

Choices Flooring Limited

Membership Agreement Summary

last updated September 2023

Below is a plain English summary of the agreement. This summary should be read in conjunction with the agreement as it does not comment on every detail.

Recitals

Simply a background of the parties. The recitals explain the nature of the relationship the member has with the group and in particular the member's independence and right to resign, if the member does not follow the group's direction.

Clause 1 - Membership

It is acknowledged that Choices Flooring reviews applications for membership and will from time to time admit new members.

The clause further states the member agrees to satisfy the pre-conditions to the membership, pay the Membership Fees and comply with its obligations under this agreement.

Clause 2 - Intellectual Property

The agreement grants to the member the right to use the Choices Flooring trademarks, the Choices Flooring names and any related logos, colours, and the group's related intellectual property, etc. This remains the property of Choices Flooring.

The member is authorised to use the name, logo, etc. and agrees to keep confidential information (i.e. commercially sensitive information) confidential, and to protect the group and its members' reputations when using Choices Flooring intellectual property.

The reference to "goodwill" is in relation to the group's goodwill in the logo and other intellectual property, not the goodwill a store may generate in respect to its own business.

Clause 3 - Choices Flooring's Obligations

Choices Flooring agrees to provide samples, recommended price books and other items upon the member joining. On an ongoing basis Choices Flooring will source product, provide knowledge, training and marketing. It may vary the level of services between members and areas. Notice of meetings will be given, at which members are expected to attend.

Clause 4 - Operational

Upon signing the agreement, the member agrees to establish the correct signage, maintain a well presented store, attend training sessions, maintain adequate insurance, not join another floor covering group, not to conduct a direct account with preferred suppliers, and ensure any proposed changes in business structure are notified to Choices Flooring.

Choices Flooring has the right to impose levies, and if it introduces an integrated computer network, the member will acquire the necessary equipment to become connected. The services provided by Choices Flooring are only for use at licensed outlets. The clause also confirms that if the member sells "complementary" lines (e.g., window furnishings or rugs), they will be confined to one section of the store and not dominate the store. Further, the clause confirms a member may operate unidentified outlets; however they must not appear related to Choices Flooring. Thus sample and drape labelling must not feature Choices Flooring, without written permission.

An important obligation under this clause is the restriction on “wholesaling” in clause 4.2(f). Wholesaling of exclusive group lines is prohibited to non-group retailers or persons who may on sell such products. In addition, a member will also not sell other lines (from preferred suppliers) to non-group retailers if the member suspects that retailer will disrupt a fellow member.

Clause 5 - Conduct of Member's Business

This clause details that the member will conduct their business in a proper manner in accordance with the law, and give prominence to preferred supplier lines, in a properly merchandised and managed business, offering good customer service and dealing ethically and fairly with customers and suppliers.

Further, the member agrees to adequately support preferred suppliers and acknowledges that their business is independent of Choices Flooring. The remainder of the clause outlines that if Choices Flooring does not consider that the member is performing to reasonable stipulated levels after a certain time, the member will have breached the agreement.

Clause 6 - Member's Trading

The member agrees to provide any necessary financial information to assist in the granting of or renewal of a credit facility. The member will provide whatever securities that Choices Flooring may deem necessary.

The balance of the clause covers the ordering process, title in the goods, compliance with trading terms, payment of levies, interest on overdue accounts, withholding of rebates and discounts, limits on Choices Flooring's liability for products supplied by other parties, and the providing of certain financial information if requested.

Choices Flooring agrees to keep confidential any information provided to it by the member.

Clause 7 – Member's Financial Obligations

The member agrees to pay the Initial Fee, Royalty and Administration Fee, Marketing Fee and Membership Fee as specified in Schedule 1.

Clause 8 - Marketing

The member agrees to take part in all general promotions.

Special regional promotions must be supported if a majority of members in that region agree to participate. The member agrees to pay the Special Promotion levy. Exemption from marketing activities will only be granted by Choices Flooring in exceptional circumstances.

Clause 9 - Membership Code of Conduct

The member agrees to comply with the Code of Conduct. A copy of the Code is attached to the agreement.

Clause 10 - Indemnity

The member indemnifies Choices Flooring from any claims against it as a consequence of the member's activities.

Clause 11 - Assignment and Transfer

The rights and obligations of this agreement belong to the member only and cannot be transferred without the approval of the other party. A change in control of the member is deemed to be an assignment for which Choices Flooring's consent is required. Should a member sell their business, the agreement may be terminated by Choices Flooring provided it specifies why, although Choices Flooring will if the purchaser meets necessary criteria, grant membership to the purchaser.

Clause 12 - Guarantees

If the member is a company, Choices Flooring may request the shareholders of the member to execute a guarantee of the member's obligations under the agreement.

Clause 13 - Term of Membership

The Initial Term is specified in Schedule 1. The agreement will automatically be renewed after the Initial Term and continue indefinitely. Either party may terminate on not less than six months' notice after the Initial Term. The agreement may also be terminated by the non-defaulting party if there is a breach of the agreement by the other party that is not capable of remedy or remedied within thirty days, or if the other party becomes financially insolvent (or similar), commits a criminal offence, or is unable to perform a material obligation due to force majeure.

Clause 14 - Consequences of Termination

Upon termination, the member will cease to use the trademarks, return confidential information, amend their business name if necessary and pay their account.

The member will co-operate if necessary to allow Choices Flooring to remove signage and amend telephone listings which include the trademark.

Choices Flooring has the option but not the obligation to purchase the store display hardware, equipment and samples at written down tax depreciated value.

Clause 15 - Dispute Resolution

This clause identifies how a member can resolve disputes that arise in relation to the agreement. The group always endeavours to resolve disputes internally, although if that is not possible, either party may have a mediator appointed.

Clause 16 - Notice

Mechanical clause regarding notices delivered to the member or Choices Flooring.

Clause 17 - Interpretation

Mechanical clause detailing definitions, etc.

Clause 18 - General

Includes mechanical clauses detailing state of law applicable, and nature of parties, etc.

Also includes clauses around legal liability, confirming that the *Consumer Guarantees Act 1993 (NZ)* and *Fair Trading Act 1986 (NZ)* do not apply, excluding express and implied warranties, and confirming that neither party is liable to the other for indirect losses, etc.

Schedule 1

Mechanical clause detailing the information on parties, licenced outlets, initial term, fees, levies and discounts.

Membership Code

A Membership Code is attached. The Code reflects the culture and spirit of the group as a co-operative and in effect summarizes the intent of the agreement.