

**Port Macquarie Carpet Court**  
**KJB Building Services Pty Ltd (ABN 52079913438)**  
**General Terms and Conditions of Sale**

These general terms and conditions of sale apply to the supply of goods and services by KJB Building Services Pty Ltd Trading as Port Macquarie Carpet Court of 175 Lake Road Port Macquarie NSW 2444 ("Carpet Court") to the Purchaser.

These terms and conditions of sale apply to all quotations provided by Carpet Court. The acceptance of a Carpet Court quotation indicates the acceptance of these general terms and conditions of sale.

#### 1. Definitions

The following words shall have, where the context so permits, the following meanings:

- "**Delivery Point**" means the address nominated by the Purchaser as the place for delivery of Goods;
- "**Goods**" means all materials, supplies, equipment, services and the like to be provided by Carpet Court to the Purchaser;
- "**GST**" means any goods and services tax including the tax imposed under A New Tax System (GST) Act 1999 (Ch) as amended and any regulations thereto or any such other Act and regulations of similar effect;
- "**Purchaser**" means the person, firm or corporation who has ordered the Goods in the Sales Order from Carpet Court;
- "**PPS Law**" means:
- the PPSA;
  - any regulation made pursuant to the PPSA; and
  - any amendment from time to time made to any other legislation or regulation as or a consequence of a PPS Law referred to in paragraphs (a) or (b) above;
- "**PPSA**" means the Personal Property Securities Act 2009 (Ch);
- "**Registration Commencement Time**" has the same meaning as given to that term in the PPSA;
- "**Sales Order**" means the agreement between Carpet Court and the Purchaser incorporating the quotation, these general terms and conditions of sale, and all documents applicable thereto;
- "**Security Interest**" means:
- any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power of title retention arrangement;
  - a security interest as defined in the PPSA; or
  - any document to grant or create anything referred to in either paragraph (a) or (b) above and any other thing which gives a creditor a priority to any other creditor with respect to any asset or any interest in any asset.

#### 2. Quotes and Deposits

Our quotation is fixed for 30 days only and includes GST. A holding deposit may be required on placement of all Sale Orders. Deposits are not refundable and will have been made to Carpet Court's premises or are in transit. Deposits paid pursuant to a Sales Order are not refundable after 14 days from the date of the Sales Order.

#### 3. Price and Payment

- 3.1. All prices in the Sales Order are expressed in Australian Dollars and shall be determined by Carpet Court pursuant to the quoted price payable per item or square metre rate or per Carpet Court's price list plus GST if the price is not GST inclusive. The Purchaser is liable for the amount of any GST payable in respect of the taxable supply. All customs duties, freight and other charges (if any) shall be the responsibility of the Purchaser.
- 3.2. The Goods under the Sales Order must be paid for in full prior to or upon collection or the Delivery Date.
- 3.3. Interest may be charged on all overdue accounts at the overdraft interest rate charged by Carpet Court's bankers. In addition, any collection charges, legal expenses and commissions incurred in attempting to recover payment will be payable by the Purchaser.
- 3.4. Where the Purchaser has used a credit card to pay a deposit on the Goods or to make a part payment towards the cost of the Goods, the Purchaser authorises Carpet Court to deduct all further sums owed by the Purchaser to Carpet Court in respect of the Sales Order from that credit card.

#### 4. Title and Risk

- 4.1. Legal and beneficial ownership in and to the Goods shall remain with Carpet Court until the Purchaser has paid in full all amounts owing on all accounts to Carpet Court.
- 4.2. Until the Goods are paid for in full, the relationship between the parties shall be fiduciary, the Purchaser shall hold the Goods as bailee of the Goods.
- 4.3. Once the Goods are delivered to the Delivery Point, or are collected by the Purchaser, they shall become the Purchaser's sole responsibility.
- 4.4. If the Purchaser fails to make payment for the Goods in accordance with the Sales Order, Carpet Court shall have the right to recover from the Purchaser all Goods and for that purpose, the servants and agents of Carpet Court may enter upon the premises of the Purchaser (or any premises under the control of the Purchaser or the Purchaser's agent if the Goods are stored or have been installed at another premises) in order to effect recovery and use any reasonable force to effect recovery without liability for trespass or any resulting damage. Carpet Court shall have the right to re-sell or otherwise dispose of the Goods so recovered without reference to the Purchaser. In the event that the Purchaser sells the Goods to a third party before payment in full for the Goods has been made to Carpet Court, then the Purchaser hereby:
- assigns to Carpet Court the benefit of any claim against such third party;
  - holds any proceeds from sales on trust for Carpet Court; and
  - will account fully to Carpet Court for the proceeds of the sale of the Goods sold or any part thereof until the Purchaser's indebtedness to Carpet Court is discharged.

#### 5. Cancellations

Any cancellations have been put prior to installation at Carpet Court's workrooms cannot be cancelled and full payment will be required (less underlay and installation charges).

#### 6. Delivery

- 6.1. All Goods shall be delivered by Carpet Court to the Delivery Point nominated by the Purchaser and if Carpet Court, or its servant or agents, obtain from any person at the Delivery Point a receipt, copy of the Sales Order or signed delivery docket for the Goods, then Carpet Court shall be conclusively presumed to have delivered the Goods in accordance with the Sales Order. If the Delivery Point is not made or if delivery cannot otherwise be effected by Carpet Court, Carpet Court may, at its option, leave the Goods at the Delivery Point or store the Goods at its discretion. If the Goods are stored by Carpet Court, the Purchaser shall pay or indemnify Carpet Court for all costs and expenses incurred in or about the storage and Carpet Court shall be at liberty to re-deliver them to the Purchaser from the place of storage at the Purchaser's expense.
- 6.2. Any time quoted for delivery is an estimate only and Carpet Court shall not be liable for any loss or damage howsoever arising as a result of or consequence of any failure to deliver or delay in delivery arising from any circumstances whatsoever UNLESS the failure or delay in delivery of the Goods is due to Carpet Court's negligence or willful default and the Purchaser notifies Carpet Court in writing of any loss or damage within TWO (2) days from the date of delivery. The Purchaser shall not be relieved of any obligation to accept or pay for Goods for reasons of any delay in delivery.
- 6.3. If Carpet Court determines that it is or may be unable to deliver within a reasonable time or at all the Sales Order may be cancelled by Carpet Court. In the event of cancellation, the Purchaser shall not have any claim against Carpet Court for any damage, loss, cost or expense whatsoever.

#### 7. Installation

- 7.1. All Goods are installed to manufacturer's specifications by experienced carpet installers.
- 7.2. Installation of carpet involves consistent contact with skirting and architraves and although all care will be taken, Carpet Court does not accept responsibility for any marking or damage thereof. Purchasers should be aware that newly painted surfaces are particularly prone to marking or damage. Where possible, carpet installation ought to be delayed until such time that paint has cured to lessen the potential for marking or damage.
- 7.3. Check your door clearance to see if they need to be trimmed. This is a carpenter's job and not the responsibility of Carpet Court.
- 7.4. It is important that on the day of installation that the electricity is connected.
- 7.5. Removal and replacement of furniture will be done with all due care, however, no responsibility is accepted by Carpet Court for accidental damage thereto. The removal and replacement of Billiard/Pool Tables, Pianos/Organs or Grandfather clocks cannot be undertaken by Carpet Court.
- 7.6. Placement of floor covering joints is at the discretion of Carpet Court unless otherwise specified.
- 7.7. All valuables, including but not limited to, jewellery, monies, antiques etc. are to be moved to a safe place out of the areas of installation.
- 7.8. Carpet Court takes no responsibility for resetting up your TV, video, DVD, foxtel, computers or any other electrical appliances which may have been connected to the Goods.
- 7.9. It is the Purchaser's responsibility to make the installers aware of any items of furniture that may require extra care when moving.
- 7.10. Under no circumstances will Carpet Court's installers disconnect or move gas heaters, stoves, phone points or other appliances or fixtures that require a plumber, electrician or other suitably qualified technician.
- 7.11. Unless specified in our quote no allowance has been made for floor preparation. The slab must be very smooth, level and free of humps, hollows, bumps, pitting overspray etc. This is particularly critical in the installation of vinyl. If the scope of works includes take up of an existing floorcovering, we cannot ascertain the quality of the sub floor until after the completion of the take up.
- 7.12. The use of some spray on curing compounds to retard the curing rate of new slabs may affect the bonding of adhesives used for direct stick carpet and vinyls. Prior to commencement of our works we require the suitability of the concrete surface be determined and if remedial action is required this will incur extra charges over and above our quote.
- 7.13. If we are required to return to finish your installation due to other works not being completed an additional call out fee of \$100 incl. GST may be charged.
- 7.14. Carpet Court will not accept responsibility for any future problems if you have opted for the new flooring to be laid over the existing ceramic tiles or new flooring to be laid over the existing floor without any floor preparation. For example: tiles lifting from subfloor / discoloration of the old vinyl reacting with or showing through the new floor or the old vinyl underneath lifting or bubbling and affecting the new floor.
- 7.15. When new vinyl planks are laid over a cork floor there sometimes may be a chemical reaction between the vinyl adhesive and the polyurethane coating over the cork. We recommend the cork tiles be taken up prior to the installation of the vinyl or the vinyl be loose laid.
- 7.16. Even after the sub floor is prepared properly prior to installation, in certain light you may be able to notice slight imperfections from the sub floor showing through.
- 7.17. With geometric printed and patterned carpets the manufacturer uses best available techniques to minimize pattern distortion. However the extensible nature of textile products means that some distortion due to shrinkage or stretch during and after manufacture is unavoidable, such that perfect pattern match cannot be guaranteed. Multiple width installations of geometric printed and patterned carpets may show some visible irregularities.
- 7.18. When joining carpet it is not possible to make the joins appear "invisible". We plan all jobs to minimize joins or shift them as close to the wall as possible. Long joints particularly in large or well-lit rooms will not be "invisible" and if slightly peaked should settle down after 10 weeks.
- 7.19. Over large areas connector trims will have to be fitted to allow for expansion. While these trims are not obtrusive they will be noticeable.
- 7.20. If the floor is being installed in an above ground unit we recommend you check with the body corporate first as the strata laws may prohibit any hard flooring in the living areas & bedrooms
- 7.21. Any floating floor to be installed above ground level we strongly recommend "Quiet Step" underlay which is designed to reduce foot noise by 30%. While this is a popular choice in high rise developments we cannot guarantee that it will completely deaden noise transference to the unit or rooms below. Other factors such as the thickness of the slab will also impact on the acoustic level.
- 7.22. Specifically regarding the install of Commercial grade products:
- Your industry may have specific coding, slip or fire ratings as per Australian Standards or Council Guidelines. It is your responsibility to ensure the vinyl or vinyls selected meet those standards and guidelines. For example an anti-static vinyl may be required for the designated IT/Server room. This would be extra to our quote.

- Unless specifically noted in our quote no allowance has been made to cover the vinyl.
- To cover vinyl cove it will need to be fitted using contact adhesive. This has an odour and if your staff are present some may notice and complain. As we have made no allowance to work outside normal business hours we need to be notified and probably will have to adjust our quote.
- If the commercial vinyl selected is marmoleum or linoleum the skirting boards should be fitted after the vinyl is installed. The product is very brittle with little flexibility and we cannot guarantee the skirting boards will not be scratched.
- If vinyl is required for some walls generally it may be installed with joints. That is it will not be joint free as long runs become a materials handling and OHS issue.
- If the installation of the new vinyls is over an old/existing slab we cannot be held responsible for a breakdown in the moisture barrier which may over time allow moisture to seep through hairline fractures in the slab and affect the bond of the ardit and adhesive. Remedial treatment can be completed as part of the floor preparation but this would be extra to our quote.
- Unless specified, it is assumed the floor will not be a wet area therefore we have not allowed for a water resistant epoxy adhesive.
- All drainage holes must have a vinyl type waste installed prior to the arrival of our installers. This is a plumber's job.
- Due to the slightly corrugated finish of the cool room walls it is difficult to properly cove the vinyl up these walls and follow the contours. Often over time condensation will trickle down between the wall and vinyl and may cause the vinyl to separate from the wall. This is beyond our control and not an installation defect.

#### 8. Guarantees

- 8.1. Carpet Court guarantees that the installation of the Goods will be carried out in a workmanlike manner and Carpet Court will rectify any faulty workmanship, provided that the complaints of this nature are notified to Carpet Court as soon as they become apparent, and within 24 months of the installation date and provided that the Goods have been installed by Carpet Court.
- 8.2. Regular maintenance of the floor is important. You must familiarise yourself with the manufacturer's operating guidelines. It is recommended that protective cups and/or felt pads be fitted to the legs of all chairs, tables etc. to protect the floor from scratches. Furniture, chairs etc. when moved should be lifted NOT dragged. Rubber backed mats and chair leg caps may react with the floor over time and discolour it. Keep pets nails trimmed. Custor wheels will damage your new carpet if key hole mats are not used.
- 8.3. Carpets like all other dyed textiles will slowly lose colour over time and should be protected from prolonged periods of direct sunlight. Colour change can also occur as the result of ozone emissions, from heating fuels and air conditioners, pesticides, cleaning agents and other household items. The occurrence known as ozone damage is largely unexplained but appears to be more prevalent in coastal areas with a high ultra-violet content such as the NSW North Coast and Queensland.
- 8.4. The Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a major failure and for compensation for any other reasonable foreseeable loss or damage. The Purchaser is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 8.5. The guarantee does not apply to or cover the following:
- wear and tear caused by normal usage, including but not limited to, flattening, matting, shedding, pilling and shading;
  - seconds and remnants when sold as such;
  - obvious manufacturing faults not brought to Carpet Court's attention immediately;
  - customer dissatisfaction with type and colour selected;
  - peaking of seams which may occur in some carpets under certain light conditions. This is not a fault in the carpet or installation - Carpet Court does its best to minimise this in some cases peaking or pouting of seams may be obvious; and
  - oil and dirt spills on carpets and other household items. This is not a manufacturer fault, but a characteristic of all cut pile carpets. Should you require information on this please discuss prior to installation, as no claim will be recognised once installation is commenced.
- (g) Being a natural resource, timber will change colour over time & may vary from board to board. Also we cannot guarantee the grain, knots, veins, texture & colour variations will match the sample board.

#### 9. Variations in Colour, Texture and Shade

Blooming (fading) and variations are a natural phenomenon in some carpets. Every reasonable endeavour is made by Carpet Court to match colour and shade to samples of the Goods ordered, however, variations may occur. Carpet Court does not accept any claim for liability relating to any variations of the Goods as colour and shade variations are an inherent part of the manufactured product.

#### 10. Examination of Goods

- 10.1. The Purchaser will be responsible for immediate examination of the Goods at Carpet Court's premises and at the Delivery Point and Carpet Court shall, expect as may otherwise be provided by law, not to be liable for any claim to which it would otherwise be liable in respect of damaged goods UNLESS particulars of such claims are notified to Carpet Court in writing within TWO (2) days after arrival at the Delivery Point. The Goods in question should be set aside for inspection by a nominated representative of Carpet Court.
- 10.2. All Goods should be checked for authenticity prior to installation as claims will not be recognised after the Goods are installed.

#### 11. Advice

Any advice, recommendation, information, assistance or service provided by Carpet Court in relation to the Goods, including use and application of the Goods, is given in good faith. No liability or responsibility is accepted by Carpet Court for any loss (direct or indirect) or any consequential loss suffered by the Purchaser as a result of reliance upon the advice, recommendation, information, assistance or service for delivery to the Purchaser.

#### 12. Indirect Loss

Notwithstanding any other provision of this Sales Order to the contrary, Carpet Court shall not be liable for any loss or damage to the Purchaser arising from or caused or contributed by the negligence of Carpet Court, its servants or agents, nor shall Carpet Court be liable for consequential or consequential loss or damage to the Purchaser arising from or caused by the negligence of Carpet Court of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue costs arising from such breach.

#### 13. Severance

If any provision of the Sales Order shall be determined to be void by any court of competent jurisdiction, then such a determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.

#### 14. Force Majeure

- 14.1. If Carpet Court is rendered unable, wholly or in part, by force majeure or carry out its obligation under the Sales Order, then Carpet Court shall give to the Purchaser written notice of the force majeure with reasonably full particulars thereof whereupon:
- the obligations of Carpet Court so far as it is affected by the force majeure shall be suspended during not longer than the continuance of the force majeure; and
  - the obligations of the Purchaser in respect of the Sales Order within which a particular obligation of responsibility or duty is to be performed shall be extended by a period of time equal to that during which the force majeure continues.
- 14.2. Carpet Court shall use reasonable diligence to remedy the force majeure.
- 14.3. In this clause, the term "force majeure" means any cause which is not within the reasonable control of Carpet Court and without limiting the generality of the foregoing, shall in so far as the same is not within such control, include any one or more act of God, strike, lockout or other labour difficulty, act of the public enemy, war, blockade, revolution, riot, insurrection, civil commotion, lightning, storm, flood, earthquake, explosion, action, demand, order, restraint, restriction, requirements, prohibition, frustration or hindrance by or any government or any government department or authority or official or by the Purchaser, Carpet Court or any statutory corporation or local government authority, embargoes and unavailability of essential equipment and raw materials.

#### 15. Personal Property Securities Act

- 15.1. If Carpet Court determines that a PPS Law applies, or will in the future apply, to the Sales Order or to any other agreement that incorporates these general terms and conditions of sale (each a "Supply Agreement") or the supply of any Goods, then the Purchaser must promptly, upon request from Carpet Court:
- do anything (including obtaining consents, making amendments to the Supply Agreement or executing a new Supply Agreement for the purposes of:
    - ensuring that any Security Interest created under, or provided for by, the Supply Agreement: A. attaches to the collateral that is intended to be covered by that Security Interest; B. is enforceable, perfected, maintained and otherwise effective; and C. any Security Interest created under, or provided for by, the Supply Agreement has the priority contemplated by that Supply Agreement; or
    - enabling Carpet Court, on and from the Registration Commencement Time, to prepare and register a financing statement or financing change statement; or
    - enabling Carpet Court to exercise any of its powers in connection with any Security Interest created under, or provided by, the Supply Agreement; and
  - provide any information requested by Carpet Court in connection with the Supply Agreement to enable it to exercise any of its powers or perform its obligations under the PPS Law.
- 15.2. Except if section 275(7) of the PPSA applies, each of the Carpet Court and the Purchaser agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.
- 15.3. Anything that is required by Carpet Court to be done under this clause 15 shall be done by the Purchaser at its own expense. The Purchaser agrees to reimburse the costs of Carpet Court in connection with any action taken by Carpet Court under or in connection with this clause 15.
- 15.4. The terms **attaches, collateral, financing change statement, financing statement and perfected** as used in this clause 15 have the meaning given to them in the PPSA.

#### 16. Variations to applicability of the PPSA

- The Purchaser agrees that on and from the Registration Commencement Time:
- Carpet Court is under no obligation to dispose of or retain any secured property Carpet Court seize within a reasonable time under section 125 of the PPSA;
  - following a default, the Purchaser has no rights to redeem the secured property under section 142 of the PPSA; and
  - the Purchaser has no rights to reinstate this document following a default under section 143 of the PPSA.
- 16.4. If any part of the moneys owing to Carpet Court by the Purchaser is secured by a purchase money security interest created by the Purchaser, Carpet Court will use any money received under this document in the following order:
- first, to pay obligations that are secured but which are not secured by a purchase money security interest; and
  - second, to pay obligations that are secured by a purchase money security interest.

#### 17. Waiver in respect of enforcement notices under the PPSA

- On and from the Registration Commencement Time, the Purchaser waives its rights to receive:
- a notice of Carpet Court's proposal to remove PPSA personal property which has become an accession under section 95 of the PPSA;
  - a notice of Carpet Court's proposal to exercise our rights in accordance with land law under section 118(1)(b) of the PPSA;
  - a notice of Carpet Court's proposal to dispose of any PPSA personal property under section 135 of the PPSA;
  - a notice of Carpet Court's proposal to retain PPSA personal property under section 135 of the PPSA;
  - details of the amounts paid to other secured parties in a statement of account provided by Carpet Court under section 132(3)(d) of the PPSA;
  - a statement of account under section 132(4) of the PPSA; and
  - a copy of, or notice of, any verification statement confirming registration of a financing statement or a financing change statement relating to any Security Interest under, or provided for by, the Supply Agreement.

#### 18. Governing Law

These general terms and conditions of sale shall be governed and construed according to the laws for the time being in force in the State of New South Wales and the parties submit to the jurisdiction of the Courts thereof and all Courts competent to hear appeals therefrom.