

EcoTile Flooring Ltd (trading as EcoTile) (registered number GB08483743) whose registered office is at Unit 15 North Luton Industrial Estate, Sedgwick Road, Luton, LU4 9DT (“we” or “us”)

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

Your attention is particularly drawn to the exclusions and limitations of liability at Condition 8.

1. DEFINITIONS AND INTERPRETATION

In these Conditions:

1.1 the following words and expressions have the following meanings and, in addition, any words and expressions defined in any Condition will have the same meaning when used in any other Condition:

- “Business Day” a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales
- “Change in Law” the coming into effect of a new applicable law or a change in applicable law after the date of this Agreement
- “Charges” the charges for the Services set out in our quotation, as those charges may be varied from time to time in accordance with **Condition 6.4**
- “Goods” the goods as set out in the Order
- “Liability” liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party’s obligations under the Contract and/or any defect in any of the Goods, in each case howsoever caused including if caused by negligence
- “Order” your order for the supply of goods and services (as applicable) by us or your acceptance of our quotation
- “Order Acknowledgement” our written acceptance of the Order either in hard copy or electronic form
- “Prices” the prices for the Goods set out in our quotation, as those prices may be varied from time to time in accordance with **Condition 6.4**
- “Services” the services (if any) as set out in the Order
- “Specification” the written specification for the Goods set out in our brochure, catalogue and/or on our website at www.ecotileflooring.com, of which all dimensions and specifications are provided as a guide only and the specific characteristics of each tile may vary subject to external factors
- “you” or “your” the person named as the customer in the Order

- 1.2 all headings are for ease of reference only and will not affect the construction or interpretation of these Conditions;
- 1.3 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.4 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time; and
- 1.5 any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them; and
- 1.6 references to “in writing” or “written” include facsimile and e-mail or other methods of electronic messaging;
- 1.7 any reference to time of day is to London time; and
- 1.8 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party.

2. CONTRACT FORMATION

- 2.1 Any quotation given by us will be valid for a period of 30 days from and including its date, and will constitute an invitation to treat and not an offer.
- 2.2 The Order constitutes an offer by you to purchase the Goods and Services (if applicable) from us on these Conditions. A contract for the supply of Goods and Services (if applicable) by us to you on these Conditions will be formed when we accept the Order by issuing an Order Acknowledgement to you. For the avoidance of doubt, we are under no obligation to accept the Order.
- 2.3 These Conditions are the only terms and conditions on which we will supply goods and services to you and will apply to the exclusion of all other terms and conditions including any terms and conditions which you purport to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.
- 2.4 Delivery of Goods or commencement of the performance of the Services will be deemed conclusive evidence of your acceptance of these Conditions.

- 2.5 We will be entitled, at our discretion, to deliver Goods by separate instalments. We will be entitled to invoice the Price for each instalment separately in accordance with **Condition 6.5**. Each instalment will be deemed to be a separate contract and no cancellation or termination of any one contract relating to an instalment will give you the right to cancel or terminate any other contract.
3. **THE GOODS**
- 3.1 We will be entitled at any time to:
- 3.1.1 vary the design, finish, or specification of Goods and/or their packaging; and/or
- 3.1.2 substitute any materials or parts which are used in the Goods and which are unavailable for any reason with alternative materials or parts
- if:
- 3.1.3 this does not materially affect their quality or performance; or
- 3.1.4 this is necessary to comply with any health and safety or other legal requirements.
- We will use reasonable endeavours to give you written notice of any such variation or substitution.
- 3.2 With the exception of the Specification, all samples, drawings, descriptive and illustrative matter and advertising issued or published by us whether in catalogues, brochures, websites, other promotional material or otherwise are for the sole purpose of giving an approximate idea of the relevant Goods. The Contract is not a sale by sample.
- 3.3 We will fulfil Orders from a particular manufacturing batch, but multiple Orders may be fulfilled from multiple manufacturing batches. If you decide to increase your Order after we have Delivered the Goods, we cannot guarantee that the additional Goods will be provided from the same manufacturing batch.
4. **DELIVERY**
- 4.1 We will deliver the Goods to the address specified in the Order Acknowledgement and you will be responsible for off-loading the Goods from the delivery vehicle. We will inform you not less than 1 day in advance of the date on which the Goods will be delivered. Delivery of the Goods ("**Delivery**") will be deemed to occur when they arrive at the delivery address
- 4.2 Where Goods are to be delivered outside the United Kingdom, the Goods will be delivered in accordance with the Incoterms 2020 agreed and specified in the Order Acknowledgement. To the extent only of any conflict or inconsistency between the applicable Incoterms 2020 and these Conditions, the applicable Incoterms 2020 will take precedence.
- 4.3 We will use reasonable endeavours to deliver Goods on the estimated delivery date set out in the Order Acknowledgement, but time for delivery of the Goods will not be of the essence of the Contract. Any delivery dates given by us are estimates only.
- 4.4 If you require us to Deliver the goods within your premises to a designated area, this must be agreed in advance in writing with us and may be subject to extra charges.
- 4.5 Subject to clause 8.4, if:
- 4.5.1 the Goods have not been delivered under **Condition 4.1** or 4.2 within 10 Business Days from and including the estimated delivery date set out in the Order Acknowledgement; and
- 4.5.2 we fail to deliver those Goods under **Condition 4.1** or 4.2 within 10 Business Days of a written notice referring to this **Condition 4.5** and setting out your rights under it being given by you,
- you will be entitled to cancel the Contract by giving written notice to that effect to us. If you exercise your right of cancellation we will refund to you any monies which you have already paid to us under the Contract and you will not be required to pay any further monies to us under the Contract. Subject to **Condition 8.5**, this is our sole Liability for our failure to deliver the Goods. Your right to cancel under this clause 4.5 will not apply where any delay in deliveries is due to an act or omission caused by a third party.
- 4.6 After you receive an Order Acknowledgement, you will be entitled to cancel your Order, provided that:
- 4.6.1 you notify us in writing of your intention to cancel your Order; and
- 4.6.2 you indemnify us against the cost of your cancelled Order and any applicable Delivery charges which we have already incurred in fulfilling your Order.
- 4.7 Save as provided in **Condition 4.5**, you will not be entitled to cancel the Contract or to reject any Goods by reason of a delay in delivery or failure to deliver.
- 4.8 If Delivery occurs but you fail to accept Delivery of the Goods we will be entitled to store or arrange for storage of the Goods until you accept Delivery of them. We will attempt to re-Deliver the Goods on two subsequent occasions, giving you notice of estimated Delivery dates, and if you fail to accept Delivery on both these occasions, we will deem the Contract cancelled. In such a case you will not be entitled to a refund of any monies paid in respect of the Goods and we will be entitled to recover the cost of Delivery, attempted re-Delivery and additional storage costs incurred by us as a result from you, to the extent not already paid for in the monies received.
- 4.9 Offloading & Distribution: All quotes are based on the strict understanding that there will be suitable offloading facilities suitable for unloading the flooring at site for the duration of the contract. Offloading facilities will be suitable for unloading palletised goods via the use of a forklift truck or other suitable vertical lift facilities suitable for unloading from a commercial vehicle and transporting the goods to the area where the flooring is to be fitted. It is the customers responsibility to advise if suitable unloading facilities are unavailable and that a vehicle with a tail lift or other method of unloading is required and any additional costs incurred will be the responsibility of the customer to pay.
5. **PASSING OF RISK AND RETENTION OF TITLE**
- 5.1 Risk of damage to or loss of the Goods will pass to you on Delivery or in accordance with the Incoterms agreed and specified in the Order Acknowledgement. Where you are responsible for collecting the Goods, risk in the Goods will pass to you on collection.
- 5.2 Subject to **Conditions 5.3** and **5.4**, legal and beneficial ownership of the Goods will not pass to you until we have received in full in cleared funds:
- 5.2.1 all sums due to us in respect of the Goods; and
- 5.2.2 all other sums which are or which become due to us from you on any account whatsoever.
- 5.3 You may resell the Goods in the ordinary course of your business and, if you do so, legal and beneficial ownership of Goods will pass to you immediately prior to you entering into a binding contract for the sale of those Goods.
- 5.4 We may, by giving written notice to you, pass legal and beneficial ownership of the Goods (or any of them) to you at any time before such ownership would otherwise have passed to you.

- 5.5 Until ownership of the Goods has passed to you, you will:
- 5.5.1 hold the Goods on a fiduciary basis as our bailee;
 - 5.5.2 store the Goods (at no cost to us) separately from all other goods in such a way that they remain readily identifiable as our property;
 - 5.5.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.5.4 not, without our prior written consent, annex any Goods to your premises;
 - 5.5.5 maintain the Goods in satisfactory condition; and
 - 5.5.6 procure that any insurance proceeds received in respect of lost or damaged Goods are paid to us, to the extent required to satisfy your indebtedness to us.
- 5.6 You may use the Goods in the ordinary course of your business before ownership has passed to you.
- 5.7 If you resell any Goods, you will hold such part of the proceeds of sale as represents the amount owed by you to us in trust for us and will account to us accordingly.
- 5.8 Your right to possession, use and resale of the Goods will terminate immediately if, before ownership of the Goods passes to you in accordance with **Conditions 5.2, 5.3 or 5.4**:
- 5.8.1 you have a receiver, administrator or provisional liquidator appointed; you are subject to a notice of intention to appoint an administrator; any person takes any step or action to appoint an administrator in respect of you; you pass a resolution to appoint an administrator in respect of yourself or for your winding-up (save, in the case of a resolution for winding up, for the purpose of a solvent restructuring; have a winding up order made by a court in respect of you; you or any other person proposes or you enter into any composition or arrangement with creditors (other than relating to a solvent restructuring); cease to carry on business; or have any steps or actions taken in connection with any of these procedures; or
 - 5.8.2 are the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction or are the subject of any proceeding in any Member State of the European Union which is capable of recognition under the EC Regulation on Insolvency Proceedings (EC 1346/2000) or the EU Regulation on Insolvency Proceedings (Recast) (EU 2015/848) or are the subject of an application for the recognition of a foreign insolvency proceeding under the Cross-Border Insolvency Regulations 2006 (SI 2006/1030); or
 - 5.8.3 we give you written notice that we have any reasonable concerns regarding your financial standing; or
 - 5.8.4 you fail to pay any sum due to us under the Contract on or before the due date, or you are in breach of any of your obligations under the Contract, or any other contract between us and you.
- 5.9 Once we have delivered the Goods to you, we will be entitled to recover payment for the Goods (including by way of an action for the price) notwithstanding that ownership of any of the Goods has not passed from us.
- 5.10 You grant, and will procure that the owner of any relevant third party premises grants, us, our agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where your right to possession, use and resale has terminated, to recover them.
- 5.11 If your right to possession, use and resale of the Goods terminates in accordance with **Condition 5.8**, we will be entitled to issue you with a credit note for all or any part of the price of the Goods together with value added tax thereon.
- 5.12 Our rights contained in this **Condition 5** will survive expiry or termination of the Contract however arising.
6. **PRICE AND PAYMENT**
- 6.1 You will pay the Prices and Charges to us in accordance with this **Condition 6**.
- 6.2 The Prices and Charges are, unless otherwise specified by the Incoterm pursuant to **Condition 4.2** (if applicable) and unless stated otherwise in writing, exclusive of insurance, carriage and delivery costs and those travel, accommodation and subsistence expenses reasonably and properly incurred by us from time to time in performing the Services ("**Expenses**") which will be payable by you in addition to the Prices and Charges.
- 6.3 Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time.
- 6.4 We will be entitled to vary the Prices and/or Charges at any time by giving written notice to you to reflect any variation in the cost of supplying the Goods and/or Services which arises as a consequence of any Change In Law, any variation in your requirements for the Goods and/or Services, any information provided by you being inaccurate or incomplete or any failure or delay by you in providing information.
- 6.5 We will be entitled to invoice you for the Prices for the Goods and any packaging, insurance, carriage and delivery costs payable by you in addition to the Prices and the Charges and any Expenses payable by you in addition to the Charges following us issuing the Order Acknowledgement.
- 6.6 Each invoice will be payable by you within the time period specified on the Order Acknowledgement and we reserve the right to require payment before Delivery. You will make all payments in the currency agreed in our quotation and in available cleared funds by cheque or electronic transfer to the bank account detailed in the Order Acknowledgement.
- 6.7 Notwithstanding any purported contrary appropriation by you, we will be entitled, by giving written notice to you, to appropriate any payment by you to any invoice issued by us.
- 6.8 If any sum payable under the Contract is not paid on or before the due date for payment we will be entitled to charge you interest on that sum at a rate of 8% above the Bank of England base rate. Such interest to accrue on a daily basis from the due date until the date of payment. The parties acknowledge that this is a substantial remedy under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.9 If you fail to make any payment due to us under the Contract on or before the due date or if any of the events or circumstances set out in **Conditions 5.8.1 or 5.8.3** occur all invoices issued will immediately become due and payable.
- 6.10 Save as otherwise expressly provided in these Conditions or required by law, all payments to be made by you to us under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 6.11 Where we agree to set up a credit account with you, we require a 100% deposit to be paid to us in respect of first Orders. This deposit will be invoiced in the usual way in accordance with **Condition 6.5**.

- 6.12 Following expiry or termination of the Contract:
- 6.12.1 we will be entitled to invoice all Prices and Charges and any insurance, carriage and delivery costs and Expenses incurred which have not yet been invoiced; and
- 6.12.2 all invoices (including any invoices issued under **Condition 6.12.1**) will become immediately due and payable by you.
7. **WARRANTY**
- 7.1 EcoTile Flooring Ltd warrants, for the period of ten years from the date of delivery ("Warranty Period") that the Goods will: subject to section 7.2, conform to the Specification in all material respects; and be free from material defects in design, materials or workmanship,
- 7.2 You acknowledge that the Specification (including dimensions) is provided as a guide only and that the specific characteristics of the Goods may vary subject to external factors. Please note that in the absence of section drawings detailing specifically the area that's requires covering by EcoTile, our quantities are provisional and any extra materials, labour and / or miscellaneous costs will be charged at the same rate as per our accepted quoted and / or your order.
- 7.3 Environmental Conditions: Site conditions prevailing at the time of installation and beyond must comply with our relevant installation instructions and the recommend use guidelines. No allowance will be made in in our pricing to achieve the correct environmental conditions and in the event that any additional costs are incurred such as heating equipment, dehumidifiers etc. these costs will be the customers responsibility to pay.
- 7.4 Subfloor: We have not made any allowance in our offer for any subfloor preparation other than that stated within the pricing document / quotation. Any additional work required and undertaken will be charged extra (including materials, labour, delivery etc.)
- 7.5 Extra Over Cutting: We have not included for any material wastage or additional labour involved in fitting the product into or around electrical outlet boxes, grommets, diffusers, racking, storage equipment, mezzanines, door and door thresholds (including removing and cutting down doors or thresholds to allow the free clearance of the doors or the fitting of the flooring). Any additional labour, materials etc. required to undertake such work will be charged at the prevailing rate.
- 7.6 If, at any time during the Warranty Period, you become aware of a breach of either of these warranties, you will: give written notice of the breach to us, such notice to be given 3 days after you become aware of the breach and prior to expiry of the Warranty Period; at our option either return to us (at our cost) the relevant Goods, with the original packaging, or permit us or our agent or sub-contractor to inspect it at your premises; and provide us with all information and assistance which we may reasonably require to investigate the alleged breach.
- 7.7 Our only Liability for breach of either of these warranties will be, at our option, to repair or replace the relevant Goods. We will replace the relevant Goods free of charge provided that:
The tiles are installed in accordance with EcoTile Flooring Ltd installation instructions (specifically that installation has taken place when the temperature is above 15 degrees centigrade and a minimum of a 5mm gap has been left between the tiles and any fixed points, walls etc.).
The EcoTile floor has been subject to normal wear and tear and has not been subject to physical or chemical misuse or vandalism.
- 7.8 Furthermore, we warrant that the EcoTile ESD range will retain its ESD performance for the life of the product.
- 7.9 EcoTile Flooring Ltd will investigate any claim made under this warranty and shall only be liable under the terms of this warranty if such investigation shows that the EcoTile floor has been installed and maintained according to the above specification.
- 7.10 The liability of EcoTile Flooring Ltd is limited to supplying, free of charge, sufficient material to replace that found to be defective.
- 7.11 We will not have any Liability for a breach of warranty if:
- you do not comply with your obligations at Condition 7.3 in respect of the breach;
 - the relevant defect was caused by damage in transit after Delivery;
 - the relevant defect was caused by fair wear and tear;
 - the relevant defect was drawn to your attention before formation of the Contract;
 - the relevant defect was caused or exacerbated by improper use, handling, alteration, installation, repair, maintenance, storage or failure to comply with instructions provided by us;
 - the defect relates to the colour of Goods from different batches (your attention is specifically drawn to Condition 3.3);
 - you make further use of the relevant Good after discovering the relevant breach;
 - the defect was caused by exposure to chemicals, solvents, hydrocarbons including but not limited to petrol, diesel etc. or external heat source; or
 - the defect was caused by you, your employees, contractors or suppliers by inappropriate use of equipment or machinery (such as pallet, fork lift, scissor lift or any other similar type of vehicular traffic or lifting equipment).
- 7.12 Your only remedy for our breach of our obligation in section 7.4 will be in damages.
- 7.13 The warranty does not extend to:
Chemical damage caused by spillage or leaks. EcoTile tiles offer good chemical resistance but extended exposure to certain chemicals can cause damage to the tiles. Please refer to our guide "Spills, Oil leaks and looking after your EcoTile floor" on our website for further information.
Markings from rubber tyres (car, motorbike, fork truck etc.) cigarettes or other burning agents or staining of the surface of EcoTile by acetone, cutting oils and lubricants (in particular those containing sulphur) or colour fading caused by exposure to UV / sunlight.
Liability for failure or damage due to circumstances beyond the control of EcoTile Flooring Ltd, including failures due to flooding, storm damage or the failure of the sub-floor.
- 7.14 The warranties under Section 7.1 will apply to any Goods which are repaired or replaced under Section 7.4 for the remainder of the original Warranty Period.
- 7.15 Subject to **Condition 8.5**, all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from the Contract.

- 7.16 We warrant to you that we will provide the Services with reasonable care and skill. Subject to **Condition 8.5**, this warranty is excluded from the Contract where your floor and/or environment does not meet the criteria set out in the installation handbook <https://www.ecotileflooring.com/storage/2017/08/Installation-Handbook.pdf>
- 7.17 We will use reasonable endeavours to provide the Services on the estimated performance date set out in the Order Acknowledgement, but time for provision of the Services will not be of the essence of the Contract. Any performance dates given by us are estimates only.
- 7.18 We reserve the right to invoice you for any additional Charges relating to the Services which specifically arise due to (i) any change in condition of the floor between the time we provided our Quote and the delivery of the Goods and/or us installing the Goods (as relevant and, in any case, whichever occurs later), (ii) floor repairs and/or (iii) making good floors which we could not have anticipated when we provided our Quote due to your equipment, old floor coverings or any other reason which prevented us from seeing the true condition of the floor prior to us commencing the Services.
- 7.19 Failure to provide us with written notice of your wish to cancel the Services, to be received by us in accordance with **Condition 11** not less than 72 hours prior to commencement of the Services, will incur a 50% Charge of the Charges provided in the Quote Acknowledgement.
8. **EXCLUSIONS AND LIMITATIONS OF LIABILITY**
Your attention is particularly drawn to this Condition.
- 8.1 Subject to **Condition 8.5**, our entire Liability for any non-delivery of Goods or failure to deliver the Goods in accordance with the timescales set out or referred to in the Contract will be as set out in **Condition 4.5** and we will have no other Liability for any such non-delivery or failure to deliver. For the avoidance of doubt such Liability will be subject to **Condition 8.5** and will be taken into account in calculating whether the financial limit in **Condition 8.2** has been reached.
- 8.2 Subject to **Condition 8.5**, our maximum aggregate Liability will be limited to 100% of the sum paid or payable under the Contract
- 8.3 We will have no Liability to you for any:
- 8.3.1 loss of profit (whether direct, indirect or consequential);
 - 8.3.2 loss of use, loss of revenue, loss of production or loss of business (in each case whether direct, indirect or consequential);
 - 8.3.3 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential);
 - 8.3.4 loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential);
 - 8.3.5 loss of bargain (whether direct, indirect or consequential);
 - 8.3.6 liability that you have to third parties (whether direct, indirect or consequential); or
 - 8.3.7 indirect or consequential loss,
- subject always to **Condition 8.5**.
- 8.4 We will not be in breach of the Contract or otherwise liable to you for any failure to perform or delay in performing our obligations under the Contract if such failure or delay is due to your breach of this Contract, your failure to facilitate the delivery in accordance with this Contract and applicable Incoterms, your damage to the Goods or for any event or circumstance beyond our reasonable control.
- 8.5 Nothing in the Contract will operate to exclude or restrict any Liability of a party:
- 8.5.1 that cannot be excluded or restricted in the Contract in respect of death or personal injury resulting from negligence by operation of Section 2(1) Unfair Contract Terms Act 1977;
 - 8.5.2 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
 - 8.5.3 for breach of its obligations arising under section 12 Sale of Goods Act 1979;
 - 8.5.4 for breach of its obligations arising under Section 2 Supply of Goods and Services Act 1982;
 - 8.5.5 for breach of its obligations arising under Section 8 Supply of Goods (Implied Terms) Act 1973;
 - 8.5.6 arising under Section 2(3) Consumer Protection Act 1987; or
 - 8.5.7 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 8.6 Any of our Liability which falls within **Condition 8.5** will not be taken into account in assessing whether the financial limits in **Condition 8.2** has been reached.
- 8.7 Nothing in this **Condition 8** will prevent or restrict the right of a party to seek injunctive relief or specific performance or other discretionary remedies of the court.
- 8.8 Each of our employees, agents and sub-contractors will be entitled to enforce all the terms of this **Condition 8** subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of the Contract. Accordingly and for the avoidance of doubt the financial limits on liability set out in **Condition 8** are the maximum liability of us, our employees, agents and sub-contractors in aggregate. The parties may vary or rescind the Contract without the consent of our employees, agents or sub-contractors.
9. **YOUR OBLIGATIONS**
- 9.1 You will:
- 9.1.1 provide us with all such accurate information and assistance as we may require from time to time to perform our obligations or exercise our rights under the Contract, where information is found to be incorrect, we reserve the right to invoice for the additional Price and/or Charges at the pro rata rate as applicable;
 - 9.1.2 in providing any measurements to us, allow for sufficient (at least 5%) wastage or cutting allowance;
 - 9.1.3 comply with our instructions relating to handling and installation of the Goods, as stated on our website at www.ecotileflooring.com;
 - 9.1.4 not re-package the Goods or remove or alter any trade marks, serial numbers or other identifying marks on the Goods or their packaging or other identifying marks to the Goods or their packaging;
 - 9.1.5 not alter or modify the Goods in any way;
 - 9.1.6 unless otherwise stated by the relevant Incoterm specified in the Order Acknowledgement, obtain such licences, permits, consents and authorisations as may be required; and
 - 9.1.7 where we are providing Services, ensure that the installation area is clear and ready for us to commence work immediately;
- 9.2 You will comply with our instructions in connection with any product recall initiated by us involving the Goods (or any of them).

- 9.3 Notwithstanding any other term of the Contract we will not be in breach of the Contract to the extent our failure to perform or delay or defect in performance of its obligations under the Contract arises as a result of:
- 9.3.1 any breach by you of your obligations contained in the Contract;
- 9.3.2 us relying on any incomplete or inaccurate data provided by a third party; or
- 9.3.3 us complying with any instruction or request by you or one of your employees.
10. **TERMINATION**
- 10.1 If you commit a material breach of the Contract we may terminate the Contract immediately by giving written notice to that effect to you. This **Condition 10.1** will not apply to any failure by you to make any payment due to us under the Contract on or before the due date. **Condition 6** will apply instead to any such failure.
- 10.2 We may terminate the Contract by giving not less than 3 days' written notice to that effect to you if you fail to make any payment due to us under the Contract within 7 days of the due date.
- 10.3 We may terminate the Contract immediately by giving written notice to that effect to you if any of the events or circumstances set out in **Condition 5.8** occur. You will notify us immediately upon the occurrence of any such event or circumstance.
- 10.4 If an event or circumstance which gives rise to relief from liability under **Condition 8.4** continues for a period of more than 30 days, either party will be entitled to terminate the Contract by giving not less than 7 days' written notice to that effect to the other party.
- 10.5 Following expiry or termination of the Contract:
- 10.5.1 any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and
- 10.5.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 10.6 Within 14 days after the date of expiry or termination of the Contract each party will, subject to the exception set out in **Condition 10.7**:
- 10.6.1 if requested to do so, return to the other party all of the other party's Confidential Information (including all copies and extracts) in its possession or control; and
- 10.6.2 cease to use the other party's Confidential Information.
- For the purposes of these Conditions, Confidential Information means any information relating to a party, its business or a Contract.
- 10.7 Each party may retain any of the other party's Confidential Information which it has to keep to comply with any applicable law or which it is required to retain for insurance, accounting or taxation purposes. The provisions of **Condition 10** will continue to apply to retained Confidential Information.
11. **NOTICE**
- 11.1 Any notice given under or in connection with the Contract will be in the English language and:
- 11.1.1 sent to the relevant party's email address followed by a hard copy in the post pursuant to condition 11.1.2; or
- 11.1.2 postal address by pre-paid first class post, airmail post or mail delivery service providing guaranteed next working day delivery and proof of delivery; or
- 11.1.3 delivered to or left at the relevant party's address (but not, in either case, by one of the methods set out in **Condition 11.1.1**).
- and, in the case of any notice to be given to us, marked for the attention of our specified representative. Our address and representative are set out in the Order Acknowledgment and your address is as detailed in the Order.
- 11.2 Any notice given in accordance with **Condition 11.1** will be deemed to have been served:
- 11.2.1 if given by first class post or mail delivery service, in each case as set out in **Condition 11.1.1**, at 9.00 a.m. on the second Business Day after the date of posting;
- 11.2.2 if given by airmail post as set out in **Condition 11.1.1**, at 9.00 a.m. on the fifth Business Day after the date of posting; and
- 11.2.3 if given as set out in **Condition 11.1.3**, at the time the notice is delivered to or left at that party's address.
- 11.3 To prove service of a notice it will be sufficient to prove that the provisions of **Condition 11.1** were complied with.
- 11.4 This **Condition 11** will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.
12. **GENERAL**
- 12.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 12.1.1 neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in the Contract;
- 12.1.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract; and
- 12.1.3 nothing in this **Condition 12.1** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
- 12.2 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
- 12.3 If any term of the Contract (including any exclusion from, or limitation of, liability set out in **Condition 8**) is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect. This **Condition 12.3** will not apply to a term which ceases to have effect under section 233A Insolvency Act 1986 in relation to a supply mentioned in section 233(3) of that Act.
- 12.4 No variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.

- 12.5 Nothing in the Contract and no action taken by the parties in connection with it or them will create a partnership or joint venture between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.
- 12.6 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
- 12.7 Save as provided in **Condition 8.8**, the parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.
- 12.8 Our rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 12.9 You will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of your rights under the Contract.
13. **GOVERNING LAW AND JURISDICTION**
- 13.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
- 13.2 The courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).
- 13.3 Each party waives any objection to, and agrees to submit to, the jurisdiction of the courts of England and Wales. Each party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of any other jurisdiction.