

SHIMICOAT Terms of Service – SHIMICOAT Pty Ltd (“The Contractor”)

OVERVIEW

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Terms of Services

1. Acceptance of THE QUOTATION supplied by the contractor to THE CLIENT (the persons, company or corporation named within the Quotation, or the agent thereof), either orally or in writing constitutes acceptance of THESE TERMS which are the terms of an agreement between the CLIENT and THE CONTRACTOR.
 - a. A purchase order accepts our quotation and the contract will be formed, despite anything in the purchase order to the contrary, on the terms set out in this quotation. A purchase order on different terms will not be construed to be, and is not, a counter-offer. Any terms in a purchase order inconsistent with the terms in this quotation are void and of no effect.
 - b. The Quotation is valid for a one-month period (or if the Home Building Contracts Act 1991 WA applies, 45 days).
 - c. If any part of these Terms become void or unenforceable, then that part shall be severed to the intent that all parts that are not void or unenforceable shall remain in full force and effect.
2. The Contractor offers to the Client promptly and diligently, insofar as its other commitments allow, to proceed to complete and install THE WORKS (the description of work offered within the Quotation plus any variation required) in accordance with the following terms:
3. Prior to the commencement of the Works the Client is to ensure that:
 - a. All obstacles, equipment, shelving, furniture, non-structural cabinetry, and other items from the surface and surrounding area where the Works are to be performed, are removed;
 - b. the Contractor has:
 - i. Access to power, and access to water with a minimum water-flow of 15 litres per minute;
 - ii. Adequate ceiling suspended lighting to light areas of the surface to be worked on
 - iii. Uninterrupted personnel and equipment access to the site of the Works,
 - c. That the area will remain clear of persons, equipment, animals for the duration of the works and for seven days after completion while the coating is curing.
 - d. Client is to schedule the Works to occur when the property is sealed from drafts and leaks, and that surfaces near to area of Works are free from loose debris, particles, or objects that may

affect the floor finish. The Contractor is not liable of the entry of dust or water that migrates through these surfaces.

4. Should the Contractor's work procedures be inhibited as a result of failure to comply with these Terms, additional charges may apply.
5. Failure by the Client to comply with paragraph 3 hereof, above, voids any guarantee supplied by the Contractor, or any implied warranty that would normally have applied and which cannot by law be excluded.
6. If the manufacturer, supplier, or installer of the substrate being treated has guidelines regarding the treatment, over-coating, or cleaning of the substrate, this must be provided to the Contractor prior to commencement of the Works.
 - a. The Contractor is not responsible for issues arising which relate in any way to the failure of the Client to comply with these Terms.
 - b. The Client hereby accepts that modified concrete and concrete with additives may affect the adhesion of the coating. The Contractor shall not be held liable for problems arising from such circumstances.
 - c. Sealers applied to concrete, paving, tile or any other substrate are not guaranteed to prevent staining, discolouration, or degradation.
 - d. The Quotation is subject to site inspection prior to commencement.
7. The Contractor will conduct the Works in a diligent and cautious manner, drawing from past experience of the products, similar products and the type of substrate to achieve the best result possible with the resources at hand, and any limitations that may exist.
 - a. The client acknowledges that high pressure cleaning may result in a dirty swimming pool, windows, walls, doors or other parts of the property, and while the Contractor will hose them down after the high pressure cleaning is completed, some marks or dirt may remain which the Contractor is not liable to remove.
 - b. The Contractor may use high pressure cleaning or cleaning and sealing chemicals (some hazardous) to complete the Works.
 - c. It is to be assumed that the cleaning and sealing products used to complete the Works have a strong odor that will remain after the works are completed.
 - d. Surface preparation techniques not limited only to pressure cleaning, sand blasting, grinding, sanding, shot-blasting, commercial scrubbing may be used and the Client hereby understands that the Contractor's work will create dust in the air that will settle over time, and the movement of dirt and sand.
 - e. The Client understands that damage to walls/surfaces surrounding installation area can occur and a final coat of paint should be applied after completion of the works.
8. Except in instances where the Contractor is engaged for the specific purpose of remedying one of the conditions listed below, the Client Warrants to the Contractor that the concrete to be treated:
 - a. Meets minimum Australian Standards,
 - b. has a minimum of 25 mpa in compressive strength,
 - c. has a tensile strength of minimum 1.5mpa.
9. The Contractor may in its absolute discretion, vary the application or installation methods, processes, or quantities from manufacturer or supplier recommendations based on past experience and knowledge of the products, the substrate, site and environmental conditions, and the desired finish as

described within the Quotation. The Contractor may delay or postpone works if weather conditions are not suitable for application.

- a. The Contractor is not responsible for the changes in substrate levels or “fall” as a result of surface preparation and over-coating methods.
 - b. Unless specifically stated within the Quotation, the Contractor makes no claim to correct substrate levels or “fall.”
 - c. For concrete painting and concrete over-coating works, no guarantee is made that roll coats will seep into low points, pores, holes, craters, or any other defect within the concrete.
10. The Contractor is responsible for the quality of workmanship carried out and the quality of the materials supplied. The contractor is to complete the Works in accordance with the Quotation.
- a. It is recommended that the Client request the Contractor to perform a sample or test area prior to commencement, on the actual substrate where the product is to be applied.
 - b. Any colour charts, samples or test areas supplied by the Contractor are strictly indicative, not an exact representation of the finish that will be obtained under real install conditions. The Contractor’s products are site installed and vary greatly.
 - c. Workmanship can be determined to be defective if it greatly varies from the description contained within the Quotation due to error on behalf of the Contractor or its employees or sub-contractors, but liability for the repair or replacement of the product or service is limited to occasions where adverse or unexpected environmental conditions and/or unknown substrate contaminants, moisture, passage of gases or other substances have not contributed to the occurrence of the defect.
 - d. Surface bubbles caused by off-gassing in the concrete slab, and/or roller lines, are not considered to be defects in workmanship.
 - e. The Contractor’s flooring systems are mixed and installed onsite (not factory finished), any and all surface irregularities and/or contaminants are not considered defective workmanship or product.
 - f. The Client hereby understands that excessive heat from ovens, heaters, and other high temperature sources may damage the installed flooring and the Contractor is not liable for such damage
 - g. The Contractor may mask walls or other surfaces with tapes suitable for epoxy resins/sealers, but the Contractor is not responsible for any peeling of paint from walls or other surfaces when tape is removed.
 - h. As concrete is porous, and may move or expand, no guarantee of any kind can be given against cracking of the product. Any repair performed to cracks in the substrate or flooring system is exempt from any guarantee supplied or any implied warranty that would normally have applied and which cannot by law be excluded.
 - i. No warranty is made that future repairs or modifications to the floor, whether they be warranty repairs or cost repairs will blend seamlessly with the existing floor.
 - j. Gouging or scratching of the floor is not deemed an error of the Contractor under any circumstance.
 - k. Protective floor coverings placed onto the finished floor within 28 days of installation can damage or discolour the finished floor. The Contractor is not to be held liable for such damage.
 - l. Unless expressly stated in the Quotation, the Contractor has not allowed to protect the floor during construction from other trades or events and is not responsible for any such damage
 - m. The use of any equipment with steel wheels voids any warranty provided to the client.

- n. No warranty is supplied against UV related discolouration of materials applied to the substrate, or the substrate itself
 - o. No responsibility is taken by the Contractor for any failure resulting from or partially contributed by substrate deficiency.
 - p. No warranty is provided or implied other than a warranty that may have been supplied in writing.
11. The Client understands that the Contractor may employ staff, sub- contractors, or other firms to conduct the Works without notice.
- a. The Client also understands that the Terms extend to such staff, sub- contractors and firms, and apply to all the Works undertaken or commissioned by the Contractor.
 - b. Save where a consumer guarantee, which applies to you under the Australian Consumer Law, has been breached, liability is limited to the repair and replacement of the product.
 - c. Should the Client desire that photos of the Works are not used for future promotion, the Client shall notify the Contractor in writing with this request, and the Contractor shall refrain from the use of such photos.
 - d. It is the responsibility of the Client to inspect and test the floor periodically to ensure it is safe for traffic and use, depending on the requirements of the user. Specifically, slip testing should be carried out by the Client as slip resistance levels can change over time. Visual inspections for any trip hazards or any other hazard should be completed
12. The payment terms of the Contractor are strictly Payment on Practical Completion. Snag lists, defect rectification, or sections of the Works unavailable to the Contractor at time of installation, are not to delay the date of Practical Completion.

EFFECT OF AGREEMENT

- 1. This offer can be accepted orally or in writing, and the issue of a purchase order by the customer shall operate as an acceptance even if the purchase order contains terms inconsistent with the terms set out in this offer.
- 2. Despite any rule of law to the contrary an inconsistent term in a purchase order shall not operate as a refusal of this offer and the issue of a counter-offer. To the extent of any inconsistency, the terms of this offer shall prevail as being first in time and the whole of any such inconsistent provision in any such purchase order is hereby severed and of no effect; and terms set out in this offer together with any non-inconsistent terms of any such purchase order shall be of full force and effect.
- 3. The agreement constituted by this offer and any non-inconsistent terms in any purchase order (if any) comprises the entire agreement between the parties and no prior representation or agreement, whether oral or in writing, in relation to any matter dealt with in this agreement shall have any effect from the date of this agreement.
- 4. Each party shall do or cause to be done or refrain from doing all such acts or things necessary to give effect to this agreement.
- 5. None of the terms or conditions of this agreement, or any act, matter or thing done under or by virtue of this agreement or any other agreement, instrument or document, or judgment or order of any court or judicial proceeding, shall operate as a merger of any of the rights and remedies of the parties to this agreement, and those rights and remedies shall at all times continue in force.
- 6. If any provision of this agreement is void or voidable or unenforceable in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and, it is capable of being read down, such provision shall be read down accordingly.

7. If, notwithstanding subclause 12.6 a provision is still void, voidable, unenforceable or illegal, if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are hereby severed; and. in any other case, the whole provision is hereby severed; and the remainder of this agreement shall be of full force and effect.
8. Deposits and part-payments paid by the Client to the Contractor are non- refundable.
9. Not less than seven days after the commencement of the Works, and at intervals of not less than seven days thereafter, the Contractor may state interim accounts as between itself and the Client requiring payment in respect of the progress which has been made in the Works.
10. The Client hereby indemnifies the Contractor against all claims that may be brought by third parties against the Contractor in relation to any loss or damage to property or injury or death arising out of or in relation to the Works.
11. The Quotation is governed by the following limitations which may affect its accuracy, and the Client warrants to the Contractor that any factors that could affect the Contractor's efficient and effective carrying out of the Works has been disclosed in writing to the Contractor:
 - a. Moisture content in the concrete slab is less than 4%
 - b. There are no property or substrate damage or defects which might reasonably affect the Quotation.
 - c. There are no additives within the concrete matrix or on the surface of the concrete that could affect the performance of the coating system.
12. Should the Client accept the Quotation verbally or in writing; or sign a contract with the Contractor; or ask the Contractor to proceed with the Works, and at a later date in breach of this agreement, not instruct the Contractor to proceed with the works or otherwise reside from such acceptance, the Client must compensate the Contractor in damages so that the Contractor will not be out of pocket for administrative costs, cost of items purchased or specially prepared in preparation for the works, cost of providing the quotation and cost of making the initial sale. A fair estimate of the total of this sum is \$1,360 or 48 per cent of the amount of the quotation, whichever is the greater.
13. Additional works or variation works that present at such time considered to be outside of normal business hours do not require verbal or written authority from the Client in order for proceeding. Such variation works will attract additional charges.
14. Unless there is any law to the contrary, then in case of any difference or dispute between Client and Contractor as to anything in connection to the Works (except a claim of unpaid debts), then:
 - a. either party shall give to the notice in writing of such dispute and after 7 days, unless it shall otherwise have been settled, such dispute shall and is hereby submitted to the arbitration of the president for the time being of the WA law society or his nominee, in accordance with the Commercial Arbitration Act 1985 (WA).
 - b. At the time of serving the Notice of Dispute the party serving such notice shall provide evidence of the deposit with the Secretary of WA Law Society, of \$2000 by way of security for costs of the arbitration proceedings.
15. If the Client shall not pay to the Contractor, within 14 days of practical completion of the Works, any money it might owe the Contractor:
 - a. The Client must pay to the Contractor liquidated damages in respect of the administrative effort of recovery of debt at the rate of \$85 per hour or part thereof spent on any task involved in recovering the debt;
 - b. The Client must pay to the Contractor a late fee of \$85 per month that any part of the account is unpaid, towards its costs of maintaining ledgers with respect to unpaid accounts, which

- include but are not limited to wages, software, computer hardware, electricity, external accounting fees, bank fees, provisioning and depreciation; and
- c. The Contractor may register a caveat against the land on which any of the Works have been done as if the Worker's Lien Act 1893 (South Australia) was still valid and as if it applied in Western Australia;
 - d. Interest shall accrue on the amount due at the rate of \$1 per \$1000 or part outstanding (including interest accruing upon interest which accrues from time to time) per day, and this figure represents the cost of provisioning, of the contractor negotiating extended credit with its bankers, wages, overheads, external accounting fees and bank charges.
16. If the Client has been permitted to pay the total price for the goods and services supplied to it in accordance with the provisions of this agreement ("price") over a period of three calendar months or more, then the price shall be fixed when it makes the final payment ("the final payment date"), and not when the goods are delivered or services performed ("the performance date"). The price may vary if there is a rise or fall in any quarter in the Consumer Price Index (all groups) for Perth ("CPI") over the period between the performance date and the final payment date which exceeds the average quarterly rise or fall in the CPI over the preceding ten years by more than one quarter.
17. No variation and no rise or fall in the price of materials or in labour shall vitiate this contract.
18. The rates contained in the bill of quantities are based upon the prices of materials and labour needed to fabricate them at the final payment date and not the time of the performance date. If there is a rise or fall in any quarter in the CPI over the period between the performance date and the final payment date which exceeds the average quarterly rise or fall in the CPI over the preceding ten years by more than one-quarter, then the price or any part thereof remaining unpaid at the final payment date shall be varied by increasing or decreasing it (as the case may be) by the amount in the variation in the CPI over the period between the performance date and the final payment date.
19. The Contractor is bound by the Privacy Act 1988. In consideration of the Contractor not requiring a bank guarantee in respect of the Works, the Client covenants that the Contractor may collect personal information from the Client such as personal details, contact details, financial information, and transaction information.
20. The Contractor may use the Client's personal information to carry out its business, comply with its legal requirements, and in the event that the Contractor deems that the Client has committed any default in payment, to disclose personal information to a credit reporting agency or to members of the Contractor's trade association and the CLIENT HEREBY SPECIFICALLY AUTHORISES SUCH DISCLOSURE.