

MO TILES LTD – Terms and Conditions of Trade

1. **Definitions**
 - 1.1. "Company" means MO TILES Ltd, its successors and assigns, or any person acting on behalf of, and with the authority of, MO TILES Ltd.
 - 1.2. "Customer" means the person/s purchasing the Goods or Services as specified in any invoice, document or order, and if there is more than one. Customer is a reference to each Customer jointly and severally.
 - 1.3. "Goods and Services" means all Goods or Services supplied by the Company to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
 - 1.4. "Price" means the Price payable for the Goods or Services as agreed between the Company and the Customer in accordance with clause 4 below.
 - 1.5. "GST" goods and services tax pursuant to the Goods and Services Tax Act 1985, or any similar or replacement legislation.
 - 1.6. replacement legislation.
 2. **Acceptance**
 - 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods and/or Services, or accepts Delivery.
 - 2.2. These terms and conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.
 - 2.3. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
 3. **Change in Control**
 - 3.1. The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.
 4. **Price and Payment**
 - 4.1. At the Company's sole discretion the Price shall be either: (a) as indicated on any invoice provided by the Company to the Customer; or (b) the Price as at the date of Delivery, according to the Company's current price list; or (c) the Company's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
 - 4.2. The Company reserves the right to change the Price: (a) if a variation to the Goods which are to be supplied is requested (including any applicable plans or specifications); or (b) in the event of increases to the Company in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond the Company's control.
 - 4.3. At the Company's sole discretion, a non-refundable deposit may be required.
 - 4.4. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be: (a) on, or before, Delivery; or (b) by way of instalments, in accordance with the Company's payment schedule; (c) due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices; (d) the date specified on any invoice or other form as being the date for payment; or (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Company.
 - 4.5. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking or by any other method as agreed to between the Customer and the Company.
 - 4.6. Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this contract, or any other agreement, for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price, except where they are expressly included in the Price.
 5. **Delivery**
 - 5.1. Delivery of the Goods ("Delivery") is taken to occur at the time that: (a) the Customer (or the Customer's nominated carrier) takes possession of the Goods at the Company's address; or (b) the Company (or the Company's nominated carrier) delivers the Goods to the Customer's nominated address, even if the Customer is not present at the address.
 - 5.2. At the Company's sole discretion, the cost of Delivery is either included in, or in addition to, the Price.
 - 5.3. The Customer must take Delivery, by receipt or collection of the Goods, whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery, as arranged, then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.
 - 5.4. The Company may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 5.5. Any time or date given by the Company to the Customer is an estimate only. The Customer must still accept Delivery, even if late, and the Company will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late.
 6. **Risk**
 - 6.1. Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on, or before, Delivery.
 - 6.2. If any of the Goods are damaged or destroyed following Delivery, but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
 - 6.3. If the Customer requests the Company to leave Goods outside the Company's premises for collection, or to deliver the Goods to an unattended address, then such Goods shall be left at the Customer's sole risk.
 - 6.4. The Customer acknowledges that variations of colour, shade and grain are inherent in all kiln fired products and natural stone. While every effort will be taken by the Company to match colour, shade or grain of product, the Company shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches or sale samples and the Goods supplied.
 - 6.5. The Company gives no guarantee (expressed or implied) against crazing, cracking, chipping or scratching that may occur that is beyond the Company's control due to the nature of the product at the time of installation, therefore it is recommended that the Customer allows for extra quantities for such breakages.
 - 6.6. The Customer acknowledges that it is the Customer's responsibility to check quantities, with an on-site measurement before commencing fixing. Measurements taken off plans or the Customer's figures by the Company are approximate only and no responsibility is taken for their accuracy.
 - 6.7. If the Customer orders an insufficient number of tiles, then the Company will take no responsibility for any variation of colour in further batches supplied to the Customer, or the inability to supply the Goods at all.
 - 6.8. The Company will accept no responsibility for Goods that have already been affixed.
7. **Title**
 - 7.1. The Company and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid the Company all amounts owing to the Company; and (b) the Customer has met all of its other obligations to the Company.
 - 7.2. Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then the Company's rights and ownership in relation to the Goods, and this contract, shall continue.
 - 7.3. It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 7.1. (a) the Customer is only a bailee of the Goods and must return the Goods to the Company on request; and (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; and (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand; and (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs; and (e) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods; and (f) the Company may recover possession of any Goods in transit, whether or not Delivery has occurred; and (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company; and the Company may commence proceedings to recover the Price, notwithstanding that ownership of the Goods has not passed to the Customer.
 8. **Personal Property Securities Act 1999 ("PPSA")**
 - 8.1. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that: (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and (b) a security interest is taken in all Goods, and/or any monetary obligation of the Customer to the Company for Services, that have previously been supplied (if any), and that will be supplied in the future, by the Company to the Customer.
 - 8.2. the Customer undertakes to: (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby; (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company; and (d) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
 - 8.3. The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 8.4. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
 - 8.5. Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
 - 8.6. The Customer shall unconditionally ratify any actions taken by the Company under clauses 8.1 to 8.9
 9. In consideration of the Company agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
 - 9.1. The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause
 - 9.2. The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Customer's behalf.
 10. **Defects**
 - 10.1. The Customer shall inspect the Goods on Delivery and shall within seven (7) days of such time (being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the

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- description or quotation. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following such notification if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods.
- 10.2. Goods will not be accepted for return other than in accordance with 10.1 above.
- 11. Intellectual Property**
- 11.1. Where the Company has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Company.
- 11.2. The Customer warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.
- 11.3. The Customer agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Company has created for the Customer.
12. Default and Consequences of Default
- 12.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2. If the Customer owes the Company any money, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees)
- 12.3. Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Goods to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 12.4. Without prejudice to the Company's other remedies at law, the Company shall be entitled to cancel all, or any part, of any order of the Customer which remains unfulfilled, and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 13. Cancellation**
- 13.1. The Company may cancel any contract to which these terms and conditions apply, or cancel Delivery at any time before the Goods are delivered, by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any money paid by the Customer for the Goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2. In the event that the Customer cancels the contract, or Delivery, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 13.3. Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 14. Privacy Act 1993**
- 14.1. The Customer authorises the Company (or the Company's agent) to:
- (a) access, collect, retain and use any information about the Customer:
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 14.2. Where the Customer is an individual the authorities under clause 14.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 14.3. The Customer shall have the right to request the Company for a copy of the information about the Customer retained by the Company and the right to request the Company to correct any incorrect information about the Customer held by the Company.
- 14.4.
- 15. Unpaid Seller's Rights**
- 15.1. Where the Customer has left any item/s with the Company for repair, modification, exchange, or for the Company to perform any other service in relation to the item/s, and the Company has not received or been tendered the whole of any moneys owing to it by the Customer, the Company shall have, until all moneys owing to the Company are paid:
- (a) a lien on the item/s; and
 - (b) the right to retain or sell the item/s, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods
- 15.2. The lien of the Company shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Company having been obtained against the Customer.
- 16. General**
- 16.1. The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2. These terms and conditions, and any contract to which they apply, shall be governed by the laws of New Zealand, and are subject to the jurisdiction of the courts of New Zealand.
- 16.3. The Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 16.4. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5. If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Company to the Customer.
- 16.6. The Customer hereby disclaims any right to rescind, or cancel any contract with the Company or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Company and the Customer acknowledges that the Goods are purchased relying solely upon the Customer's skill and judgment.
- 16.7. The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.8. The Customer agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Company to supply Goods to the Customer.
- 16.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.10. The Customer warrants that it has the power to enter into this contract and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this contract creates binding and valid legal obligations on it.

Please note: Upon paying a deposit into the nominated bank account at the bottom of your quotation or sales order, this acts as an acceptance to these terms and conditions listed here.