

## CONTRACT TERMS AND CONDITIONS

**The following are the Terms and Conditions of Your contract with Sergenian's Floor Coverings, Inc.:**

**1. FINAL CONTRACT:** IF YOU DO NOT SEE A SPECIFICATION, TERM, REPRESENTATION OR CONDITION YOU ARE RELYING ON INCLUDED IN WRITING IN THIS PROPOSAL, YOU MUST HAVE IT ADDED IN WRITING BEFORE YOU ACCEPT THIS PROPOSAL. WHEN ACCEPTED, THIS PROPOSAL BECOMES THE PARTIES' FULL, FINAL AND ONLY CONTRACT. ANY REPRESENTATIONS MADE DURING PRIOR NEGOTIATIONS AND NOT EXPLICITLY EMBODIED IN WRITING IN THIS PROPOSAL ARE NOT INTENDED TO BE PART OF THIS CONTRACT, ARE NOT BINDING AND CAN NO LONGER BE RELIED ON FOR ANY PURPOSE, INCLUDING THE DECISION TO ACCEPT THIS PROPOSAL.

**2. STANDARD EXCLUSIONS:** Unless specifically included on the reverse side, this Contract does not include labor or materials for the following work (any Exclusions in this paragraph which have been lined out and initialed by the parties do not apply to this Agreement): removal and disposal of any materials containing asbestos or any other hazardous material as defined by the EPA; custom milling of any wood for use in project; moving Your property or the property of others; labor or materials required to repair or replace any materials supplied by You; correction of concealed substandard framing or subflooring; and removal and replacement of existing rot or insect infestation. **Sergenian's is not responsible for consequential damages such as cupping, warping or shrinkage, caused by a failure to follow manufacturer's instructions as to maintaining relative humidity in rooms with new wood flooring.**

**3. CHANGE DIRECTIVES AND CHANGE ORDERS:** On fixed contracts, every oral direction by You or Your authorized agent, if it entails additional time or expense, shall be handled as a change order. Change orders shall be reduced to writing by Sergenian's Floor Covering, Inc., and signed by You. The Work, as modified by the You or Your agent's oral directions, may proceed immediately, at the discretion of Sergenian's Floor Covering, Inc., pending written confirmation of the change order. You shall be responsible for such additional cost or delay as may reasonably relate to the directed changes. Any additional services performed by Sergenian's Floor Covering, Inc. pursuant to such written or oral direction shall be paid for as set forth herein unless otherwise agreed to in writing. **Unless You object in writing to a written change order within five (5) days of presentation by Sergenian's Floor Covering, Inc., including both an explanation of the reasons for the objection and a statement of the amount You believes is reasonably related to the directed changes, the change order shall be deemed accepted,** whether signed by You or not, and You shall be bound by it, all objections having been waived.

**4. CONCEALED CONDITIONS:** This Agreement is based solely on the observations Contractor was able to make of the structure in its current condition at the time this Agreement was bid. If additional Concealed Conditions are discovered once work has commenced which were not visible or anticipated at the time this proposal was bid, Contractor may stop work and point out these unforeseen conditions to You so that You and Contractor can execute a Change Order for any Additional Work. If the You or the Your agent directs the work to proceed, or fails to promptly respond to Sergenian's Floor Covering, Inc., or the additional work caused by a Concealed Condition, must be completed in order to perform this Agreement in a workmanlike manner, the additional work may proceed and the You shall be responsible for the additional cost or delay as may reasonably relate to the Concealed Conditions.

**5. NOTICE CONCERNING RESIDENTIAL CONSTRUCTION DEFECTS ON DIRECT CONTRACTS WITH THE PROPERTY OWNER:** Wisconsin law contains important requirements You, if the property owner, must follow before You may file a lawsuit for defective construction against the contractor who constructed Your dwelling or completed Your remodeling project or against a window or door supplier or manufacturer. Section 895.07 (2) and (3) of the Wisconsin statutes requires You to deliver to Sergenian's Floor Covering, Inc. a written notice of any construction conditions You allege are defective before You file Your lawsuit, and You must provide Sergenian's Floor Covering, Inc. to make an offer to repair or remedy the alleged construction defects. You are not obligated to accept any offer made by Sergenian's Floor Covering, Inc. All parties are bound by applicable warranty provisions. The "Right-to-Cure" brochure is included herein and available on the Wis. Dept. of Safety and Professional Services Website.

**6. DELAYED PAYMENT PENALTIES:** Payment is due within 10 days of invoice. No credit is being extended. Penalty charges will be applied on all late payments under this Agreement. "Late Payments" are defined as any payment not received within 10 days of mailing or delivery of the invoice by Sergenian's Floor Covering, Inc. Mailing is presumed to be on the invoice date. Penalty charges accrue at the rate of 1.5% per month, compounding, on any outstanding balance, from date of invoice. Advance payment for materials to be stockpiled on site and progress payments may be required and invoiced. Credit is not being extended under this Proposal/Agreement. All payments on this obligation or any resulting judgment will be applied first to costs of collection under ¶7 below, if any, next to accrued penalty interest charges, and then to principal. The obligations of this paragraph and ¶7, below, shall continue to apply until actual payment in full, notwithstanding the reduction to judgment of the underlying obligation.

**7. DISPUTE RESOLUTION AND ATTORNEY'S FEES:** Any controversy or claim arising out of, related to, or concerning this Agreement, shall be brought and heard in Wisconsin Circuit Court, without a jury. **The right to a Jury Trial is here specifically waived by all parties to this Agreement.** The laws of the State of Wisconsin shall govern interpretation of this contract. You agrees to pay all of Sergenian's Floor Covering, Inc.'s costs of collection or litigation, including any appeal, for any claim arising out of, related to, or concerning this Contract, or any related lien claim, including, without proration by issue or claim, all of Sergenian's Floor Covering, Inc.'s reasonable actual (a) attorney's fees, (b) expert witness fees, (c) witness expense (including employee time at charge-

out rates), (d) out-of-pocket costs, (e) collection agency fees, and (e) other litigation related expenses. The obligations of this paragraph shall continue to apply until actual payment, in full, regardless of whether the underlying claim is reduced to judgment, or not.

**8. LIMITED WARRANTY:** All materials are guaranteed to be as specified. **Sergenian's Floor Covering, Inc. agrees to correct any defective Contractor- or Subcontractor-supplied labor used for new construction in this project for a period of one year following substantial completion of all work, unless a longer period is specified elsewhere in this contract.** This is Sergenian's Floor Covering, Inc.'s sole and exclusive workmanship warranty. This is a "Make-Good Warranty." There is no warranty Sergenian's Floor Covering, Inc.'s work will be defect-free; only that any defect as to workmanship will be corrected pursuant to the terms of this Limited Warranty. **The Your sole remedy for any defect in materials (including labor and supplies necessary to repair or replace defective materials) shall be to the manufacturer's warranty and is strictly with the manufacturer, not with Sergenian's Floor Covering, Inc.** Sergenian's Floor Covering, Inc. shall have no obligation to perform under this warranty unless paid in full on this contract and provided actual notice and opportunity to perform its warranty repair obligations, during the warranty period. Refusal to allow access to the building site, when requested by Sergenian's Floor Covering, Inc. so that it can perform under this Contract, is a material breach of this Contract, entitling Sergenian's Floor Covering, Inc. to immediate payment of the full contract price and releasing Sergenian's Floor Covering, Inc. of any further obligations under this Contract and this Limited Warranty.

No warranty is provided by Contractor on any materials furnished by the You for installation. No warranty is provided on any existing materials that became attached to Sergenian's Floor Covering, Inc.'s work or are removed and/or reinstalled by Sergenian's Floor Covering, Inc. Sergenian's Floor Covering, Inc. does not warranty that existing/used materials will not be damaged during the removal and reinstallation process. Where Sergenian's Floor Covering, Inc. attempts to save and reuse existing/used materials, or structural surfaces, You assume all risk of breakage and/or defect.

**THE EXPRESS LIMITED WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, HABITABILITY, DEFECT-FREE WORK OR FITNESS FOR A PARTICULAR USE OR PURPOSE. THIS LIMITED WARRANTY EXCLUDES CONSEQUENTIAL AND INCIDENTAL DAMAGES AND PRECLUDES IMPLIED WARRANTIES TO THE FULLEST EXTENT PERMISSIBLE UNDER STATE AND FEDERAL LAW.**

**ANY AND ALL LIABILITY OF SERGENIAN'S FLOOR COVERING, INC. WHETHER IN CONTRACT, IN TORT, INCLUDING NEGLIGENCE, OR OTHERWISE SHALL EXPIRE WITH SERGENIAN'S FLOOR COVERING, INC.'S WORKMANSHIP WARRANTY. NEITHER SERGENIAN'S FLOOR COVERING, INC. NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT, (INCLUDING NEGLIGENCE), OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE OR PROFIT, OR OF SUBSTITUTE USE OR PERFORMANCE OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF SIMILAR TYPE, OR FOR CLAIMS FOR DAMAGES OF YOUR CUSTOMERS OR INVITEES.**

### **NOTICE OF LIEN RIGHTS**

**AS REQUIRED BY THE WISCONSIN CONSTRUCTION LIEN LAW, SERGENIAN'S FLOOR COVERINGS, INC. HEREBY NOTIFIES OWNER THAT PERSONS OR COMPANIES FURNISHING LABOR OR MATERIALS FOR THE CONSTRUCTION ON OWNER'S LAND MAY HAVE LIEN RIGHTS ON OWNER'S LAND AND BUILDINGS IF NOT PAID. THOSE ENTITLED TO LIEN RIGHTS, IN ADDITION TO SERGENIAN'S FLOOR COVERINGS, INC., ARE THOSE WHO CONTRACT DIRECTLY WITH THE OWNER OR THOSE WHO GIVE THE OWNER NOTICE WITHIN 60 DAYS AFTER THEY FIRST FURNISH LABOR OR MATERIALS FOR THE CONSTRUCTION. ACCORDINGLY, OWNER PROBABLY WILL RECEIVE NOTICES FROM THOSE WHO FURNISH LABOR OR MATERIALS FOR THE CONSTRUCTION, AND SHOULD GIVE A COPY OF EACH SUCH NOTICE RECEIVED TO THE MORTGAGE LENDER, IF ANY. SERGENIAN'S FLOOR COVERING, INC. CO., INC AGREES TO COOPERATE WITH THE OWNER AND THE OWNER'S LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID.**

Initials \_\_\_\_\_

# Wisconsin “Right to Cure Law”

The “Right to Cure Law” provides the steps and timetables to be followed in resolving any claims of dwelling construction defects by consumers against contractors or suppliers. Claims must be pursued through the “Right to Cure Law” process before arbitration or before legal action.

The 2005 Wisconsin Act 201, the “Right to Cure Law,” says that consumers at the time of contracting for construction or remodeling work for dwellings must be provided with this brochure describing requirements for making any future claims of construction defects.

People who feel they have a claim concerning defective workmanship or materials need to provide written notice to contractors or suppliers before any legal action may be filed. The contractors and suppliers have the opportunity and the responsibility to respond to claims.

Construction defects can involve workmanship, materials, or code requirements in new construction or remodeling, but not maintenance or repairs. Claims may be made by owners, tenants, or property associations.

This document highlights some of the provisions of the “Right to Cure Law”, and is not a complete description of the law, and is not a substitute for legal representation.

## Notice Concerning Construction Defects

**Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against a window or door supplier or manufacturer. Section 895.07 (2) and (3) of the Wisconsin statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door supplier the opportunity to make an offer to repair or remedy the alleged construction defects. You are not obligated to accept any offer made by the contractor or window or door supplier. All parties are bound by applicable warranty provisions.**

## More Highlights

- Claimants may accept settlement offers, accept them in part, or reject offers, doing so via detailed written notice.
- The law does not apply where there is no contract to construct, as in the case of purchasing an existing home.
- Contractors and suppliers have the right to inspect and, as appropriate, test alleged defects.
- Access must be provided in a timely fashion for inspections, tests, and repairs.
- Additional claims made or discovered after an original claim, are treated as separate in terms of time and process.
- There is a different timetable and process for the claims and responses if a contractor seeks contribution from a supplier.
- Failure by the claimant, contractor, or supplier to follow the “Right to Cure Law” can result in delay or dismissal of legal or arbitration actions.

The Department Safety and Professional Services prepared this brochure, but does not investigate, arbitrate, or judge consumer-contractor/supplier disputes. Those disputes are solved through the “Right to Cure Law” process, by the state’s court system, and, for alterations and additions, the Home Improvement Practices Code, ATCP 110, of the state Department of Agriculture, Trade, and Consumer Protection.

The Department Safety and Professional Services does not discriminate on the basis of sex, race, religion, age, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability. Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact the Industry Services Division at 608-266-2112, or TTY 800-947-3529.

## **Chronology of the step-by-step claim and response interaction between consumers and contractors/suppliers**

*Step One Notice of Claim*—At least 90 working days before commencing an action against a contractor or window or door supplier or manufacturer, a claimant must deliver a written notice of the alleged defect to the contractor.

*Step Two: Contractor’s Response*—The contractor will have 15 working days (or 25 working days if it involves a defect involving a window or door supplier) to provide the claimant with a written: (1) offer to repair or remedy the defect; (2) offer to settle the claim with a monetary payment; (3) offer of a combination of (1) and (2); (4) statement that the contractor rejects the claim and the reasons for rejecting the claim; or (5) proposal to inspect the alleged defect or perform any necessary testing.

*Step Three: Claimant’s Response*—If the contractor rejects the claim, the claimant may proceed to commence an action against the contractor. The claimant must serve written notice on the contractor within 15 working days if he or she either accepts any offer or rejects an offer. Note that if the claimant has a claim against a window or door supplier or manufacturer, the claimant should contact the supplier to ensure that the supplier received a notice of the claim from the contractor.

*Step Four: Contractor’s Supplemental Response*—If the claimant rejects the offer, the contractor has five working days to provide a written supplemental offer or a notice that no additional offer will be made.

*Step Five: Claimant’s Response*—If the contractor has provided the claimant written notice that no additional offer will be made, the claimant may commence a lawsuit or other action against the contractor. If the claimant has received a supplemental offer from the contractor, the claimant must respond within 15 working days.