

**TIMBERLINE HARDWOOD FLOORS, LLC
SALES ORDER TERMS AND CONDITIONS**

1. **Agreement.** This is a contract of sale between Timberline Hardwood Floors, LLC ("Seller") and you ("Buyer") for the goods ("Products") described on the face of this Sales Order. Signor warrants that he/she is duly authorized to enter into this agreement. This Sales Order is expressly conditional on Buyer's assent to all the Terms and Conditions herein, excluding all additional and/or different terms and conditions proposed by Buyer in a purchase order and/or other offer, unless such terms and conditions are expressly accepted by Seller in writing. In no case shall Seller's act of shipping the Products to Buyer be taken as assent to any provision different from or additional to those set forth herein.

2. **Acceptance.** Buyer shall be deemed to have accepted these terms and conditions on the earlier of the following: (a) by signing the face of this Sales Order; (b) any acceptance or written confirmation of this Sales Order, express or implied; (c) any acceptance of the delivery of the Products, express or implied; or (d) any other event constituting acceptance under applicable law.

3. **Price/Payment Terms.** Buyer shall pay Seller the amount specified on the face of this Sales Order within thirty (30) days from Seller's invoice date. This amount includes the cost of all applicable foreign, federal, state, and local taxes, duties and tariffs, if any, incurred in connection with the sale of the Products. Buyer shall pay for the Products in manner acceptable by Seller in its sole discretion. Any amounts owed by Buyer to Seller and not paid when due shall bear a service charge at the rate of 1.25 percent (1.25%) per month from the original due date until paid. Buyer shall also be liable to Seller for Seller's reasonable costs of collection incurred, including but not limited to reasonable attorney's fees, in collecting any amounts owed by Buyer. Buyer agrees to pay all transportation charges incurred after the Products are delivered to the carrier, including any loading costs, and if Seller pays these in advance, Buyer agrees to promptly reimburse Seller upon demand.

4. **Order Fulfillment.** Seller shall have the right to deliver the Products, in the quantities specified on the face of this Sales Order, at one time or in portions from time to time within the applicable delivery period. Each partial shipment shall be deemed a separate sale and payment shall become due in accordance with the terms of payment set forth herein.

5. **Delivery of Products.** Seller shall deliver the Products to Buyer by placing the Products with a shipment carrier for delivery to Buyer. Any and all delivery dates provided to Buyer are estimated and in no event shall Seller be liable to Buyer or any third parties for any damages of any kind, direct or indirect, in the event of delay of delivery. In the event of any such delay, Seller shall have such additional time within which to perform its obligations herein as may reasonably be necessary under the circumstances.

6. **Title and Risk of Loss.** Unless otherwise specified on this Sales Order, all deliveries are FCA Seller's facilities in Fulton, New York. Title and risk of damage to or loss of the Products shall pass to Buyer upon Seller's tender of the Products to the shipment carrier.

7. **No Partial Acceptance.** Buyer shall not accept only part of the Products delivered, without Seller's written consent. Acceptance of any part of a delivery shall constitute acceptance of the entire aggregate of the Products tendered under this Sales Order. The Buyer's acceptance, subject to Section 8 below, shall be final and irrevocable.

8. **Inspection.** Buyer shall, at its own cost and expense, inspect the Products at the place of destination immediately upon

receipt of delivery. Upon physical receipt of the Products, Buyer's acceptance of the Products shall be conclusively presumed and any breach of warranty and/or contract is waived, unless Buyer gives Seller written notice of defective or non-conforming Products within ten (10) days after receipt and any shortage claims within five (5) days after receipt. The notice shall describe in reasonable detail the rejected Products and the defects and/or shortage upon which the claims are based. Seller shall be given a reasonable opportunity to investigate all claims and to inspect the allegedly defective Products or any shortage.

9. **Security Interest.** Buyer hereby grants to Seller a purchase money security interest in all the Products sold by Seller to Buyer, together with all proceeds thereof, to secure full payment of the purchase price for the Products, all other costs and expenses and the full performance of all Buyer's obligations to Seller whether arising hereunder or under any other agreement between Buyer and Seller. Seller thereby possesses the rights of a secured party under Article 9 of the Uniform Commercial Code. Upon Seller's request, Buyer agrees to execute all necessary financing statements and other documents evidencing this security interest with the appropriate state and local authorities.

10. **Warranties.** Seller warrants that: (i) it has the legal right to sell the Products; (ii) the Products are free from encumbrances, liens, or claims; and (iii) the Products sold meet any applicable grading agency standards as set forth herein, within allowable tolerances, in effect at the time of sale, unless otherwise provided on the face of this Sales Order. **SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, STATUTORY OR OTHERWISE, EXPRESS OR IMPLIED, OR ARISING BY USAGE OF TRADE, OR OTHERWISE, EXCEPT THOSE SPECIFIED HEREIN. SELLER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

11. **Buyer's Remedies.** If any of the Products do not meet applicable specifications or warranties, Seller, upon written notice from Buyer in accordance with Section 8 above, shall have the option in its sole discretion of repairing or replacing the non-conforming Products or remedying a shortage of Products within a reasonable time period, or, in the alternative, crediting Buyer that portion of the amount actually paid by Buyer for the non-conforming and/or shortage of Products. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OF BUYER'S INCIDENTAL OR CONSEQUENTIAL DAMAGES OR PERSONAL INJURY ARISING IN ANY WAY FROM THE SALE OR DELIVERY OF NON-CONFORMING PRODUCTS OR ANY OTHER BREACH OF CONTRACT BY SELLER.** The limitation of Seller's liability is applicable to any and all claims or theories of recovery asserted by Buyer, including, without limitation, breach of contract, breach of warranty, expressed or implied, strict liability in tort or negligence, or in the event that Buyer claims, alleges, or otherwise asserts that any loss or damage is attributable to the negligence of Seller and/or its agents, employees, or otherwise. Any action for Seller's breach of its warranties or any other breach of contract must be commenced by Buyer within one (1) year after the cause of action has accrued.

12. **Limitation of Liability.** Seller shall not be responsible for any misuse, neglect, accident, reconfiguration, or alteration of the Products by Buyer or others, or improper installation or use of the Products. Seller's liability for any claims and/or damages relating to the Products and/or its use shall be limited to the purchase price of the Products.

13. **Changes/Cancellations.** Buyer's purchase orders and/or other orders shall not be subject to cancellation, changes or reductions in amount, or suspension of deliveries except upon Seller's prior written consent. If such changes cause an increase or

decrease in the cost of, or the time required for, performance of any such order affected by such change, an equitable adjustment in the price, delivery schedule, or both, shall be made by the Seller and such order shall be modified accordingly. Either party may cancel any outstanding portion under this Sales Order without penalty in the event: (a) the other party fails to comply with any of the terms and conditions herein; (b) the other party becomes insolvent, is subject to a bankruptcy proceeding, makes an assignment for the benefit of creditors, or ceases or suspends its normal business operations. Any cancellation by Seller shall be without prejudice to any other rights which Seller may have against Buyer in this Sales Order or otherwise. Buyer shall be responsible for any and all costs and expenses incurred by Seller as a result of any cancellation.

14. **Selection/Design of Products.** The selection of the Products ordered, or design of any custom Products, shall be Buyer's sole and ultimate responsibility, and Seller shall have no liability whatsoever for any design defects of Products selected by Buyer or of custom Products, or in the event the Products ordered are unsuitable for Buyer's intended use. Any advice or assistance provided by Seller to Buyer in connection with Buyer's selection or design of the Products is at Buyer's risk, and Seller makes no representation or warranty whatsoever to such advice or assistance.

15. **Lumber Grades/Grain/Specifications.** Lumber grades, grain, and specifications shall be determined by the rules of applicable trade associations (National Wood Flooring Association) or, in the absence of such rules, on procedures which are customary in the industry and on other trade customs. In case of conflict among trade associations, the rules of the trade association of which the Seller is a member, or which is relied upon by Seller in the ordinary course of business, shall control.

16. **Indemnification.** Buyer shall indemnify, hold harmless, and defend Seller, and its directors, officers, employees, agents, and affiliates from and against any and all costs, claims, suits, liabilities, damages, and expenses of any kind whatsoever (including, but not limited to, court costs and reasonable attorneys' fees), incurred or suffered as a result of: (i) misuse or alteration of the Products by Buyer, its agents, employees, or otherwise; (ii) faulty or improper installation of the Products; and/or (iii) Buyer's material breach of this Sales Order and/or any of Buyer's obligations contained herein.

17. **Force Majeure.** Seller shall not be responsible for delays in producing, procuring, or delivering the Products caused by: acts of nature, fires, war, terrorism, fuel, riot or insurrection, strikes, government interference, inability to secure transportation, weather conditions, import restrictions, timing of deliveries from Seller's vendors or suppliers, or other contingencies beyond Seller's control. Should any of such conditions continue for a period of thirty (30) days after its first occurrence, Seller may cancel this Sales Order without incurring any liability to Buyer.

18. **Assignment.** Seller shall have the right to assign this Sales Order without the prior written consent of the Buyer. Buyer shall not assign any of its rights, or delegate any of its duties, under this Sales Order without the prior written consent of Seller, and any attempt to do so shall be void.

19. **Remedies and Waiver.** All rights and remedies of Seller under this Sales Order shall be cumulative and in addition to any other rights and remedies available to Seller under any other valid agreement with Buyer or any applicable law, including the New York Uniform Commercial Code and Lien Law. All waivers hereunder must be made in writing, and failure at any time to require the other party's performance of any obligation under this Sales Order shall not affect the right subsequently to require performance of the obligation.

20. **Entire Agreement.** This Sales Order, the terms and conditions herein and any Seller provided invoice represent the

entire agreement between the parties relating to the sale of the Products to Buyer and supersede all previous offers, purchases orders and/or otherwise, whether oral or written. No modification of this Sales Order shall be binding unless it is in writing and executed by a duly authorized representative of the Seller. The terms and conditions herein shall control in the event of any conflict between any of the terms and conditions contained in a purchase order or other offer and those contained herein.

21. **Governing Law and Venue.** This Sales Order shall be construed in accordance with, and governed by, the internal laws of the State of New York, without regard to that state's choice of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from this Sales Order. To the extent any disputes relate to, or arise from this Sales Order, before pursuing litigation, the parties hereto agree to submit to mandatory mediation before a mediator chosen by mutual agreement of the parties, to be held in a mutually determined location. In the event that no agreement is reached through mediation, Buyer hereby irrevocably consents to the personal jurisdiction and venue of the federal or state courts located in Oswego County, New York.

22. **Attorney's Fees.** If any litigation is commenced arising out of this Sales Order, the prevailing party shall be entitled to its costs and reasonable attorney's fees.

23. **Clerical Errors.** Stenographic, computer, mathematical computation, or other clerical errors made by Seller on either this Sales Order or any invoice issued to Buyer shall be subject to correction by Seller without incurring any liability to Buyer.