

## WAXMAN CERAMICS LTD TERMS AND CONDITIONS OF SALE

### 1. GENERAL

- (a) In these terms and conditions, "Company" means Waxman Ceramics Ltd of Grove Mills, Elland Lane, Elland, HX5 9DZ, "Purchaser" means the person buying the Goods from the Company, and all other defined terms shall have the meanings given to them overleaf. "Goods" means the tiles and tile products detailed overleaf. "Business Day" means a day (other than Saturday, Sunday or public holiday) when banks in London are open for business. "Contract" means the contract between the Company and the Purchaser for the sale and purchase of the Goods in accordance with these terms.
- (b) Whether or not the Purchaser has signed and returned a copy of this document, all quotations are given and all orders are accepted by the Company exclusively on these terms and conditions (in conjunction with any Incoterm specified overleaf, as modified by these terms and conditions) to the exclusion of all other terms or conditions which the Purchaser purports to apply through any order, confirmation, specification or other document of/ or communication from the Purchaser in the course of negotiations or any other terms, conditions or representations referred to in any course of dealings between the Company and the Purchaser. All orders hereafter made by the Purchaser shall be deemed to be made subject to these terms and conditions.
- (c) These are the terms on which the Company supplies Goods to the Purchaser and apply to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- (d) No modification of these terms shall be effective unless made by an express written agreement between the Company (acting through a Director) and the Purchaser. The signing by the Company of any of the Purchaser's documentation shall not imply or effect any such modification.
- (e) The Purchaser shall not be entitled to cancel any contract without the consent of the Company, which if given shall be deemed to be given on the express condition that the Purchaser shall indemnify the Company against all loss, damage, costs, claims or actions arising out of such cancellation.
- (f) No stock can be held or reserved without an official order and delivery date
- (g) The Company only supplied the Goods and does not provide any services for the installing of the Goods. The installation of the Goods is the responsibility of the Purchaser. Any advice which the Company provides to the Purchaser or any customer of the Purchaser relating to installation or use of the Goods shall be for assistance only and shall not create any liability or duty of care on the part of the Company.

### 2. PRICES

In the case of all orders for the supply of the goods described overleaf ("the Goods"), unless otherwise expressly stated in writing by the Company orders are accepted on the basis that:-

- (a) The price stated is the net price of the Goods (after deduction of any discounts) excluding delivery in accordance with the provisions overleaf and is exclusive of value added tax, customs duties and import levies or any similar duties or levies:
- (b) **Please note that the Company is entitled without prior notice to adjust the price** stated to take account any change in specification made at the request of the Purchaser or any alteration before the date of delivery in the cost to the Company of labour materials sub-contracted services or import or export duties or tariffs or transport or fluctuations in currency exchange rates which directly affects the cost to the Company of supplying the Goods;
- (c) the price stated is for stipulated quantities only and does not hold good for lesser quantities.

### 3. PAYMENT

- (a) In the case of orders for UK delivered Goods, unless otherwise expressly stated, prices are due and payable in United Kingdom pounds sterling on the 20<sup>th</sup> day of the month following the date of delivery (actual or deemed) of the Goods.
- (b) In the case of all orders, if the Purchaser shall fail to make payment in full on the due date above, then (without prejudice to any other rights of the Company) the Purchaser shall, without any need for the Company to give notice, become liable to pay the Company interest on the amount for the time being unpaid at the rate of 2.5% above the base rate of the HSBC Bank (or such other rate if any as is specified overleaf) which shall accrue from day to day, compounded monthly, and be calculated from the

date of delivery of the Goods until the date of actual payment, both before and after any court judgement and:-

- (i) the Company shall be entitled to suspend all or any other deliveries to be made under that or any other contract with the Purchaser. In such event the Purchaser shall not in any respect be released from its obligations to the Company under that or any such other contract; or
- (ii) instead of suspension in accordance with paragraph (i) above the Company shall be entitled to terminate the relevant contract or any other contract with the Purchaser in accordance with Conditions 11 below and to claim damages from the Purchaser.
- (c) Time for payment is of the essence of these terms and conditions.

### 4. DESPATCH AND DELIVERY

- (a) The exact method and target date for delivery as agreed between the Company and the Purchaser is stated on the order form. Any despatch or delivery date shown on the order form is a target date only, and whilst the Company will use all reasonable endeavours to achieve any stated despatch or delivery date it accepts no liability whatsoever for any loss or damage resulting from delay howsoever the same shall have been caused. Time of delivery is not of the essence and shall not be made of the essence by notice. Please note that where the Company physically deliver the Goods there may be an additional delivery charge which the Purchaser will be notified of before delivery or will be stated on the order form.
- (b) In the case of orders for UK delivery, delivery shall (unless otherwise stated overleaf) be effected on loading the Goods on to the carrier's transport at the Company's Premises.
- (c) In the case of orders for delivery outside the UK, delivery shall (unless otherwise stated overleaf) be effected:
- (i) in the case of CIF and CFR contracts (as defined in Incoterms 2010), by delivery to the Purchaser or its duly authorised agents of the bills of lading, airway bill or other document in respect of the Goods; or
- (ii) in the case of FOB contracts (as defined in Incoterms 2010), by delivery to the ship or aircraft at the place of export or to the specified carrier or its duly authorised agent of the Goods and to the confirming house or its agent of the bills of lading, airway bill or other document in respect of the Goods.
- (d) Notwithstanding that the stated price may include the cost of carriage from the Company's Premises the risk in the Goods sold shall pass to the Purchaser upon their transfer at such Premises onto the carrier's or Purchaser's transport save that where the contract is stated to be CIF, FOB and CFR the risk shall pass to the Purchaser when the Goods are delivered onto the ship or aircraft.
- (e) The Purchaser shall keep the Goods fully insured against all risks normally insured against at least throughout the period between the risk therein passing to the Purchaser and the property therein ceasing to remain with the Company.
- (f) Upon delivery of the Goods in each case the Purchaser shall sign the Company's delivery note and check the consignment. **Please note:** If the Goods are not delivered or upon delivery are found to be damaged or short the Company shall not in any event be liable unless:
- (i) the Purchaser gives written notice to the Company and to the carrier within two working days of the date of delivery and
- (ii) in the case of short or damaged delivery the Purchaser gives the Company or its representative(s) a reasonable opportunity to inspect the Goods concerned in the state and condition and location in which they were delivered.
- (g) The Purchaser shall inspect the Goods for shade and quality and accept the Goods before they are installed, no claims will be considered after the Goods have been installed.
- (h) When the Goods are delivered or shipped in lots or by instalments the contract for the Goods shall be construed as a separate contract in respect of each lot or instalment subject to these conditions and subject to any special conditions incorporated in the contract in writing.
- (i) If 10 Business Days after the day on which the Company notified the Purchaser that the Goods were ready for delivery the Purchaser has not accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods

### 5. PROPERTY

- (a) Notwithstanding delivery of the Goods or of any documents representing the Goods the property in each item of the Goods shall remain with the Company until receipt by the Company of payment in full in cleared in funds for each such item, and until the receipt by the Company of payment in full of any other sum from time to time owing to the Company on any account whatsoever.

- (b) The Purchaser shall (unless otherwise agreed by the Company in writing) ensure that all Goods which are in the possession or control of the Purchaser and the property in which remains with the Company are stored separately and that they are labelled so that they may be readily identified as property of the Company.
- (c) Subject to condition 11(b) (i) the Purchaser may sell any item of the Goods prior to the Company receiving payment in full for such item and in such event:-
  - (i) the Purchaser shall hold on trust for the Company and shall account to the Company for the proceeds of sale of such item; and
  - (ii) until payment to the Company in full for such item the Purchaser shall maintain such proceeds of a sale in a separate bank account.
- (d) The Purchaser may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Purchaser resells the Goods before that time:
  - (i) it does so as principal and not as the Company's agent; and
  - (ii) title to the Goods shall pass from the Company to the Purchaser immediately before the time at which resale by the Purchaser occurs.
- (e) If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in clause 12(a)(i) to 12(a)(viii) inclusive then, without limiting any other right or remedy the Company may have:
  - (i) the Purchaser's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - (ii) the Company may at any time:
    - (1) require the Purchaser to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (2) if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.

## 6. SPECIFICATIONS, DESCRIPTIONS AND CATALOGUES

### Please note the following important provisions:

- (a) The Purchaser shall be responsible to the Company for the accuracy of any order and specification submitted by the Purchaser. Only specifications accepted in writing by the Company will form part of the contract for the Goods. The Purchaser shall be responsible for supplying to the Company all pertinent information relating to the supply of the Goods (including but not limited to the purpose for which the Goods are to be used). It is the Purchaser's responsibility to check the suitability of the Goods prior to order
- (b) All drawings, descriptive matter, descriptions, specifications, , photographs, physical examples, advertising and any other data issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or price lists are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and only being intended to serve merely for guide purposes only and no warranties or representations are given by the Company in respect of the same of the above. The Company is not responsible for any images or statements contained within any brochure or website produced or controlled by a third party including (but not limited to) the manufacturer of the Goods.
- (c) Where a sample of the Goods is supplied or is inspected or is shown to the Purchaser such sample is provided for the sole purpose of giving an approximate idea of the Goods and for guide purposes only, the Purchaser shall not rely upon any representation or description concerning sample of any Goods supplied unless reference is made thereto overleaf.
- (d) Accordingly the Company shall not be liable for the accuracy of any information or samples referred to whether in 7(a) (b) or (c) or otherwise and such information and samples will not form part of the contract and the contract shall not be a sale by description or a sale by sample as defined in s 13 and s15 of the Sale of Goods Act 1979.
- (e) It is the Purchaser's responsibility to specify certification requirements at the time of ordering.
- (f) Where the Goods are hand made or comprise of natural materials, the Goods may vary in accordance with reasonable natural tolerances, (e.g appearance of or in dimension (including crazing) from the specification or order made by the Purchaser) and the Purchaser irrevocably and unconditionally waives it's right to make any claim against the Company in respect of any such variations.
- (g) The Company reserves the right to substitute alternative Goods where necessary and to make changes to any specifications provided that such substitutions or changes are minor (i.e. do not materially alter the quality or performance of the Goods) or which are required to comply with any applicable Statute, Statutory Instrument or regulatory requirements.

## 7. WARRANTY AND GENERAL LIABILITIES

### Please note the following important provisions:

- (a) The Company warrants that Goods supplied are free from substantial defects in materials and workmanship PROVIDED ALWAYS that
  - (i) the Purchaser notifies the Company in writing of the alleged defects as soon as it becomes aware of them and in any event within two weeks from the date of delivery; applied to any other Goods, property or land, AND the Purchaser therefore acknowledges that it must take steps to inspect all Goods supplied immediately upon delivery.
  - (ii) the Purchaser returns the allegedly defective Goods to the Company carriage paid; and
  - (iii) the Company's liability under this warranty is limited to the repair of the defect or; at the discretion of the Company, the provision of replacement Goods or the refund of the price paid for the defective Goods; and
  - (iv) any liability on the part of the Company shall cease upon any of the Goods supplied being blended or mixed with other Goods or upon any manufacturing or other process being applied thereto, or upon the Goods being affixed or
- (b) The Company does not exclude or restrict its liability for death or personal injury to the extent that it results from the negligence of the Company or its employees or agents, or for fraud or fraudulent mis-statement nor in any other circumstance forbidden by law.
- (c) Save as provided in sub clauses (a) and (b) the Company hereby excludes to the fullest extent permitted by law, all other liabilities (including liability for its negligence) and all other warranties and conditions whether express or implied and whether arising by common law statute or otherwise other than those relating to title to the goods. In particular but without limitation of the foregoing the Company shall not be liable for the failure of any Goods supplied to be fit for any particular purpose for which they are required or to comply with any laws, rules or regulations as regards their use or subsequent re-sale.
- (d) Subject to 7(b) above, the Company shall not be liable for: any indirect or consequential loss injury or damage of any nature whatsoever; any loss of profit (direct or indirect); loss of business; depletion of goodwill; or other costs, claims or expenses of an indirect or consequential nature arising out of or in connection with this agreement or any Goods supplied.
- (e) Without in any way limiting the effect of the foregoing the Purchaser acknowledges that the provisions of this clause are reasonable having regard to the fact that the Purchaser has either inspected the Goods prior to the conclusion of the contract, or has decided at its own risk not to inspect the Goods; and furthermore the Purchaser accepts that it should procure insurance cover for such risks as the Purchaser considers are of importance to it.

## 8. RETURNS

The Company has absolute discretion whether it accepts Goods returned by the Purchaser. Goods supplied for special orders cannot be returned. If Goods are returned they may be only accepted if they are for full cartons only within a one month period from invoice date. Goods that are accepted as returns will be subject to a 20% restocking charge.

## 9. INDEMNITIES

### Please note the following important provisions:

The Purchaser shall be solely responsible for and shall keep the Company indemnified against any loss, liability or expense arising directly or indirectly from the negligent, wrongful, or inappropriate (including a failure to follow manufacturer's instructions) use or re-sale of the Goods.

## 10. FORCE MAJEURE

The Company shall be entitled to cancel or rescind any contract without liability for loss or damage resulting there from if the performance of its obligations under the contract is in any way adversely affected by any circumstances beyond its reasonable control, including but not limited to war, strike, lockout, sit-in, trade dispute, flood, accident to plant or machinery, shortage of any material or labour or any other cause whatsoever beyond the Company's control.

## 11. ASSIGNMENT

The Purchaser shall not assign this Agreement or any rights hereunder in whole or in part without the prior written consent of the Company.

## 12. DEFAULT

- (a) The Company may by notice in writing to the Purchaser terminate any contract for Goods forthwith if:-
- (i) the Purchaser shall commit any breach of any of these terms and conditions (including without limitation terms concerning the time for payment of the purchase price) or other terms of that or any other contract with the Company PROVIDED if such breach is remediable that the Company has previously given to the Purchaser notice thereof and the same has not been remedied within seven days thereafter;
  - (ii) if an order is made or a resolution is passed for the winding up of the Purchaser or circumstances arise which entitle a Court of competent jurisdiction to make a winding-up order of the Purchaser; or an order is made for the appointment of an administrator to manage the affairs, business and property of the Purchaser or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Purchaser or notice of intention to appoint an administrator is given by the Purchaser or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
  - (iii) a receiver is appointed of any of the Purchaser's assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Purchaser or if any other person takes possession of or sells the Purchaser's assets; or
  - (iv) the Purchaser makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
  - (v) the Purchaser is, or is reasonably considered to be unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986; or
  - (vi) any distress is levied against the Purchaser or its property by any third party;
  - (vii) if the Purchaser ceases, or threatens to cease, to carry on business.
  - (viii) the Purchaser's financial position deteriorates to such an extent that in the Company's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- (b) In the event of any such termination:-
- (i) the Company shall be entitled to repossess any Goods which are in the possession or control of the Purchaser and the property in which remains with the Company and for such purpose to enter into and upon the premises of the Purchaser and the Purchaser shall cease to be entitled to sell any Goods supplied by the Company which have not yet been paid for; and
  - (ii) the Company shall be entitled by notice in writing to the Purchaser to declare (and there shall forthwith become) immediately due and payable any amounts outstanding from the Purchaser to the Company under that or any other contract and all such amounts shall bear interest at the rate set out in Condition 3 above, calculated from the date of the notice until actual payment.
- (c) Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Purchaser and the Company if the Purchaser becomes subject to any of the events listed in clause 12(a)(i) to clause 12(a)(viii), or the Company reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.
- (d) The provisions of (a) and (b) above and the exercise by the Company of its rights thereunder are without prejudice to any other rights of the Company.

## 13. LIEN

**Please note the following important provision:** The Company shall have a general lien over all and any Goods or property belonging to the Purchaser which is in possession of the Company from time to time in respect of all and any sums due from the Purchaser to the Company and shall be entitled to exercise such lien by selling such goods or property and applying the proceeds of sale against any sum so due at any time following the expiry of 7 days' notice to the Purchaser demanding payment thereof.

## 14. PROCESSING

- (a) In relation to any agreement made with the Purchaser which involves processing of property or goods belonging to the Purchaser (or a third party) such agreement is made on the assumption that such goods or property are suitable for processing on the Company's plant. If this proves not to be the case the Company reserves the right to cancel or renegotiate the agreement

and the purchaser shall have no claim whatsoever against the Company in this regard.

- (b) Where an agreement involves work upon materials supplied by the Purchaser the Company shall use reasonable care to remove contaminating matter therefrom but shall have no liability whatsoever (whether for negligence or otherwise) arising out of the presence of such contamination.

## 15. GENERAL

- (a) Notices to be served hereunder shall be served on the relevant party at its address shown on the order form, invoice or other relevant documents or such other address as may be notified in accordance with this clause or (in the case of a company) its registered office for the time being or (in the case of a Purchaser not being a company) its principal place of business for the time being, by pre-paid first class post (if in the United Kingdom) or prepaid airmail (if outside the United Kingdom) and such notices shall be deemed to have been duly served 2 days (7 days in the case of airmail post) after the same has been put in the post properly addressed.
- (b) The headings used in these Terms and Conditions are for convenience only and shall not affect the construction thereof.
- (c) If for any reason any wording in any part of these conditions is rendered or held by a Court to be unreasonable, void or unenforceable then such offending wording shall be deemed severable from the remaining wording in such part of these conditions, and the remainder of such wording shall continue to have full force and effect.
- (d) no forbearance or indulgence on the part of the Company in enforcing any of these Conditions shall prejudice its strict rights hereunder or be construed as a waiver thereof.
- (e) All contracts shall be construed in accordance with English Law and where the Purchaser is based in the United Kingdom, the Company and the Purchaser hereby submit to the exclusive jurisdiction of the English Courts, and otherwise to the non-exclusive jurisdiction of the English Courts.
- (f) A person who is not a party to the Contract shall not have any rights to enforce its terms.