

# General terms and conditions

**mFLOR**<sup>®</sup>

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Of the private company  
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## Article 1 Definitions

The following terms are used in these terms and conditions:

- 1.1** the Principal: the natural person or legal entity who placed an order with mFLOR to sell and/or deliver goods or to perform work and/or render services;
- 1.2** MFLOR: MFlor International B.V., which accepted the order as referred to in 1.1 or which gave a quotation or made an offer prior to a possible order.

## Article 2 Applicability

- 2.1** These terms and conditions apply to every offer and every agreement between MFLOR and the principal, unless the parties have stipulated deviations from these terms and conditions in writing.
- 2.2** General terms and conditions of the principal only apply if and to the extent that the parties have agreed to this in writing. For the rest, mFLOR's general terms and conditions continue to apply.

## Article 3 Offers; agreements

- 3.1** All quotations given by MFLOR are without obligation. They are valid for 30 days, unless stipulated otherwise.
- 3.2** An agreement between the parties is only established once MFLOR has accepted an order in writing or has begun the actual fulfilment of the agreement.
- 3.3** Illustrations, descriptions, drawings, dimensions, weights and colours as well as the contents of price lists, brochures, printed matter, etc. of MFLOR do not bind MFLOR, unless the agreement explicitly refers to them. Every new price quotation from MFLOR supersedes the previous quotation.
- 3.4** With respect to specified dimensions, quantities, weights and colours of delivered goods, MFLOR always reserves the customary tolerances, in accordance with the information regarding this as specified by MFLOR's manufacturer/supplier. Minor deviations that do not exceed the customary tolerances cannot lead to any claim by the principal against MFLOR, such as a claim for dissolution and/or compensation.
- 3.5** Promises made by and agreements made with subordinates of MFLOR to the extent that these subordinates do not have any representation authority do not bind MFLOR until and to the extent that MFLOR has confirmed such promises and agreements in writing.

## Article 4 Prices

- 4.1** All prices quoted are exclusive of VAT and other government levies and exclude transport costs and assembly costs, unless otherwise agreed upon in writing.

- 4.2** The price that MFLOR quoted for the performance it is to render only applies to the performance in conformance with the offer made by MFLOR.
- 4.3** MFLOR reserves the right to change prices, unless otherwise agreed upon in writing. In the event of price changes, the principal has the right to dissolve the concluded agreement via a written statement, if the price increase exceeds 10%. Dissolution must take place immediately after the principal has been notified of the price increase. If a price increase is a result of a statutory or other government measure, MFLOR is entitled to pass on the price increase to the principal, even where the price has been agreed as a fixed price, without this resulting in a right to dissolution on the part of the principal.

## Article 5 Cancellation

The principal is entitled to cancel an agreement before MFLOR has begun fulfilment of the agreement, provided the principal compensates the damage MFLOR suffered as a result. In any event this damage includes the profit MFLOR lost as a result of the cancellation. The principal will compensate MFLOR for this damage at MFLOR's initial request to do so. The request for cancellation must be sent to MFLOR in writing. If the cancellation is requested within 24 hours before loading of the goods, a 10% handling fee will be charged. If applicable the cost of cancellation of the forwarder contracted by MFLOR will also be charged.

## Article 6 Delivery and delivery time

- 6.1** Unless stipulated otherwise in writing, delivery is "Ex-works", where the purchased goods are stored. The purchased goods are transported at the expense and risk of the principal, who must take out adequate insurance.
- 6.2** The principal is required to take delivery of the purchased goods at the time the goods are placed at his disposal in accordance with the agreement or when the goods are delivered. In the event that the principal fails to take delivery of the goods or fails to provide information or instructions required for the delivery, the goods will be stored at the principal's risk. In that case, the principal will be required to pay all additional costs, in any event including storage costs.
- 6.3** A delivery time is not a firm deadline, unless explicitly agreed otherwise in writing. Therefore, in the event of late delivery the principal must give MFLOR a written notice of default.
- 6.4** A specified delivery time is fixed with the expectation that there will be no impediments for MFLOR to deliver on time and that MFLOR can perform the work related to the delivery as envisaged at the time the agreement was concluded and that the materials

possibly needed to fulfil the agreement will be delivered to MFLOR in a timely fashion. Failing this, the delivery time will be extended by the extra time needed. This also applies if changes in the order for MFLOR mean that more time is required to fulfil the agreement.

- 6.5** MFLOR is permitted to make partial deliveries of goods. If the goods are delivered in this fashion, MFLOR is authorised to invoice separately for each delivery.

#### *Article 7 Payment; collection costs*

- 7.1** Unless the parties agree otherwise, the principal must pay the amounts due within 30 (thirty) days after the invoice date, without claiming any discount or offsetting. In the event of late payment, the principal will be deemed to be in default without any notice of default from MFLOR being required.
- 7.2** MFLOR is entitled to demand advance payment or other security from the principal at any time.
- 7.3** In the event that the principal fails to pay on time, he has to pay interest on the amount due at a rate of 1% per month or, if this is higher, the statutory interest that applies in the mutual relationship between the parties, from the moment the principal is in default.
- 7.4** Payments made by the principal are always applied first to all interest and costs owed, and thereafter to settle the due invoices which have been outstanding the longest, even if the principal states that the payment is for a later invoice.
- 7.5** In the event that MFLOR takes collection measures against the principal who is in default, the principal will have to pay the collection costs, with a minimum of 10% of the outstanding amount.
- 7.6** The principal is liable to pay MFLOR the judicial costs which MFLOR incurred in all instances, unless these costs are unreasonably high. This only applies if MFLOR and the principal are conducting legal proceedings regarding an agreement to which these general terms and conditions apply and a decision from the court ruling fully or primarily against the principal has become final.

#### *Article 8 Defects; complaint terms*

- 8.1** The principal must inspect the purchased goods upon delivery (or have this done). In this inspection, the principal must check that the delivered goods conform to the agreement, i.e.: that the correct goods have been delivered; that the delivered goods conform to the agreements in terms of quantity (for example number and amount); that the delivered goods satisfy the quality requirements agreed upon or – if there are no quality agreements – the requirements which may be stipulated for normal use and/or commercial purposes.
- 8.2** The principal must notify MFLOR in writing of any visible defects or shortcomings within eight days after delivery.
- 8.3** The principal must notify MFLOR of any hidden defects within eight days after such defects have come to light or reasonably should have come to light, but no later than within the applicable warranty term.
- 8.4** In the event of a valid complaint, MFLOR will at all times be entitled still to deliver in conformance with the agreements, repair the defect or credit the principal for a proportionate part of the invoice.
- 8.5** Even if the principal complains in a timely manner, he continues to be liable to pay for and take delivery of the purchased goods.
- 8.6** Purchased goods can only be returned to MFLOR after prior written consent has been granted. MFLOR will only give its consent to return goods specifically ordered for the principal if they are damaged and MFLOR can be held accountable for this.

#### *Article 9 Retention of title*

- 9.1** MFLOR continues to be the owner of all the goods delivered or to be delivered by MFLOR to the principal pursuant to any agreement until the principal has fully paid all the claim(s) regarding these goods. In the event that MFLOR has rendered or should render services pursuant to that (or those) agreement(s), the goods referred to in the previous sentence continue to be the property of MFLOR until the principal has also fully paid MFLOR's claim(s) for those services. The retention of title also applies to claims which MFLOR acquires against the principal on account of non-fulfilment by the principal of such agreement(s).
- 9.2** If the law of the country of destination of the purchased goods includes possibilities relating to the retention of title that go beyond those provided for in paragraph 1 above, the parties agree that these further-reaching possibilities will be deemed to have been stipulated for MFLOR, with the proviso that if it proves impossible to objectively establish the further-reaching rules to which this provision relates, the provisions of paragraph 1 above will continue to apply.
- 9.3** Goods delivered by MFLOR and covered by the retention of title may only be resold within the scope of normal business operations. If, however, the principal is declared bankrupt or has his payments suspended, the principal may not sell such goods on, even within the context of normal business operations. Moreover, the principal is not authorised to pledge the goods or to establish any other right on the goods.
- 9.4** MFLOR hereby states that it will reserve the rights of pledge referred to in Section 3:237 Dutch Civil Code with respect to delivered goods whose title has passed to the principal as a result of payment and which are still held by the principal as additional security for claims, other than the claims mentioned in paragraph 1 and paragraph 2 of this article, which MFLOR may have against the principal on any account whatsoever. The authority set forth in this paragraph also applies to goods that have been delivered by MFLOR and have been treated or processed by the principal.
- 9.5** In the event that the principal fails to fulfil its obligations or in case of valid fear that the principal will fail to fulfil its obligations, MFLOR is entitled to remove delivered goods that are subject to retention of title or to have this done from the principal or from third parties holding the good(s) for the principal. The principal must render its full assistance in this on pain of a penalty of 10% of the amount payable by the principal per day.
- 9.6** In the event that third parties wish to establish or exercise any right to the goods delivered subject to retention of title, the principal must inform MFLOR of this as soon as may be reasonably expected.
- 9.7** The principal must mark goods which have been delivered subject to retention of title as MFLOR's property and insure these goods and keep these goods insured against fire, explosion and water damage and against theft and - at MFLOR's initial request to this effect - make the insurance policy and proof of payment of the premium for this insurance available to MFLOR for inspection. In addition, at the initial request from MFLOR, the principal is required to:
- pledge all the principal's claims against insurers regarding the goods delivered subject to retention of title to MFLOR in the manner described in Section 3:239 of the Dutch Civil Code;
  - pledge the claims the principal acquires towards his buyers in the re-sale of goods delivered by MFLOR subject to retention of title to MFLOR in the manner described in Section 3:239 of the Dutch Civil Code;

- mark the goods delivered subject to retention of title as MFLOR's property;
- assist in other ways in all reasonable measures which MFLOR wants to take in order to protect its property rights regarding the goods, which do not unreasonably obstruct the principal in his ordinary business operations.

### *Article 10 Warranty*

- 10.1** Unless otherwise stipulated in writing, no warranty applies if the purchased goods are not new but used. For the rest, purchased goods are only warranted in accordance with the warranty stipulations of MFLOR's supplier.
- 10.2** In the event of a valid claim under the warranty, the principal is entitled to repair of the good. MFLOR may choose to replace the good if there are objections to repairing the good. The principal is only entitled to replacement if the good cannot be repaired. Replaced goods become the property of MFLOR. Our liability under the warranty is limited to full or partial redelivery when the delivered goods show a product defect.
- 10.3** The warranty does not apply if the conditions stipulated in the product installation instructions are not followed: in particular those regarding transport and storage, temperature conditions before, during and after installation and acclimatisation must be strictly and fully adhered to as specified:

#### **10.3.i** Transport and storage

Boxes containing any and all flooring products supplied by mFLOR must always be stored and transported on a flat and firm surface in neat stacks, flat (i.e. not overhanging), and never vertical. Do not stack pallets when storing.

The boxes must never be stored in very cold (below 6°C), very warm conditions (above 35°C) or damp rooms. The advised temperature is between 15 and 25 °C.

In principle pallets must be stored in warehouse racking. In case racking is not available the product can be stored/stacked, for a short period, to a maximum of 2 pallets high and only when the temperature in the warehouse is between 15 and 25 °C.

#### **10.3.ii** Temperature conditions before, during and after installation

It is best to install all flooring products supplied by mFLOR at a room temperature between 18°C and 28°C and a floor temperature above 15°C. Installations in places that are colder than recommended have a detrimental effect on the user-friendly installation features of Loose Lay. The boards and/or tiles are less easy to handle and less flexible, and cutting will be more difficult, making it harder to cut out small pieces. The lower the temperature, the harder they are to handle. For installations in places that are warmer than the recommended temperature conditions, we recommend that you create the correct installation conditions by external means such as fans, blinds, etc.

A constant temperature which does not fluctuate by more than 5°C per day and which is not below the required 18°C or above the required 28°C room temperature, and a minimum floor temperature of 15°C, must be maintained for 3 days before and during installation and for 7 days after installation has been completed.

#### **10.3.iii** Acclimatisation

All flooring products supplied by mFLOR should be acclimatised in the room where it is to be installed for at least 24 hours prior to installation, or until the product has reached the ambient temperature. This is a temperature not lower than 18°C. Ensure that the packages are laid flat and without stress during acclimatisation. Leave the panels in the packaging in small stacks away from sources of extreme heat or cold. The acclimatisation environment

should be between 18 and 28°C during this period and should be maintained within these levels after installation to ensure acceptable product performance.

#### **10.3.iv** REMARKS

PVC floors may expand and shrink under the influence of temperature or climatic conditions. If the PVC is not properly acclimatized or if the temperature fluctuates by more than 10 degrees over 12 hours, open or raised joints may occur in the PVC floor which can cause irreparable damage. This can be prevented by following the installation instructions correctly.

- 10.4** The warranty does not apply if the damage results from normal wear and tear or improper handling. Improper handling includes: careless use of the good or use of the good for a purpose other than the purpose for which the good is intended; insufficient maintenance; damage and changes to or repairs of the good by third parties without MFLOR's prior consent
- 10.5** The warranty only applies if the principal has fulfilled all his obligations to MFLOR

### *Article 11 Liability*

- 11.1** Defects in delivered goods are governed exclusively by the warranty as described in Article 10 (Warranty) of these terms and conditions.
- 11.2** MFLOR's liability, to the extent that this is covered by its liability insurance, is limited to the amount of the payment made by the insurer. If the insurer does not pay in any event or the damage is not covered by the insurance.
- 11.3** If MFLOR's liability insurer does not pay in any event or if the damage is not covered by the insurance, mFLOR's liability is limited to the invoice value of the performance at issue.
- 11.4** MFLOR is not liable for trading losses, such as damage in the form of lost profits and other consequential losses.
- 11.5** MFLOR is not liable for the accuracy of advice, information and usage instructions provided in the scope of the delivered goods. Usage instructions are guidelines; the principal must conduct his own examination under the circumstances in question in order to verify the accuracy of these instructions.
- 11.6** Any legal claim the principal has against MFLOR becomes null and void one year after the goods have been delivered or made available to the principal in conformance with the agreement, unless the principal has initiated legal proceedings against MFLOR within this term.
- 11.7** The limitations of liability included in these terms and conditions do not apply if the damage can be attributed to intent or wilful recklessness on the part of MFLOR or its managerial employees.

### *Article 12 Force majeure*

- 12.1** Force majeure is understood to mean: circumstances that make it impossible to honour the obligation but that cannot be attributed to MFLOR. If and in so far as these circumstances make it impossible or unreasonably difficult to honour an obligation, force majeure includes: strikes; a general shortage of the requisite raw materials and other goods or services needed to render the agreed performance; unforeseeable delays at suppliers or other third parties on which MFLOR depends; a situation in which a performance relevant in connection with the performance to be rendered by MFLOR is not rendered, not rendered in time or not properly rendered to MFLOR; government measures which prevent MFLOR from fulfilling its obligations in time and/or properly; excessive absences due to sickness; terrorist attacks; restricted or discontinued supplies of energy, whether or not by public

utility companies; fire; time lost through frost or other weather influences and general transport problems.

**12.2** MFLOR is also entitled to invoke force majeure if the circumstance that prevents (further) fulfilment commences after MFLOR should have fulfilled its obligation.

**12.3** During a force majeure situation, MFLOR's delivery and other obligations are suspended. If the period of time in which fulfilment of the obligations by MFLOR is not possible on account of force majeure lasts longer than three months, both parties are authorised to dissolve the agreement without any obligation to pay damages.

**12.4** In the event that MFLOR has already fulfilled part of its obligations or can only fulfil part of its obligations at the time the force majeure situation commences, MFLOR is entitled to separately invoice the part MFLOR already delivered and/or MFLOR can deliver and the principal is required to pay this invoice as if a separate contract is involved.

### *Article 13 Termination of the agreement*

**13.1** MFLOR's claims against the principal will become due and payable at once, inter alia in the following cases:

- if after concluding the agreement MFLOR learns of circumstances which give MFLOR valid grounds to fear that the principal will not fulfil its obligations;
- if the principal winds up its business, is declared bankrupt or is granted suspension of payments;
- if MFLOR has asked the principal to furnish security for the fulfilment and this security is not furnished or is inadequate;
- if the principal is in default in some other manner and fails to fulfil its obligations under the agreement.

In the events mentioned above, MFLOR is authorised to suspend the further performance of the agreement and/or to dissolve the agreement, all this subject to the obligation of the principal to compensate the damage MFLOR suffers as a result and without prejudice to the other rights to which MFLOR is entitled.

**13.2** If circumstances arise relating to persons and/or materials used by MFLOR, or which MFLOR is in the habit of using, in the performance of this agreement, that make performance of the agreement impossible, or so difficult and/or disproportionately expensive that fulfilment of the contract can in all fairness no longer be demanded, MFLOR is authorised to dissolve the agreement.

### *Article 14 Change of address*

The principal must immediately inform MFLOR in writing of any change of address. Goods delivered to the principal's last known address will be deemed to have been received by the principal.

### *Article 15 Dispute resolution and applicable law*

**15.1** Contrary to the statutory rules for the competence of the civil court, any dispute between the principal and MFLOR will be settled in the first instance exclusively by the court in Zwolle, unless dictated otherwise in Section 108 (2) of the Dutch Code of Civil Procedure. MFLOR will always be authorised to submit a dispute to the court which has jurisdiction by law or according to the applicable international convention.

**15.2** All agreements between MFLOR and the principal are governed by Dutch law.

### *Article 16 Translations*

In the event of any differences between translations of these general terms and conditions and the Dutch version of the terms and conditions, the Dutch text will prevail.