

**NEW ZEALAND FLOORING TRAINING
ORGANISATION INCORPORATED**

CONSTITUTION



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1. NAME

- 1.1 The society's name is "The New Zealand Flooring Training Organisation Incorporated".

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these rules, unless the context otherwise requires:

"Act" means the Incorporated Societies Act 1908;

"Annual Subscription" means the annual payment (plus GST if any) due from Members, fixed in accordance with rule 6;

"Annual General Meeting" means a meeting referred to in rule 10;

"Auditor" means the person appointed in accordance with rule 10.2.3;

"Board" means the Board constituted by these rules;

"Business Day" means a day which is not a Saturday or a Sunday or a public holiday in Wellington;

"CEO" means the Chief Executive Officer appointed in accordance with rule 9.1;

"Chairperson" means the Board's Chairperson appointed in accordance with these rules;

"Financial Year" means the period from 1 January in each year to 31 December in each year.

"Financial Statements" means proper financial statements giving a true and fair account of:

- (a) the Society's income and expenditure during a Financial Year;
- (b) the Society's assets and liabilities at the end of a Financial Year;
- (c) all mortgages, charges and other securities of the Society at the end of a Financial Year.

"Flooring Industry" includes every part of the chain of supply in New Zealand's flooring industry;

"General Meetings" means Annual General Meetings and Special General Meetings;

"Industry Sectors" means:

- (a) distributors, importers and manufacturers (including related professional associations);
- (b) retailers (including commercial); and

(c) installers (including related professional associations),

"Member" means a person who is admitted to membership of the Society in accordance with these rules;

"NZQA" means the New Zealand Qualifications Authority and includes any successor organisation;

"Objects" means the Society's Objects as set out in rule 3;

Rules" mean these rules and includes any alteration or amendment; and

"Special General Meetings" means a meeting referred to in rule 11.

2.2 **Interpretation**

In these rules:

2.2.1 "written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form;

2.2.2 references to rules are to rules in these rules (unless stated otherwise);

2.2.3 the singular includes the plural and *vice versa*;

2.2.4 pronouns denoting a gender shall include the obverse pronoun;

2.2.5 headings are inserted for a convenience only and shall be ignored in construing any matter;

2.2.6 all references to legislation are references to New Zealand legislation and include all subordinate legislation, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation; and

2.2.7 references to a "party" "person" or "entity" include an individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional authority, any government, any agency of any government or of any such authority, and includes their respective successors, assigns, executors and administrators.

3. **OBJECTS**

3.1 **Objectives**

The Society's objectives are to, within New Zealand:

3.1.1 liaise with training organisations both in New Zealand and overseas to develop training, specific to the Flooring Industry's needs;

3.1.2 support and promote the development of industry (Australia/New Zealand) standards for the recognition and improvement of skills within the Flooring Industry;

3.1.3 to deliver off the job apprenticeship training;

- 3.1.4 undertake non-apprenticeship training needs analyses for, and on behalf of, Members from time to time;
- 3.1.5 provide support, information and advice or any other assistance to Members on matters relating to education and training development;
- 3.1.6 gain NZQA validation for training courses conducted on behalf of Members;
- 3.1.7 establish appropriate accreditation systems for the Flooring Industry as required;
- 3.1.8 arrange and promote educational seminars and, by any other such means deemed advisable by the Board, propagate new methods and improve practice and procedure within the industry;
- 3.1.9 otherwise encourage, improve and maintain standards in the field of flooring;
- 3.1.10 encourage, improve and maintain research within the Flooring Industry;
- 3.1.11 act as an advocate on behalf of the Flooring Industry to represent Members' views to Central Government, Local Government and Government Agencies; and
- 3.1.12 otherwise facilitate the advancement of the Flooring Industry in New Zealand.

3.2 **No pecuniary gain**

- 3.2.1 The Society's income and property is to be applied solely towards the Society's Objects, and the payment directly or indirectly by any means of any profit to any person or organisation is absolutely prohibited except for the payment of remuneration in good faith in return for services actually performed for the Society or the payment of interest on any money borrowed by it.
- 3.2.2 No Member shall be entitled to receive any dividend out of any subscriptions, fees, donations or other income or funds of the Society.
- 3.2.3 No Member, board member or any person associated with a Member, shall participate in or materially influence any decision made by the Society in respect of the payment to, or on behalf of, any Member or associated person of any income, benefit, or advantage whatsoever. Any such income paid shall be reasonable and relative to that which would be paid in any arm's length transaction (being the open market value).

4. **POWERS**

- 4.1 In addition to its statutory powers, the Society shall have the power:
 - 4.1.1 to own or operate a private training establishment;
 - 4.1.2 to purchase, lease, exchange, hire, acquire, sell, surrender, mortgage, charge, manage, subdivide, develop and deal with every kind of real or personal property;

- 4.1.3 to construct, maintain, restore, repair, alter and replace any buildings or other structures;
- 4.1.4 to borrow or raise money and secure the payment of monies borrowed in such a manner as the Board thinks fit and, in particular, by the issue of debentures or by way of mortgage charged upon the Society's property;
- 4.1.5 to employ such staff and to engage such professional services as the Society deems desirable;
- 4.1.6 to effect insurances in respect of any of the Society's assets, undertakings or activities as appropriate to safeguard such assets, undertakings or activities;
- 4.1.7 to indemnify any person, entity or company against debts, liabilities, claims or proceedings, incurred on behalf of or in the course of providing any services for the Society (except in connection with any gross negligence or illegal acts) and for this purpose to charge any of the Society's assets; and
- 4.1.8 to apply the Society's funds towards the furthering of its Objects and otherwise generally to do all things necessary or expedient for the proper conduct of the Society's affairs not otherwise provided for in these rules.

5. MEMBERSHIP

5.1 Organisations and individuals carrying out either:

5.1.1 business within the Flooring Industry; or

5.1.2 activities consistent with the Society's Objects,

may apply for membership of the Society.

5.2 Application

All applications for membership shall be made to the Board in writing as prescribed by the Board from time to time.

5.3 Acceptance or refusal

The Board shall have absolute discretion to accept or refuse applications for membership and shall not be bound to give any reason for its acceptance or refusal.

5.4 Cancellation

Any Member may, by Board resolution, have its membership cancelled if:

5.4.1 that Member:

5.4.1.1 suspends, for twenty (20) Business Days or longer, or ceases its business activities in the Flooring Industry; or

- 5.4.1.2 goes into liquidation (otherwise than for a solvent restructuring which has been previously approved in writing by the Board which approval may not be unreasonably withheld); or
 - 5.4.1.3 goes into receivership or a statutory manager is appointed in respect of that Member or any material part of its assets; or
 - 5.4.1.4 makes any assignment to, or enters into an arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring); or
 - 5.4.1.5 is adjudicated bankrupt or commits any act of bankruptcy;
- 5.4.2 in the Board's opinion, that Member has broken any of its undertakings to the Society or any of the Society's rules or bylaws or shall be guilty of disreputable conduct or conduct prejudicial to the Society's interests.

5.5 **Effect of cancellation**

Unless the Board determines otherwise, the cancellation of any membership of the Society pursuant to rule 5.4 shall not:

- 5.5.1 entitle the Member concerned to a refund of any Annual Subscriptions paid to the Society; or
- 5.5.2 relieve the Member concerned from liability to pay any Annual Subscriptions which have fallen payable at the time of such cancellation of membership.

6. **ANNUAL SUBSCRIPTIONS**

6.1 **Subscriptions**

The Annual Subscription for each Financial Year shall be set by the Board prior to, and notified during, each Annual General Meeting.

6.2 **Payment**

Unless the Board determines otherwise, the relevant Annual Subscription payable by any Member shall be paid in full by such Member, on or before the first Business Day of each Financial Year, unless such Member has given notice to the Society of its intention to terminate its membership and has delivered that notice at least twenty (20) Business Days before the expiry of the previous Financial Year.

6.3 **Non-payment**

The Board shall have an absolute right to either terminate the membership of a Member or to suspend all the rights and privileges of membership enjoyed by a Member who fails to pay any Annual Subscription within the period or manner specified for payment by the Board at the Annual General Meeting.

7. GOVERNANCE

7.1 Board

The Society's governance shall be conducted by a Board consisting of not less than six (6) and not more than nine (9) board members.

7.2 Appointments

A minimum of two (2) and a maximum of three (3) board members will represent each different Industry Sector and the board members will be elected at Annual General Meetings.

7.3 The CEO will send a notice to all Members plus board members calling for nominations in each Industry Sector at least fifty (50) Business Days before Annual General Meetings.

7.4 Nominations for election to the Board may be made by either the Board or Members for a specified Industry Sector. Nominations must be delivered to the Board's Chairperson and received at least twenty five (25) Business Days before Annual General Meetings.

7.5 If more than three (3) nominations are received for an Industry Sector, the Chairperson will hold a ballot and the three (3) nominees with the most votes will be elected.

7.6 Vacancies

The office of a board member may be vacated if a board member:

7.6.1 dies; or

7.6.2 becomes bankrupt; or

7.6.3 becomes of unsound mind or becomes the subject of a personal order or property order made under the Protection of Personal and Property rights Act 1988; or

7.6.4 resigns by giving written notice to the Chairperson; or

7.6.5 is convicted of an offence and sentenced to imprisonment; or

7.6.6 in the Board's opinion, has broken any of its obligations to the Society or any of the Society's rules or bylaws or shall be guilty of disreputable conduct or conduct prejudicial to the Society's interests.

7.7 The Board shall have the power to appoint board members to fill vacancies for the remaining duration of the vacated board member's term.

8. BOARD PROCEEDINGS

8.1 Meetings

The Board will meet regularly, but at least four (4) times in the course of a year. Meetings shall be convened by the CEO at the Chairperson's request.

8.2 Special Board Meetings may be called by any two (2) board members giving three (3) clear days' notice to the other board members.

8.3 **Chairperson**

At the first Board Meeting following the Annual General Meeting the Board will elect, from its Members, a Chairperson to exercise the Chairperson's powers and duties when the Chairperson is absent and any such other functions as the Board may delegate.

8.4 **Quorum**

Four (4) board members will constitute a quorum for the purposes of a board meeting.

8.5 Board Meetings may, at the Chairperson's discretion, be held by teleconference in which case a quorum shall be deemed to be constituted while a conference telephone call is connected with four (4) board members simultaneously.

8.6 **Voting**

Each board member shall have one vote. Resolutions shall be carried by a majority, except where otherwise required by these rules.

8.7 If there's an equal number of votes in favour of, and against, a resolution the Chairperson may have an additional casting vote.

8.8 **Validity of board's actions**

All acts properly done by any Board meeting or by any person acting as a board member, notwithstanding that it may afterwards be discovered that there was some defect in the appointment or continuance in office of any such board member or persona acting as such, or that they or any of them were disqualified from the office of board member, shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a board member.

8.9 **Records**

The Board will cause proper minutes of all proceedings to be taken and recorded.

8.10 A written resolution, copies of which have been forwarded to all board members and which have been signed by at least three fourths of the board members, shall have the same effect as if passed at a board meeting.

8.11 **Committees**

The Board may form sub-committees for such purposes as may be necessary or desirable.

8.12 Persons appointed to such committees need not be board members or associated with Members.

8.13 The Board shall regulate the proceedings of all such committees at its complete discretion.

9. OFFICERS AND STAFF

- 9.1 The Board will appoint a CEO to undertake the effective day to day management of the Society.
- 9.2 The CEO shall:
- 9.2.1 supervise all matters pertaining to the Society's activities and work;
 - 9.2.2 carry out the Board's instructions;
 - 9.2.3 keep full accounts of all monies received or paid out; and
 - 9.2.4 report quarterly (or as otherwise directed) to the Board about the Society's financial status.
- 9.3 The CEO will appoint such other full time or part time salaried or wage earning staff, as may be necessary for the Society's effective operation.
- 9.4 The CEO will be responsible for the preparation of the annual accounts to be presented at the Annual General Meeting.
- 9.5 The CEO's appointment may only be terminated by a Board resolution.

10. ANNUAL GENERAL MEETING

- 10.1 The Annual General Meeting shall be held within five (5) months after the Society's Financial Year.
- 10.2 The business conducted at the Annual General Meeting will be:
- 10.2.1 to receive and consider a report from the Chairperson about the Society's performance during the previous year;
 - 10.2.2 to receive and consider the audited statement of income and expenditure and an audited balance sheet showing the Society's assets and liabilities;
 - 10.2.3 to appoint an Auditor;
 - 10.2.4 to appoint a solicitor; and
 - 10.2.5 to transact or consider any other business which, in the Chairperson's opinion, may be expedient.

11. SPECIAL GENERAL MEETINGS

- 11.1 All General Meetings of the Society other than the Annual General Meeting shall be Special General Meetings.
- 11.2 A Special General Meeting may be called for by Board resolution or by written request to the Board by a minimum of half of the Members specifying the item(s) of business to be discussed at the meeting.

12. PROCEEDINGS OF GENERAL MEETINGS

12.1 Proposed resolutions

In addition to the notice pursuant to rule 7.3, the CEO will send a notice to all Members plus board members calling for proposed resolutions at least fifty (50) Business Days before the Annual General Meeting.

12.2 The Board or Members may propose resolutions by delivering the proposed resolution to the CEO at least twenty five (25) Business Days before the Annual General Meeting.

12.3 Notice of General Meetings

All General Meetings shall be convened by at least twenty (20) Business Days' prior written notice to all Members specifying the place, day and hour of the meeting and the general nature of business to be transacted and, if a special resolution is to be proposed at the meeting, then the notice shall also specify the nature and content of the proposed special resolution.

12.4 All notices will be properly served if:

12.4.1 in the case of notice by email, when a delivery receipt is received from the Member's server; or

12.4.2 in the case of notice by letter, on the third day after being posted by mail, correctly addressed and stamped; or

12.4.3 on personal delivery to the Member or the Member's registered office; or

12.4.4 in the case of notice by facsimile, when transmitted with no indication of incomplete transmission to the Member's last known facsimile number.

12.5 Quorum

There must be at least five (5) Members present to constitute a quorum for any General Meeting.

12.6 Voting

A Member may exercise the right to vote at a General Meeting by being present or by proxy. No proxy is effective in relation to a General Meeting unless a copy of the notice of appointment is produced before the start of the meeting.

12.6 At all General Meetings each Voting Member, whether present or by proxy, shall be entitled to one vote. In the case of an equality of votes the Chairperson shall also have a casting vote.

12.7 Subject to rules 7.2, 7.4 and 7.5, voting on all nominations for election to the Board and proposed resolutions shall be taken in such manner as the Chairperson directs.

12.8 A ballot may be demanded by one-third of the Members present on any question before the meeting and such ballot shall be conducted as the Chairperson directs.

13. COMMON SEAL

- 13.1 The common seal shall be kept by the CEO and will be used as authorised by the Board.
- 13.2 Every document on which the common seal is used shall be witnessed and signed by:
 - 13.2.1 the CEO and a board member; or
 - 13.2.2 two (2) board members.

14. FUNDS AND PROPERTY

- 14.1 All money received shall be immediately paid into the Society's bank account.
- 14.2 The CEO will arrange for the bank account mandate to be updated in accordance with the board's directions.
- 14.3 All the Society's officers shall be entitled to reimbursement of expenses properly incurred to carry out their duties.

15. ACCOUNTS AND AUDIT

- 15.1 An Auditor who is a Chartered Accountant but not a board member shall be appointed at each Annual General Meeting.
- 15.2 If a casual vacancy in the office of Auditor occurs this may be filled by an appointment made by the Board.
- 15.3 Audited Financial Statements will be submitted to the Members at each Annual General Meeting.

16. INDEMNITY

- 16.1 The Society shall indemnify every board member, the CEO and its other officers in respect of any liabilities arising from the proper performance of their functions.

17. RESPONSIBILITY

- 17.1 The Society's board members, CEO and other officers shall not be responsible for any action or default of any other person or for any loss suffered by the Society unless caused through their own dishonesty.

18. ALTERATION OF CONSTITUTION

- 18.1 This Constitution may be altered, rescinded and a new Constitution may be made by a resolution in an Annual General Meeting passed by a majority of three-fourths of those persons entitled to vote in person or by proxy.
- 18.2 No Member shall acquire any right to limit the power of the Society at any time to alter, rescind or make new rules.
- 18.3 No addition to, alteration of, or rescission of the Constitution shall be approved if it affects the personal benefit or winding up rules, or removes the charitable purpose of the Objects and powers rules.

19. INTERPRETATION OF CONSTITUTION

- 19.1 Where doubt arises as to the interpretation of any of this Constitution the Board's decision, which shall be recorded in the Board's minutes, will be final.

20. PRIVILEGED COMMUNICATIONS

- 20.1 All documents and other material of the Society declared to be confidential by the Board shall not be disclosed outside the Board without its express authority.

21. REGISTERED OFFICE

- 21.1 The Society's registered office shall be decided by the Board.

22. WINDING UP

- 22.1 A resolution to wind up the Society must be passed by a majority of not less than three-fourths of those Members present and voting at an special general meeting specially convened for the purpose of considering the proposed resolution. The Society shall not be wound up except by appropriate resolution or resolutions passed in accordance with section 24 of the Act.
- 22.2 Upon the winding up of the Society, its assets shall, after payment of all liabilities, be:
- 22.2.1 transferred to any organisation that will use the assets to further some or all of the Society's charitable objects; or
- 22.2.2 shall be disposed of in such a manner as the Society in a General Meeting shall resolve provided that the assets shall be applied for educational or charitable purposes within New Zealand.