

## DEED OF AGREEMENT FOR BESPOKE FLOORING TERMS OF SERVICE

This DEED is made on this \_\_\_\_\_ day of \_\_\_\_\_  
BETWEEN: Bespoke Flooring Pty Ltd (ABN 11  
627 937 848) t/as Bespoke Flooring  
Sydney (“BFS”)

AND: **The Customer**  
(Individually referred to as “Party” or collectively  
referred to as “Parties” or “the Parties”)

### RECITALS

- A. BFS offers commercial services undertaking bespoke flooring remediation, repair and restoration work, as the case may be.
- B. The Customer wishes to engage the services of BFS, for consideration, and subject to the terms and conditions set out in this Deed.

### IT IS AGREED

#### 1. Interpretation and Definitions

- a. In this Deed, unless the context requires otherwise, the following shall apply:
  - i. References to this or any other document include the document as varied or amended, and notwithstanding any change in the identity of the Parties.
  - ii. A reference to a gender shall include a reference to all other genders, and the singular will include the plural and vice versa.
  - iii. A reference to a statute, ordinance, code, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction), and any equivalent of any other legislative authority having jurisdiction that may be relevant to the subject matter of this Deed.
  - iv. Headings are for convenience only and shall not be taken into account in interpreting the provisions of this Deed.
  - v. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed, in its original form or any varied or amended form that comes into effect.
  - vi. An expression importing a natural person includes any assignee, trust, partnership, joint venture, association, body corporate or governmental agency.
  - vii. Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia.

- viii. Reference to a Party will include a reference to that Party’s successors, heirs or assignees permitted by law.
  - ix. An obligation of 2 or more Parties binds them jointly and separately and an obligation incurred in favour of 2 or more Parties is enforceable by them jointly and separately.
  - x. Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- b. In this Deed, unless the context requires otherwise, the following words mean:
    - i. “*Building Law*” means the *Home Building Act 1989* (NSW), any accompanying regulations thereto, any applicable Australian Standards or similar, any equivalent legislation and regulations in other Australian States or Territories, the common law regulating the same substratum of facts regulated by that Act and those regulations in the State of New South Wales Australia and elsewhere in Australia, and any equivalent, similar or alternative statutes, legislation, regulations, ordinances, codes, or law in any other jurisdiction.
    - ii. “*Claims*” means any claims, without limitation, including any suit, action, cause of action, arbitration, money, debt, costs, demands, verdicts and judgments, whether brought by a private or public entity, including a regulatory body, either at law or in equity or arising under the provisions of any statute, including but not limited to a breach or alleged breach of the Building Law, the Construction Law, the Consumer Law, the Privacy Law, or arising as a result of a Tortious Action, whether in any Australian jurisdiction or otherwise.
    - iii. “*Construction Law*” means the *Building and Construction Industry (Security of Payment) Act 1999* (NSW), any accompanying regulations thereto, any applicable Australian Standards or similar, any equivalent legislation and regulations in other Australian States or Territories, the common law regulating the same substratum of facts regulated by that Act and those regulations in the State of New South Wales Australia and elsewhere in Australia, and any equivalent, similar or alternative statutes, legislation, regulations, ordinances, codes, or law in any other jurisdiction.
    - iv. “*Construction Work*” has the meaning given by s 5 of the Construction Law.
    - v. “*Consumer Law*” means the *Competition and Consumer Act 2010* (Cth), and particularly

Schedule 2 thereto, any accompanying regulations thereto, the common law relating to consumer transactions, including but not limited to the issue of misleading and deceptive conduct, and any equivalent, similar or alternative statutes, legislation, regulations, ordinances, codes, or law in any other jurisdiction.

- vi. "BFS's Privacy Policy" means the policy concerning the management of personal information published by BFS on its website and updated or amended from time-to-time, in accordance with the Privacy Law.
- vii. "Order Form" means the form given to the Customer by BFS and completed by the Customer containing a quotation for the relevant services to be provided by BFS.
- viii. "Privacy Law" means the *Privacy Act 1988* (Cth) and particularly the "Australian Privacy Principles" set out in Schedule 1 thereto, any accompanying regulations thereto, and any equivalent, similar or alternative statutes, legislation, regulations, ordinances, codes, or law in any other jurisdiction.
- ix. "Quote" means the quotation issued by BFS to the Customer as referenced on the applicable Order Form in each instance.
- x. "Residential Building Work" has the meaning given by clause 2 of Schedule 1 to the Building Law.
- xi. "Tortious Action" means any conduct capable of giving rise to a Claim founded on a tort, including but not limited to the torts of negligence, assault, trespass to person or property, negligent misrepresentation, deceit, interference with contractual relations and public nuisance.
- xii. "The Customer" means any person who accepts the terms of this Deed in accordance with clause 13 herein.

## 2. Purpose and Agreement

The purpose of this Deed is to set out and formalise the terms and conditions upon which the Customer engages BFS and procures their services, which the Parties have agreed to be essential, including the:

- a. acknowledgment of this Deed as a Construction Contract within the meaning of the Construction Law;
- b. consideration payable to BFS by the Customer;
- c. nature and extent of the product and / or service that BFS will provide to the Customer;
- d. way in which personal information is collected, stored and distributed in connection with the services of BFS;
- e. limitations in the services provided by BFS; and

- f. allocation of various liabilities or potential liabilities and corresponding releases and indemnities.

## 3. Warranties

- a. Before entering into this Deed, the Customer has obtained, or has had the opportunity and has elected not to obtain, separate and independent legal, accounting and financial advice as to the terms of this Deed and as to the Customer's obligations, rights and liabilities under this Deed. BFS relies on this warranty and representation given by the Customer.
- b. All Parties intend for this Deed to be binding.
- c. The Customer understands that this Deed continues to operate despite the death of the Customer, and operates in favour of, and is binding on, the legal personal representative of that Party.
- d. The Parties have entered this Deed with the intention that it will still apply with a binding effect to the fullest extent possible notwithstanding any material change in the circumstances of any Party.
- e. No Party has entered this Deed as the result of any undue influence, unconscionable conduct, duress or similar circumstances of pressure, necessity or unequal bargaining power and all Parties were fully cognisant of the advantages and disadvantages of so entering at the time of making an informed choice in the affirmative.
- f. The Customer will do all things reasonably necessary, including but not limited to the execution and lodgement of any requisite documents, to give effect to the provisions of this Deed.
- g. The Customer will refrain from doing anything, including but not limited to the execution of a last will and testament with inconsistent provisions to this Deed, that may potentially jeopardise the operation or effect of any of the provisions of this Deed, and the Customer acknowledges and agrees that any such act will be void or voidable at the discretion of BFS.
- h. The Customer specifically warrants to BFS that the Customer understands, acknowledges and accepts the provisions of this Deed, and in particular, clauses 5 to 9 inclusive herein.

## 4. Consideration

- a. In consideration for the services provided by BFS, the Customer:
  - i. Must pay to BFS the fee stated on the Quote nominated on the Order Form and any invoice within seven days of issue of the said invoice; and

- ii. Acknowledges and agrees to, and must specifically comply with, the terms of this Deed, and particularly clauses 5 to 9 inclusive herein, and particularly the releases and indemnities provided in those clauses.
  - b. A breach of this clause on the part of the Customer gives BFS an immediate right to terminate this Deed and refuse the Customer access to any and all documents, materials, other items and / or services relating to the services or activities of BFS and any future services.
5. Privacy
- a. The Customer warrants to BFS that the Customer has familiarised itself, or will familiarise itself at the first available opportunity, with the Privacy Law, and that it is not the responsibility of BFS to do so, in any way whatsoever, and that BFS will not do so.
  - b. The Customer warrants to BFS that the Customer has read BFS's Privacy Policy.
  - c. The Customer accepts the terms of BFS's Privacy Policy.
  - d. The Customer hereby consents and gives express permission for BFS to use the Customer's personal information and any information the Customer provides to BFS in the following manners:
    - i. To register the Customer's account with BFS;
    - ii. To ensure the Customer's compliance with clause 4 herein; and
    - iii. To disclose if required to do so by law.
  - e. The Customer understands that, notwithstanding that BFS takes the most appropriate measures possible in the circumstances to ensure against such occurrences, other persons or entities with whom BFS deals, or hackers or other cyber criminals, may use the Customer's information or content in a manner that breaches the Privacy Law or BFS's Privacy Policy or this clause. The Customer engages BFS knowing and accepting that this is a risk that the Customer assumes in full, and the Customer hereby forever releases and indemnifies in full BFS for any such occurrence or any similar or like occurrence.
  - f. Any act inconsistent with this clause on the Part of the Customer, including but not limited to a breach or the pursuit of a Claim in relation to the Customer's personal information or the Privacy Law, gives BFS an immediate right to terminate this Deed and cancel the Customer's access to any and all documents relating to the services or activities of BFS and any future services.
6. Statutory Breaches and other Tortious Actions
- a. The Customer warrants to BFS that the Customer has familiarised itself, or will familiarise itself at the first available opportunity, with the Construction Law and the Building Law, and that it is not the responsibility of BFS to do so, in any way whatsoever, and that BFS will not do so.
  - b. The Customer hereby warrants to BFS that it will not involve itself in any way whatsoever with any act or omission that gives rise to an actual or potential breach or contravention of the Construction Law or the Building Law, as the case may be.
  - c. The Customer understands that, notwithstanding that BFS itself takes the most appropriate measures possible in the circumstances to ensure against its services falling foul of the requirements of the Construction Law and / or the Building Law, limitations apply as set out in clause 8 herein. The Customer engages BFS and relies upon its services knowing and accepting that this is a risk that the Customer assumes in full, and the Customer hereby forever releases and indemnifies in full BFS for any such occurrence or any similar or like occurrence.
  - d. The Customer also acknowledges and agrees that the Customer remains liable, to the exclusion of BFS under any and all circumstances whatsoever, to its principle contractor or the relevant building or homeowner, at all times.
  - e. Any act inconsistent with this clause on the Part of the Customer, including but not limited to a breach or the pursuit of a Claim in relation to the Construction Law or the Building Law, gives BFS an immediate right to terminate this Deed and cancel the Customer's access to any and all documents relating to the services or activities of BFS and any future services.
  - f. The provisions of this clause apply in full, *mutatis mutandis*, with respect to other applicable Tortious Actions, as the case may be.
7. Indemnification
- The Customer expressly acknowledges and agrees that:
- a. BFS may be relying on representations made and / or warranties given by other Parties in this Deed and that, as such, BFS may, and may continue to, assume considerable risk, including but not limited to through the fulfilment of BFS's obligations in reliance upon the Customer's warranties, that BFS may not otherwise have endeavoured to assume in absence of the Parties' execution of this Deed;
  - b. The Customer acknowledges that, in the event of a breach, derogation from, inability, unwillingness

or refusal of the Customer to comply with the terms of this Deed, BFS would have relied upon the Customer's representations and / or warranties to its detriment and that, as such, the Customer will indemnify BFS for any reasonable costs or expenses, whether direct or indirect, present or future, incurred by BFS in connection with this Deed;

- c. Subject to BFS acting in breach or outside the scope of the provisions of this Deed, the Customer specifically indemnifies BFS against the following occurrences:
- i. Any and all Claims arising in relation to the Customer's use of the GPR and the services of BFS generally;
  - ii. Any and all Claims arising in relation to the use by third parties of the GPR and the services of BFS generally that may affect or relate in any way whatsoever to the Customer and that may have a bearing on BFS;
  - iii. Any Claim based on negligence, other Tortious Actions or a breach of the Constructions Law and / or the Building Law, as the case may be; and
  - iv. Any ancillary loss or damage, suffered by the Customer or any third party.
- d. Without limiting any other right or obligation which a Party may have under this Deed or a covenant herein or otherwise, the Customer indemnifies BFS and will keep BFS indemnified for any Claims or other loss or damage suffered as a result of a breach by BFS or a third party or the Customer of this Deed or a contravention of any law, regulation, by-law or order of any relevant competent authority or the covenants of this Deed; and
- e. Any indemnity under this Deed will be independent of any other obligation of any Party and is irrevocable and will continue despite expiration or termination of this Deed. BFS may enforce any indemnity without or before incurring any actual expense or suffering any actual loss or damage.

#### 8. Limitations

The Customer acknowledges and agrees that, while BFS has taken all reasonable measures to ensure that the most accurate, credible and reliable information is provided information is provided to the Customer by BFS, the services rendered by BFS have the following limitations:

- a. BFS relies almost exclusively on the Customer in delivering its services, and interprets the data and information given to it by the Customer, to the

exclusion of any other human assessment, consideration or expertise;

- b. BFS does not guarantee the absolute accuracy or effectiveness of its work, either indefinitely or under any circumstances whatsoever;
- c. The Customer remains responsible for satisfying itself of the lack of other subsurface risks before proceeding with its own Construction Work or Residential Building Work, as the case may be.

#### 9. Relationship of the Parties

Nothing in this Deed, is to be construed as constituting the Parties as partners, or as creating between the Parties the relationship of employer and employee, master and servant, or principal and agent, and no Party has (and must not represent that it has) any power, right or authority to bind the other, unless the contrary intention is expressed in the provisions of this Deed.

#### 10. Variation

No variation of this Deed will be of any force or effect unless it is in writing and signed by both Parties.

#### 11. Assignment

- a. The Customer may not assign its rights or obligations under this Deed under any circumstances whatsoever.
- b. In the event that BFS merges with another entity, transfers its intellectual property to another entity, sells its business, or on the occurrence of a similar or like event, the rights and obligations of BFS will automatically be assigned and subrogated to the relevant new entity, as the case may be.

#### 12. Acceptance and Agreement

- a. The Customer acknowledges and agrees that the Customer was made aware of the terms of this Deed, and physically and / or electronically acknowledged and accepted those terms, by signing the Order Form or otherwise, as a condition precedent to the provision of services by BFS.
- b. Without limiting the operation of subclause a. above, this Deed will be deemed to be accepted, and agreement therefore reached between the Parties, when the Customer accesses any report prepared by BFS electronically.

#### 13. Document to Enure

Subject to any express terms of this Deed evincing a contrary intention, all of the clauses of this Deed survive the termination of this Deed for any reason and continue to be binding upon the Parties and enure for the benefit of the Parties.



14. Entire Agreement

This Deed embodies the entire agreement between the Parties relating to the subject matter of this Deed, and this Deed supersedes and replaces any prior and / or contemporaneous agreements and understandings between the Parties in that regard.

15. Governing Law and Jurisdiction

- a. This Deed is governed by the law of New South Wales and the Parties:
  - i. submit to the jurisdiction of its courts or tribunals and courts of appeal from those courts or tribunals ; and
  - ii. will not object to the exercise of jurisdiction by those courts or tribunals on any basis.
- b. For the avoidance of doubt, clause 16a above is intended to have the effect that any litigious dispute should be heard and determined by a court or tribunal in New South Wales, Australia, and according to the laws applicable in New South Wales, Australia.

16. Dispute Resolution

- a. If a dispute arises out of or relates to this Deed (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of the Deed or as to any claim in tort, in equity or pursuant to any statute) ("Dispute") a Party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause, except where the Party seeks urgent interlocutory relief.
- b. A Party claiming that a Dispute has arisen under or in relation to this Deed must give written notice to the other Party specifying the nature of the Dispute.
- c. On receipt of that notice by the other Party, the Parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- d. If the Parties do not agree within seven (7) days of receipt of the notice (or such further period as agreed in writing by them) as to:
  - i. The dispute resolution method and/or procedures to be adopted;
  - ii. The timetable for all steps in those procedures; and
  - iii. The selection and compensation of the independent person required for such technique;
  - iv. The Parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the

President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

- e. In the event the Dispute is not resolved by mediation within fourteen (14) days of written notice by one Party to the other of the Dispute (or such further period agreed in writing between the Parties), either Party may refer the Dispute to arbitration. The arbitrator shall be agreed between the Parties within ten (10) days of written notice of the referral by the referring Party to the other, or failing agreement such as appointed by the President of the Law Society of New South Wales or the President's nominee. In either case the arbitrator shall not be a person who has participated in an informal resolution procedure in respect of the Dispute.
- f. This clause does not operate with respect disputes solely concerning payment for Construction Work, in which case the provisions of the Construction Law apply instead.
- g. This clause does not operate with respect disputes solely concerning payment for Residential Building Work, in which case the provisions of the Building Law apply instead.

17. Severance

- a. In the event of any covenant or other provision of this Deed being declared invalid, illegal, unlawful or otherwise being incapable of enforcement, all other covenants and provisions of this Deed shall nevertheless prevail and remain in full force and effect.
- b. In the event of any such provision being severed the Parties must endeavour to agree upon provisions in substitution for the severed provision that are not illegal and that substantially express the meaning of the severed provision, as suggested by BFS.

18. Independent Advice

- a. The Customer acknowledges and represents to BFS that the Customer has obtained, or has had the opportunity to obtain and has elected not to obtain, separate and independent legal, accounting and / or financial advice as to the terms of this Deed and as to any obligations, rights or liabilities that may arise under this Deed.
- b. BFS relies on the acknowledgement and representation given in this clause by the Customer.

19. Absolute bar

This Deed may be pleaded and tendered by any Party as an absolute bar and defence to any proceeding or

Claim brought in breach of the terms of this Deed or otherwise in relation to this Deed.

