



## TERMS AND CONDITIONS

### Interpretation

1. In these conditions: -
  - 'Buyer' means the buyer of any goods including any specified overleaf.
  - 'Conditions' or 'these conditions' means these Terms and Conditions of Sale.
  - 'Costs' include Goods and Services Tax (GST).
  - 'Goods' means any products and services supplied by the Seller.
  - 'Seller' means Jubilee Tiles and its assigns or successors.
  - 'Legislation / Regulations' encompasses all legislative requirements being current at the time.

### General

2. Unless these conditions are varied or waived by the Seller in writing these conditions shall prevail over all conditions of the Buyer's orders.

### Terms of sale

3. The Goods are sold on these conditions.
4. If payment is overdue the Seller may without notice demand from the Buyer payment of all amounts due for any Goods sold by the Seller to the Buyer.

### Seller's quotations

- 5.1 If the Buyer wishes to reduce the quantity ordered from the Seller's quotation then the seller can increase its price for the Goods supplied
- 5.2 Unless withdrawn, the Seller's quotations are open for acceptance within the period stated or, when no period is so stated, within 60 days. The Seller reserves the right to require payment in advance or a deposit for Goods specially imported or not otherwise held in stock.

### SHORTAGE

6. The Buyer waives any claim for shortage of any Goods delivered if a written claim about it has not been lodged with the Seller within seven (7) days from the date the Buyer receives the Goods.

### SAMPLES, VARIANCES, ETC

- 7.1 All samples, specifications, drawings, and particulars of dimensions, gauge, shade, color or quality submitted by the Seller are approximate only and any deviation shall not be taken to vitiate any contract with Seller or form grounds for any claim against the Seller.
- 7.2 The descriptions, illustrations and performances data contained in catalogues, price lists, samples and other advertising matter do not form part of the contract of sale. The Goods supplied by the Seller may vary from the samples provided by the Seller.
- 7.3 Variations in shade and gauge of Goods can occur from batch to batch. The Seller will not be able to guarantee a match in either shade or gauge for Goods from a later batch.

### PERFORMANCE

8. The Seller makes no warranty about the performance of any tiles.

### DELIVERY

- 9.1 Unless delivering the Goods, the Seller is not responsible for any loss or damage to Goods in transit.
- 9.2 The Seller accepts no responsibility for any loss or damage, including consequential loss, arising out of delivery, including non-delivery or late delivery, even if it arranges delivery on behalf of the Buyer.

### RETURNS

10. The Buyer cannot return any goods once delivery has been made except for credit as follows: -
  - 10.1 The returned Goods are accompanied by the original invoice number.
  - 10.2 The Goods are returned to the Seller's premises in good order and condition by pre-paid freight within thirty (30) days of delivery to the Buyer.
  - 10.3 The Goods returned match the Seller's current stock.
  - 10.4 Where the Seller agrees to credit return stock the maximum credit allowed shall be 80% of invoice value.
  - 10.5 End of line specials and Goods purchased or imported by the Seller against the Buyer's order cannot be returned.

### SELLER'S LIABILITIES

- 11.1 The Seller shall not be liable for and the Buyer releases the Seller from any claims in respect of faulty or defective design of any Goods supplied.
- 11.2 All express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and the Seller shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation, materials or workmanship or otherwise and the Seller shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of Seller's negligence or in any way whatsoever.
- 11.3 The Seller will not be liable for any crazing, wear or cracking of any tiles and no promise is made by it or the manufacturer about crazing, wear, cracking or fading of tiles and or implications and failings of other consumable products.
12. The Seller's liability for a breach of a condition or warranty implied by Division 2 of Pt V of the Trade Practices Act 1974 (other than s 69) is hereby limited to: -
  - 12.1 In the case of Goods, any one or more of the following:
    - a. the replacement of the Goods or the supply of equivalent Goods;
    - b. the repair of the Goods;
    - c. the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
    - d. the payment of the cost of having the Goods repaired; or in the case of services:
    - e. the supplying of the services again; or
    - f. the payment of the cost of having the services supplied again.
  - 12.2 The Seller's liability under s 74H of the Trade Practices Act 1975 is expressly limited to a liability to pay to the Buyer an amount equal to:
    - a. the cost of replacing the Goods;
    - b. the cost of obtaining equivalent Goods; or
    - c. the cost of having the Goods repaired, whichever is the lowest amount.



#### PRICES

13. Unless otherwise stated all prices quoted by Seller are net, exclusive of GST. Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, currency exchange, shipping expenses, sorting and stacking charges, cartage, rates of weights, cost of materials and other charges affecting the cost of supply ruling on the date the quotation is made and any alterations thereto either before acceptance of or during the currency of the contract shall be to the Buyer's account. Where no prices have been quoted by the Seller, the price to be charged is that ruling on the date of delivery of the Goods. The Seller is at liberty to change its prices without notice to the Buyer.

#### PAYMENT

- 14.1 Payment is due on delivery unless otherwise stated in writing.
- 14.2 By way of liquidated damages for breach of the payment obligation in Condition 16.1, the Buyer agrees to pay compound interest on daily rests on the nett invoice amount and all Costs calculated from the date of invoice at the rates set from time to time by section 94 of the Supreme Court Act, 1970
- 14.3 Where the Buyer pays the nett invoice amount together with all Costs to the Seller at its address for payment by payments which reach the Seller at that address within the month following the month in which the Goods were delivered (or such other terms of payment specified in writing by the Seller) the Seller will accept that sum in full satisfaction of the Buyer's obligation, free of any obligation under Condition 14.2.

#### RIGHTS IN RELATION TO GOODS

- 15.1 Property in each unit of the Goods shall remain with the Seller until all monies owing to the Seller have been paid ("the Debts").
- 15.2 The Buyer grants a license to the Seller to enter any place where the Goods may be located so the Seller can retake possession of the Goods.
- 15.3 The Seller shall not be liable, and is hereby indemnified by the Buyer, for any damage caused by or costs incurred in retaking possession of the Goods.

#### WAIVER AND VARIATION

- 16.1 Any leniency indulgence or extension of time granted by the Seller will not be a waiver of these conditions.
- 16.2 These terms can only be varied in writing by the Seller.
- 16.3 A provision of or a right created under these conditions in favour of the Seller may not be waived or varied except in writing signed by the Seller. The Seller may elect not to exercise its rights arising from a breach of any provision of these conditions and such election, even if the breaches are continuous and multiple shall not create any estoppel or presumption against the Seller.

#### GOODS REMAINING IN THE SELLER'S CUSTODY

17. If the Buyer leaves goods at the Seller's premises after payment it does so at its own risk and the Seller is not liable for any loss or damage occurring.

#### STORAGE

18. Seller reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Buyer within fourteen days of a request by Seller for such information.

#### GOODS SOLD

19. The Seller shall supply to the Buyer the Goods which the Buyer orders in writing (Purchase Order).

#### AUDIT

20. The Seller reserves the right to audit any sale and should any discrepancy be found, reserves the right to recover any undercharges from the buyer.

#### CANCELLATION

21. Once an order is placed it can only be cancelled if the Seller agrees to do so.

#### PLACE OF CONTRACT

22. The contract for the sale of the Goods is made in Western Australia and the parties agree to submit all disputes arising between them to the courts of such state at any court competent to hear appeals therefrom.

#### FORCE MAJEURE

- 23.1 If there is an act or event of any nature outside of the Seller's control which prevents the Seller from exercising any of its duties and obligations under these terms, then the Seller shall not be liable.

#### EXCLUSION OF NEGLIGENCE

24. The Seller shall not be liable to the Buyer in contract or in tort arising out of, or in connection with, or relating to, the performance of the Goods or any such breach of these conditions or of any fact, matter or thing relating to the Goods or error (whether negligent or a breach of contract or not) in information supplied to the Buyer or a user before or after the date of the Buyer's or user's use of the Goods.

#### SEVERANCE

26. If any of these conditions is deemed to be unlawful or unenforceable, such term or condition shall be severed and all other terms and these conditions shall remain in force.