



1 Definitions

- 1.1 "Account Customers" means those Buyers who have been deemed as such by the Seller;
- 1.2 "Bespoke Goods" means any Goods stated on the Order as being goods specifically made to measure or Customised at the request of the Buyer;
- 1.3 "Buyer" means the individual or organisation that purchases or agrees to purchase the Goods from the "Seller";
- 1.4 "Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- 1.5 "Carrier" means the company contracted to deliver the Goods;
- 1.6 "Consumer" means a Buyer that deals as a consumer as defined in Section 12 of the Unfair Contract Terms Act 1977;
- 1.7 "Contract" means any contract for the sale and purchase of the Goods by the Seller to the Buyer incorporating these Terms and Conditions;
- 1.8 "Floor Fitter" means those workers instructed to install the Goods at the Buyer's Installation Site on behalf of the Seller;
- 1.9 "Goods" means the goods (or any part of them) to be supplied in respect of the Order;
- 1.10 "Installation" means the installation of the Goods by the Seller and its Floor Fitters at the Installation Site;
- 1.11 "Installation Site" means those premises in which the Installation takes place;
- 1.12 "Order" means the Buyer's order for the Goods, as set out in the Buyer's purchase order form, the Buyer's written acceptance of the Seller's quotation, or overleaf, as the case may be;
- 1.13 "Seller" means Upton Wood Flooring Ltd of Unit 5, Manor Farm, Peppard Common, Henley on Thames, Oxon RG9 5 LA;
- 1.14 "Specification" means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and the Seller;
- 1.15 "Terms and Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;
- 1.16 "VAT" means Value Added Tax;
- 1.17 Use the words "writing" or "written" in these Terms, includes e-mail unless otherwise stated.



The Buyer's attention is drawn in particular to the provisions of clause 11.

2 Basis of Contract

- 2.1 These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Terms and Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Buyer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Seller may choose not to accept an Order for any reason.
- 2.5 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
- 2.8 Nothing in these Terms and Conditions shall affect the Buyer's statutory rights as a Consumer.
- 2.9 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3 Orders

- 3.1 On receipt of the Order the Seller shall confirm in writing the details, description and price for the Goods.
- 3.2 If the Goods ordered by the Buyer are not available for despatch within 10 Business Days of order



confirmation under clause 2.3, the Buyer shall be notified and given the option to either wait until the Goods are available, or be offered an alternative or cancel the Order and receive a full refund within 30 days.

3.3 For the avoidance of doubt, Goods are not sold on a trial basis.

4 **Pricing and Payment**

4.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Seller's price list in force as at the date of delivery.

4.2 Any prices that are quoted by the Seller are exclusive of the costs and charges of packaging, insurance, VAT and delivery charges which shall be invoiced to the Buyer.

4.3 VAT will be charged at the current rate of 20%.

4.4 All payments will be made in GBP £ sterling unless agreed in writing by the seller.

4.5 Where the Seller lists a product at the wrong price due to a typographical error or itself receives incorrect pricing information from its suppliers, the Seller has the right to refuse or cancel any Orders placed prior to the Order being delivered.

4.6 The Seller may, by giving notice to the Buyer at any time up to delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- a) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

4.7 Where the Seller gives notice under clause 4.6a only, the Buyer shall be permitted to withdraw its order at no cost to itself, whereupon if applicable a full refund will be given.

4.8 On placing of the Order, the Buyer will either be asked to pay the full amount (in cash or cleared funds) or a deposit of 50 % ("Deposit") in cash or cleared funds at the time of ordering. Where a Deposit is taken, the balance shall be paid on collection or delivery of the Goods. Where the Buyer has used a debit/credit card to pay a Deposit, it will be deemed that authorisation has been given by the Buyer to take the balance of the Order on the same card unless the Buyer indicates otherwise in



writing prior to collection or delivery.

- 4.9 In respect of Account Customers only, the invoice shall be paid in full within 10 Business Days of the date of the invoice. Payment shall be made (in cash or in cleared funds) to the bank account nominated in writing by the Seller. Time of payment is of the essence.
- 4.10 If the Account Customer fails to make any payment due to the Seller under the Contract within 10 Business Days, then the outstanding invoice will be referred to David Silverman Limited for debt collection whereupon the outstanding invoice will be subject to a surcharge of 15% plus VAT to cover the collection costs incurred. The Buyer shall pay the overdue amount plus the surcharge together with all other charges and legal fees incurred.

5 **Seller's Rights**

- 5.1 Notwithstanding clause 4.6, the Seller has the right to adjust the price and specification of any item at its discretion.
- 5.2 The Seller has the right to withdraw any Goods from sale at any time.
- 5.3 The Seller shall not be liable to the Buyer for withdrawing any Goods from sale, price adjustments or refusing to process an Order.

6 **Warranty**

- 6.1 The Seller warrants that the Goods shall, at the time of delivery:
- a) correspond to the description given by the Seller and any applicable Specification; and
 - b) be free from significant defects in design, material and workmanship.
- 6.2 Subject to clause 6.3, if:
- a) the Buyer gives notice in writing to the Seller within 5 Business Days of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
 - b) the Seller is given a reasonable opportunity of examining such Goods; and
 - c) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost, the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 6.3 The Seller shall not be liable on the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:

UPTON

WOOD FLOORING

- a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 6.2 (including the fitting or installation of any kind of the Goods);
 - b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation (as per clause 8.13), use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - c) the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;
 - d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
 - e) the Goods differ from the Order or Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
 - f) the Goods comprise solid wood flooring.
- 6.4 Where Goods comprising engineered flooring are to be fitted over underfloor heating, the warranty set out in clause 6.1 will only apply where the underfloor heating system includes an independent floor thermostat that prevents the underside of the board from exceeding 27 °C. For the avoidance of doubt, in the event that no floor thermostat is included, the Seller will not warrant any of the Goods for shrinkage, movement, delamination or any other defect or damage that may arise or become apparent.
- 6.5 Except where the Buyer is dealing as a Consumer, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 6.1 save as provided in this clause 6.
- 6.6 Except where the Buyer is dealing as a Consumer, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.7 Clause 6 shall apply to any repaired or replacement Goods supplied by the Seller.
- 6.8 For the avoidance of doubt, any remedies or liabilities or damages shall in no circumstances exceed the price paid for the Goods and the Seller shall under no circumstances be liable for any indirect, incidental or consequential loss or damage to the Buyer.
- 6.9 Colour accuracy of the Goods cannot be guaranteed due to the fact that the Goods are derived from a natural product.

UPTON

WOOD FLOORING

7 **Fitting**

- 7.1 Where the Seller undertakes to install the Goods, the type, colour, and installation method of the Goods will be agreed in advance in writing between the parties.
- 7.2 Where the Seller undertakes to install the Goods, 50% of the invoice value will be payable by the Buyer (in cash or cleared funds) in advance of any Installation by the Seller.
- 7.3 The Seller shall only confirm the date for Installation of the Goods once the payment under clause 7.2 is made in full.
- 7.4 On completion of Installation by the Seller, the invoice balance shall immediately become payable in full.
- 7.5 The Installation Site will be empty of furniture and accoutrements so that the Seller may start Installation work promptly on arrival.
- 7.6 Whilst the Seller is undertaking Installation of the Goods, the Seller shall at its sole discretion have the ability to move any movable objects that in its reasonable opinion impede commencement of Installation.
- 7.7 In the event that the Seller is unable to commence work for any reason at the Installation Site, the Seller has the absolute right to postpone the Installation until the following Business Day.
- 7.8 Where the Seller postpones any Installation under clause 7.7, the Seller may at its sole discretion charge to the Buyer the amount of £250+VAT per Floor Fitter per Business Day.

8 **Delivery**

- 8.1 Goods will normally be delivered within 10 -15 Business Days of the Seller's acceptance of the Order under clause 2.3.
- 8.2 The Seller shall deliver the Goods to the Buyer's delivery address specified in the Order or such other location as the parties may agree in writing ("Delivery Location").
- 8.3 The Goods will be delivered to the Delivery Location between 8.00am and 5.00pm unless otherwise agreed in writing between the parties prior to delivery.
- 8.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods for any reason including that caused by a Force Majeure Event (as defined in clause 12 of these Terms and Conditions) or the Buyers failure to provide the Seller with adequate delivery instructions.

UPTON WOOD FLOORING

- 8.5 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 8.6 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 8.7 It is assumed by the Buyer that for the purposes of delivery, the Delivery Location address is accessible by wagon measuring approximately 8foot wide x 35 foot long x 13foot high (similar to a dustbin vehicle).
- 8.8 Goods can only be delivered kerbside at the Delivery Location and the Buyer must therefore make all necessary arrangements for the transport of the Goods from the kerbside to the Delivery Location premises.
- 8.9 If the Seller fails to deliver the Goods, its liability shall be limited to the reasonable costs incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyers failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 8.10 If the Buyer fails to accept delivery of the Goods within 3 Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract:
- a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and
 - b) the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 8.11 If 10 Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 8.12 Goods supplied incorrectly, entirely through the fault of the Seller will be re-supplied by the Seller at no additional cost to the Buyer.
- 8.13 Where the Seller is not undertaking any Installation under clause 7, the Seller recommends that the



Buyer arranges for suitably qualified tradesmen only to carry out any installation work on behalf of the Buyer.

9 **Title and Risk**

- 9.1 The risk in the Goods shall pass to the Buyer upon delivery of the Goods.
- 9.2 Title to the Goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for the Goods.
- 9.3 Until title to the Goods has passed to the Buyer, the Buyer shall maintain the Goods in satisfactory condition.

10 **Cancellations and Returns Policy**

- 10.1 The Buyer must inspect the Goods immediately upon receipt and in the event of any damage or shortage, must indicate such on the Carrier's delivery note. Failure to do so shall deem the Goods to have been received as stated on the delivery note and in good condition.
- 10.2 The Buyer shall additionally notify the Seller in writing within 4 Business Days of delivery if the Goods are damaged or do not comply with the Order or Specification.
- 10.3 If the Buyer fails to do so the Buyer shall be deemed to have accepted the Goods. Communication of non acceptance by the Buyer via telephone does not constitute notification of non acceptance of the Goods.
- 10.4 Save for Bespoke Goods, the Buyer has the right to cancel the Order no less than 5 Business Days prior to delivery.
- 10.5 Goods that are not faulty may only be returned with the prior written consent of the Seller.
- 10.6 Any Goods returned must be in a saleable and as new condition and returned in their original packaging. All Goods returned to the Seller must be packaged in an appropriate manner to prevent any damage whilst in transit.
- 10.7 In the event that the Buyer returns any Goods to the Seller under clause 9.5 the Buyer must arrange transportation and pay all costs involved in transporting the Goods back to Unit 5, Manor Farm, Peppard Common, Henley on Thames, Oxfordshire RG9 5 LA.
- 10.8 Any Goods returned under clause 9.5 must be insured by the Buyer whilst in transit for the full value.



- 10.9 In the event that any Goods returned under clause 9.5 are received damaged, the Buyer shall not receive any refund whatsoever for the Goods.
- 10.10 On receipt of any Goods returned and accepted by the Seller, the Seller will levy a restocking and administration charge of 25 % of the value of the returned Goods.
- 10.11 Unless the returned Goods are deemed to be faulty or damaged, the Seller shall not refund any costs of delivery or labour incurred by the Buyer in the Seller's supplying of the Goods.
- 10.12 Where the Goods are to be collected by the Seller, all costs of the collection of the Goods will be deducted from any refund due to the Buyer.

11 **Limitation of Liability**

- 11.1 Nothing in these Terms and Conditions shall exclude or limit the liability of the Seller for death or personal injury resulting from the negligence of the Seller or that of the Seller's agents or employees.
- 11.2 Except as may be implied by law where the Buyer is dealing as a Consumer, in the event of any breach of these Terms and Conditions by the Seller the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract and the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

12 **Waiver**

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.



13 Force Majeure

The Seller will not be liable or adversely affected for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances beyond its reasonable control which by their nature could not have been foreseen, or, if they could have been foreseen, were unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), shortage or unavailability of raw materials from a natural source of supply, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

14 Assignment

- 14.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2 The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

15 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16 Changes to Terms and Conditions

The Seller shall be entitled to alter these Terms and Conditions at any time. This right shall not affect the existing Terms and Conditions accepted by the Buyer upon receiving confirmation of an

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The logo for Upton Wood Flooring features the word "UPTON" in a bold, olive-green, sans-serif font. The letter "O" is replaced by a stylized tree icon with a white trunk and a green, textured canopy. Below "UPTON" is the word "WOOD FLOORING" in a smaller, dark grey, sans-serif font.

WOOD FLOORING

Order under clause 2.3.