

TERMS AND CONDITIONS OF SALE

1. Application of Terms

1.1 These terms apply whenever Middle Earth Tiles Limited ("we/us" supplies good or services of any kind, gives any quotation or accepts any order or goods or services.

1.2 Where you seek to impose terms and conditions for a supply of goods or services by us, whether in a purchase order, specification or otherwise, such terms and conditions will not be binding on us unless we specifically agree in writing to such terms and then only on the condition that in the event of a conflict these terms and conditions shall prevail.

2. Terms of Payment (Excluding Account Holders)

2.1 Unless otherwise agreed in writing, payment is required in full prior to delivery or collection of the goods.

2.2 When an ex stock order is required to be held we require a 50% deposit on confirmation of the order with the balance to be paid within 30 days or prior to delivery whichever is the sooner. Deposit is only refundable if the order is cancelled within 7 days of the date of order.

2.3 Indent orders (product purchased specifically for your order) require a 50% non-refundable deposit at the confirmation of the order. The balance is to be paid on arrival into our store and prior to delivery.

3. Freight / Delivery

3.1 All prices are ex our warehouse/factory, freight and payable by you on all deliveries.

3.2 We are not a common carrier and do not undertake the obligations of liabilities of a common carrier. Delivery is deemed to have taken place at the time of collection or despatch from our warehouse/factory.

3.3 All delivery dates given by us are estimated delivery dates. Every endeavour will be made to meet the required delivery date but we will not be liable for any loss, damage or any other claims arising from any delay nor shall you have the right to cancel the order.

4. Limitation of Liability

4.1 To the fullest extent permitted by law and subject only to express exceptions contained in these terms and conditions, we exclude all liability, we or any of our employees or suppliers may have to you whatsoever including without limitation for any loss, damage or expense sustained or incurred by you or any party in consequence of or resulting directly or indirectly out of the supply, performance or use of any goods and services or for any negligence by us or our employees or suppliers whatsoever.

4.2 In the event that we cannot reply on the exclusion in Clause 4.1 or if any other circumstances you are entitled to compensation from us, our employees or suppliers, the maximum combined amount of all of our/ their liability to you re the price that you have paid for the goods and services to which such compensation relates or the statutory minimum (whichever is the lower).

Nothing in Clause 5 through 6 will limit the generality of Clauses 4.1 and 4.2.

5. Quantities

5.1 Any statement by our staff as to the quantity of goods required by you is an estimate given for guidance only and you agree will not be relied on by you. It is your responsibility to verify and confirm quantities and to purchase additional quantities if for any reason estimates are incorrect.

6. Product Variation / Suitability for Purpose

6.1 There may be variations in shade and size between the sample and the delivered goods (and between batch of goods and another due to the manufacturing process by which tiles are produced. Variation in shade and size is not a defect.

6.2 We recommend additional goods should be retained to allow for wastage and repairs as the same batch may not be available at a later date.

6.3 Nominal sizes are indicated; actual sizes can and will vary between batches / suppliers. If mixing tiles, compatibility should be confirmed prior to purchase.

6.4 Whilst we may assist with and advise you in the selection of goods, it is your responsibility to ensure that the goods are suitable for the purpose you are using them for and that they comply with the relevant regulations and specific requirements.

7. Installation and Use

You acknowledge it is essential that goods be installed in accordance with manufacturer's directions and guidelines and relevant to New Zealand building standards. We will have no responsibility for the product failure caused by non observance of any such directions, guidelines and standards.

7.2 You acknowledge that

a) You do not rely in any way of us in relation to the use, fixing, installation or incorporation of the goods.

b) We have no responsibility for the works of any tradesperson in installation of the goods, whether or not we have recommended a tradesperson to you.

8. Claims

8.1 You are responsible for checking the tiles prior to installation. Any claims must be made before the goods constitutes acceptance of the goods. No claims can be made by you against us and we will not be liable to anyone once goods are installed.

9. Warranties

The only warranty on our part in respect of any new goods is that the goods shall be of acceptable quality only and such warranty is to the exclusion of all other warranties, conditions and liabilities whatsoever and whether by statute or common law, expressed or implied or whether arising in contract, tort, statute or otherwise however. Without limiting the generality of the foregoing, we shall not be liable for personal injury, contingent on consequential loss whatsoever whether caused by us, our servants or agents. No warranty or representation made or purported to be made by or on behalf of us shall be binding on us unless made expressly and in writing signed by our director.

9.2 We give no warranties or representations and accept no liability with respect to any used good or seconds supplied and you acknowledged that you have purchased such goods in reliance on your own skill and judgment on the basis of caveat emptor regardless of whether you have full knowledge at the time of purchase of all of the damage to or defects in the goods.

10. Returns

Under the Consumer Guarantee Act we have no obligation to accept returns or provide a refund if you have changed your mind about a particular purchase or ordered excess stock, so please choose carefully.

10.2 Subject to any other provision of these terms and conditions, we may accept for return for full credit, faulty goods sent in error (product / quantity). Returns may be considered in some other circumstances at our sole discretion but only subject to such terms and conditions of return as we may stipulate at the time.

10.3 Non stock indented items (product specifically ordered for your order), job lots, miscellaneous items, seconds and "sale goods" are neither returnable nor refundable.

10.4 In the event product is accepted for return, a 20% handling fee will apply. Only full box lots will be accepted and must be accompanied by the original invoice. Goods must be returned within thirty days of purchase.

11. Personal Property Securities Act 1999

Title to all goods supplied to you by us will be retained by us until payment is made for such goods. All risk of loss, or damage to the goods passes to the customer on delivery of the goods to the customer in accordance with these terms and conditions.

11.2 These terms and conditions constitute a Security Agreement which provides a security interest in favour of us – all present and acquired property except for any item of personal property or proceeds of any items of personal property which is not supplied by us to you under these Terms and Conditions.

11.3 You shall do all things (including signing any other documents) and provide all information necessary to enable us to perfect and maintain the perfection of any security interest granted under these terms and conditions including registration of a financing statement.

11.4 You waive any right to receive a copy of any verification statement in respect of a financing statement registered by us and you agree to rectify us, upon demand, for all costs and expenses incurred in registering and maintaining any financing statements.

11.5 If you fail to make payment or are in breach of these terms and conditions then we, as our agents may enter your premises whether or not is present retake possession of the goods and you waive, where permitted by law, every rights that they arise as a result of this removal. Any shortfall on the sale of the goods will be paid by you to us.

12. Where you are a business as defined in the Consumer Guarantees Act 1992 or you are acquiring our Goods and /r services for the purpose of a business, the Consumer Guarantees Act does not apply.

13. Cancellation

13.1 We reserve the right to immediately cancel any order or suspend any delivery without incurring any liability to you if you are:

a) In breach of these terms and conditions or

b) Overdue with any payment due to us

c) We are prevented from fulfilling our obligations hereunder due in whole or in part to an event or force majeure which expression shall mean Act of God, fire, storm, power failure, reduction of power supplies, mechanical failure or lack or shortage of materials or stock or any other circumstances beyond all reasonable control or

d) A material change occurs which causes an increased cost to us in complying with any order or delivery.

13.2 In addition to any other breach of these terms and conditions, you will be deemed to be in breach of these terms and conditions if you:

a) Are in bankruptcy or proceedings have been commenced for bankruptcy; or

b) Are in liquidation or proceedings have been commenced for liquidation; or have entered into an agreement with your creditors or have had a receiver or manager appointed over all or any part of your assets are otherwise insolvent or unable to pay your debts as they fall due.

14. Non Availability of Goods

14.1 While every effort is made to fulfil your order for goods and services, we will not be liable for loss for damage arising out of non-availability or such good and services

15. Indemnity

Where you fail to meet your responsibility to us under our terms and conditions or are otherwise in breach of these terms and conditions, you must indemnify us or demand against any liability, claim, or expenses suffered or incurred by us as a result including without limitation or collecting any money owed to us or in exercising any of our other legal rights.

16. Specifications

16.1 In the event of any alteration or variation by the manufacturers in the design or specification of any Goods, we shall be entitled to deliver goods conforming to the altered design or specification in fulfilment of our obligations to you.

17. Information

17.1 You agree that we and associated companies of ours may collection information about you. The information may be obtained from you and others. You may refuse to provide any information sought by us but if you fail to provide the information, we may refuse to provide goods or services or any credit.

17.2 You may ask to see any information held by us as long as it is readily retrievable and you may ask for any details that are wrong to be corrected.

17.3 We and our associate companies may also hold the information, share it with associated companies, employees and contractors, with credit reference agencies and with collection agencies. This enables us and associated companies to:

i) Provide services to you and others;

ii) Send invoices and recover money owed to us and associated companies

iii) Keep you informed of goods and services available from us and other people;

iv) Exercise any lawful right that we have (which includes registration and maintenance of financing statements under the Personal Property Securities Act 1999.

18. For the purposes of these terms and conditions (unless the context otherwise requires)

a) When the singular is used that includes the plural and vice versa, a reference to any person includes an individual, a company and a body of persons (whether incorporated or not)

b) "You", "Yours" means any customer of ours or any person who purchases or agrees to purchase goods and / or services from us and includes that person's executors, administrators and assigns;

c) "Goods" means all goods supplied from time to time by us or our related company to you provided that (but solely for the purpose of application of PPSA).

i) Where goods supplied are inventory you, then all references to goods shall in respect of those goods, be references to inventory for so long as they are held as inventory.

ii) Where the goods supplied are not inventory to you then all references to goods shall mean the goods described in any or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) prepared by us and relating to those goods on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be accepted to by you, incorporated in and form part of these terms and conditions; are

iii) Goods includes all proceeds of such goods and any product of which the goods subsequently become part; and

iv) "PPSA" means the Personal Property Securities Act, 1999 "seconds" includes goods which has been sold at a discount by the Supplier as damaged, defective or obsolete goods.