 hereof title in the Goods shall not pass to the Buyer until whichever shall be the first to occur of the following:-

8.2.1 payment being received by the Company for the Goods and Services and no other amounts then being outstanding from the Buyer to the Company in respect of other Goods or Services supplied by the Company

8.2.2 the Buyer selling the Goods in accordance with the provisions of these terms and conditions in which case title to the Goods shall be deemed to have passed to the Buyer immediately prior to delivery of the Goods to the Buyer’s customers; and

8.2.3 the Company waiving its rights under this clause 8.2 in respect of specified Goods or Services whereupon title to the said Goods shall forthwith vest in the Buyer.

8.3 The Buyer is licensed by the Company to use or to agree to sell the Goods delivered to the Buyer subject to the express condition that the entire proceeds of any sale are held in trust for the Company and are not mixed with other moneys or paid into an overdrawn bank account and shall at all times be identifiable as the Company’s moneys.

8.4 Until title to the Goods passes:

8.4.1 The Buyer will hold the Goods as fiduciary agent and bailee for the Company;

8.4.2 the Goods shall, subject to clause 8.3, be kept separate and distinct from all other property of the Buyer and of third parties and in good and substantial repair and condition and be stored in such a way as to be clearly identifiable as belonging to the Company;

8.4.3 the Company may at any time revoke the power of sale and use contained in clause 8.3 by notice to the Buyer if the Buyer is in default for longer than 14 days in the payment of any sum whatsoever due to the Company (whether in respect of the Goods or any other Goods or Services supplied at any time by it to the Buyer) or if the Company has bona fide doubts as to the solvency of the Buyer;

8.4.4 The Buyer’s power of sale and use contained in clause 8.3 shall automatically cease if the Buyer has a petition presented for its winding-up or passes a resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver appointed of all or any part of its assets or becomes bankrupts or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceeding under foreign law;

8.4.5 upon determination of the Buyer’s power of sale and use pursuant to clause 8.4.3 or clause 8.4.4. the Buyer shall place any of the Goods in its possession or under its control and unsold at the disposal of the Company and the Company shall be entitled to enter upon any premises of the Buyer for the purpose of removing such Goods.

8.5 The Buyer shall at any time be entitled to appropriate any payments made by the Buyer in respect of any Goods or Services in settlement of such invoices or accounts in respect of such Goods or Services as the Company may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Buyer.

9. LIEN AND STOPPAGE

9.1 Until such time as the title in the Goods has passed to the Buyer the Company has the right to withhold delivery if the Buyer (being a Company) has a petition presented for its winding-up or passes a resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver appointed of

- all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law.
- 9.2 When the title in the Goods has passed to the Buyer and the time for payment has fallen due but payment has not been made or if the Buyer (being a Company) has a petition presented for its winding-up or passes a resolution for voluntary winding-up otherwise than for the purposes of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver appointed of all or any part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under foreign law the Company has
- 9.2.1 a lien on the Goods so long as the Company is in possession of them
- 9.2.2 a right of stoppage in transit
- 9.2.3 a right of resale
- 9.3 For the avoidance of doubt it is hereby declared that nothing in this clause shall affect the rights given to the Company by ss.38-48 of the Sale of Goods Act 1979.
10. INSPECTION/SHORTAGES
- 10.1 The Buyer is under a duty to inspect the Goods forthwith on delivery and satisfy himself as to the due performance of Services forthwith after supply.
- 10.2 The Company shall be under no liability for any defects or shortages that would be apparent on careful inspection if the terms of this clause are not complied with, and, in any event will be under no liability if a written complaint is not delivered to the Company within 7 days of delivery or supply detailing the alleged defect or shortage.
- 10.3 In all cases where defects or shortages in respect of Goods are complained of the Company shall be under no liability in respect thereof unless an opportunity to inspect the Goods is given to the Company before any use is made thereof or any alteration or modification is made thereto by the Buyer.
- 10.4 Subject to clauses 10.2 and 10.3 the Company shall make good any defect or shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonably able to do so, but otherwise shall be under no liability whatsoever or howsoever arising from such defect, shortage or damage.
- 10.5 Subject to clause 10.4 the Company shall remedy any defect in the supply of Services as soon as it is reasonably able to do so but otherwise shall be under no liability whatsoever or howsoever arising from such defect
11. WARRANTY
- 11.1 No representation or warranty is given as to the suitability or fitness of the Goods or Services for any particular purpose and the Buyer shall satisfy himself in this respect and shall be totally responsible therefore
- 11.2 If the Goods are in such a state or the Services so defectively supplied as would but for this condition entitle the Buyer to repudiate the contract and/or claim damages from the Company the Company reserves the right to repair or replace the Goods or perform the Services (or the relevant part thereof) again.
12. LIABILITY
- 12.1 Introduction
- 12.1.1 Nothing in clause 12 shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from negligence.
- 12.1.2 Each of the sub-clauses in clause 12 is to be treated as separate and independent
- 12.1.3 The Company is willing to undertake liability additional to that provided by this clause in exchange for a higher price
- 12.2 EXCLUSION
- 12.2.1 Clause 12.2 only covers defects caused by faulty design, manufacture, materials or workmanship. It does not cover defects caused by abnormal use, misuse or neglect.
- 12.2.2 The Company agrees that if any defect covered by clause 12.2 is discovered during the period of three months commencing with the date of delivery or supply, the Company will remedy any defect at its own expense or, in the case of Goods if it chooses to do so, replace them.
- 12.2.3 The Buyer cannot claim the benefit of this clause unless - he informs the Company of the relevant defect in writing within 7 working days of discovering it; and - in the case of Goods he returns the Goods to the Company at his own expense
- 12.2.3a The company will not accept any liability for defects in goods once they have been fitted. It is the buyers responsibility to check the goods prior to installation.
- 12.2.4 The risk of accidental loss whilst the Goods are being returned will be borne by the Buyer
- 12.2.5 In consideration for receiving the benefit of this clause, the Buyer agrees that, apart from those terms set out in clause 10 and 11, all other terms, whether conditions, warranties or innominate terms, express or implied, statutory or otherwise, are excluded from the contract between the Company and the Buyer to the extent permitted by law (except where the Buyer deals as consumer within section 12 of the Unfair Contract Terms Act 1977 when the terms implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 shall be implied into the contract).
- 12.3 Exclusion of Consequential Loss
- The Company shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of a duty in contract or tort or in any other way (including loss arising from the Company's negligence). Non-exhaustive illustrations of consequential or indirect loss would be
- loss of profits
 - loss of contracts
 - damage to property of the Buyer or anyone else, and
 - personal injury to the Buyer or anyone else (except so far as such injury is attributable to the Company's negligence)
- 12.4 Limitation
- The Company's total liability for any one claim or for the total of all claims arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed £1000 Or the contract price whichever is the greater.
13. FORCE MAJEURE
- 13.1 The Company shall not be liable for any failure to deliver the Goods or perform the Services arising from circumstances outside the Company's control.
- 13.2 Non-exhaustive illustrations of such circumstances would be act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, Government action or regulations (UK or otherwise), delay by suppliers, accidents and shortage of materials, labour or manufacturing facilities.
- 13.3 Should the Company be prevented from delivering the Goods or performing the Services in the above circumstances, it shall give the Buyer written notice of this fact as soon as reasonably practicable after discovering it.
- 13.4 If the circumstances preventing delivery of the Goods or performing the Services are still continuing three months after the Buyer receives the Company's notice, then either party may give written notice to the other cancelling the contract.
- 13.5 If the contract is cancelled in this way, the Company will refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount the Company is entitled to claim from the Buyer) but the Company will not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver the Goods or perform the Services.
14. SALES PROMOTION DOCUMENTATION
- Whilst the Company takes every precaution in the preparation of its catalogue, technical circulars, price lists and its other literature, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.
15. NOTICES
- Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified overleaf or such other address as that party may from time to time notify in writing and shall be deemed to have been served, if sent by post, 48 hours after posting.
16. CANCELLATION
- The Company is prepared to accept the cancellation of a contract provided that it is in writing and is received by the Company:
- (a) in the case of special orders before the manufacture of the goods has commenced:
 - (b) in the case of goods ordered from stock before the goods have been despatched.
 - (c) but subject to liability for any losses incurred by the Company in disposing of the goods.
17. MATCHING
- For technical reasons it is not always possible to obtain an exact colour match between different production batches which have the same colour description. The Company therefore recommends that all products should be of the same batch. The Company will be under no liability whatsoever in respect of any mismatching of tiles and sheet with the same colour description where the tiles and sheet are of different batches.
18. ADVICE AND WARNINGS
- (a) Without prejudice to any of the Company's rights under these terms or common law or statute the Company shall not be liable for any loss or damage suffered by the Buyer or any third party as a result of failure to follow any of the Company's recommendations with regard to the goods.
19. STILETTO HEELS
- Where Stiletto heeled shoes are in use, floors are liable to suffer damage from intense point loading pressure. We therefore cannot be held responsible for any loss in appearance where such heels are in use.
20. SUITABILITY OF GOODS
- If requested in writing to do so, we will use our utmost endeavours to give sound and honest advice as to the suitability of goods sold by us for a particular use or purpose, but we do not represent or warrant (and nobody has authority to represent or warrant) the fitness of any goods for any particular purpose or use, whether such use or purpose is known to us or not or any advice requested regarding installation.
21. ASSIGNMENT
- Neither the Company nor the Buyer shall assign or purport to assign or transfer the contract or the benefits thereof to any other person without prior written consent of the other.
22. PROPER LAW AND JURISDICTION
- The Contract shall be governed by and construed in accordance with English law and all disputes arising in connection with the contract shall be submitted to the jurisdiction of the English Courts.
23. HEADINGS
- The headings of these conditions are for convenience only and shall have no effect on the interpretation thereof.

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Kenton Floors reserves the right to update and amend these terms and conditions without notice.