



## Terms and Conditions

**RUSSELL ROOF TILES a trading name of RUSSELL BUILDING PRODUCTS LIMITED**

### **STANDARD CONDITIONS OF SALE**

All Quotations issued by the Company are subject to these terms and conditions and the Trading Criteria only.

#### **1 Definitions and Interpretation**

1.1 In these Conditions the following words have the following meanings:

**“Company”** means Russell Building Products Limited (Registered No: 7685988) whose registered office is at Nicolson Way, off Wellington Road, Burton on Trent DE14 2AW;

**“Conditions”** means these standard conditions of sale;

**“Confidential Information”** means without limitation, business, commercial, economic, financial, operational, technical, administrative, marketing, planning and staff information and data relating to the Company or its interests disclosed to the Customer whether before, during or after the provision of the Goods, whether in written, oral, pictorial or any other form, and all information, data, know-how, trade secrets, formulae, processes, designs, photographs, drawings, specifications, software programs, samples or other material attributable to or deriving its existence from the Company or the provision of the Goods;

**“Contract”** means any contract between the Company and the Customer for the sale of Goods, incorporating these Conditions and the Contract Details, formed in accordance with Condition 2.4;

**“Contract Details”** means the specific details of the Contract confirmed by the Company in writing to the Customer prior to delivery of the Goods including in any Quotation;

**“Customer”** means the person(s), firm or company who purchases the Goods from the Company as set out in the Contract Details;

**“Delivery Location”** means the location for delivery of the Goods in accordance with Condition 3.1 and as set out in the Contract Details or as otherwise agreed between the parties in writing from time to time;

**“Estimated Delivery Date”** means the date(s) on which the Company shall deliver the Goods in accordance with Condition 3.1 and as indicated by the Company in the

Contract Details or on the date(s) as otherwise agreed between the parties in writing from time to time;

**“Goods”** means any goods set out in the Contract Details to be supplied to the Customer by the Company (including any part or parts of them and pallets where applicable);

**“Group Company”** means any subsidiary or holding company of the Company and any subsidiary of such holding company (in each case from time to time) (and the terms “Subsidiary” and “Holding Company” shall have the meanings given to them by Sections 736 and 736A Companies Act 1985);

**“Indirect Customer”** means any person who has entered into an agreement with the Company under which such person will refer or direct other persons (including but not limited to the Customer) to purchase goods from the Company;

**“Intellectual Property Rights”** means any patent, copyright (including without limitation moral rights), database right, design right, registered design, trade mark or science mark, (both whether registered or otherwise), domain name, know-how, utility model, unregistered design or any other industrial or intellectual property right subsisting anywhere in the world in each case whether registered or unregistered and, where relevant, any application for and renewals or extensions of protection or proprietorship of any such right and all similar or equivalent rights or forms of protection;

**“Quotation”** means any proposal, tender, estimate, scope of works or quotation submitted to the Customer by the Company prior to the Contract being formed;

**“Rebate Agreement”** means any agreement between the Company and either the Customer, an Indirect Customer or a third party under which the Company pays a rebate in respect of goods purchased from the Company;

**“Trading Criteria”** means the trading criteria published on the Company’s website at

<https://www.russellrooftiles.com/wp-content/uploads/2019/05/RRT-Trading-Criteria-2019.pdf>

from time to time; and

**“Working Day”** means any day from Monday to Friday other than a statutory holiday or public holiday in England.

## **2 Basis of Contract**

- 2.1 Subject to any variation under Condition 2.3 the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).
- 2.2 Each order for Goods by the Customer from the Company or acceptance of a Quotation by the Customer shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions. It is the Customer’s obligation to ensure that the terms of its order and any applicable specification are complete and accurate.

- 2.3 Any variation to these Conditions or the Contract or any representations about the Goods shall have no effect unless set out in the Contract Details or expressly agreed in writing and executed by a director of the Company.
- 2.4 These Conditions shall become binding on the Customer when they are signed by the Customer, or if they are not signed, when the Company:
- (a) confirms the order placed by the Customer in writing;
  - (b) commences manufacture or mixing of the Goods or their appropriation to the Customer's order; or
  - (c) notifies the Customer that the Goods are ready for delivery or collection,
- at which point a "**Contract**" shall come into existence between the Company and the Customer.
- 2.5 Any order shall be accepted entirely at the discretion of the Company and no order shall be regarded as having been accepted by the Company unless the circumstances set out in Condition 2.4 apply.
- 2.6 Any Quotation made by the Company is given subject to these Conditions. Without prejudice to the Company's right not to accept an order, Quotations will be valid for 60 days from date of issue. Notwithstanding this Condition 2.6, any Quotation shall no longer be valid where a sub-contractor or supplier has changed its charges.
- 2.7 All Goods are sold by reference to the Company's specification for those Goods in force at the date of the Company's acceptance of the Customer's order in accordance with Condition 2.4.
- 2.8 The Customer can only cancel an order (or any part of an order) which the Company has already accepted with the Company's prior agreement in writing and provided that the Customer indemnifies the Company in full in accordance with Condition 8.3.
- 2.9 The Company may cancel an order at any time on the provision of written notice to the Customer at any point before commencing delivery of the Goods. The Company shall not be liable to the Customer in relation to any loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses incurred by the Customer as a result of cancellation.
- 2.10 Where the Company confirms the details of the Contract in writing, the Customer shall be under a duty to bring any discrepancies to the Company's notice within 3 days of receipt of the written confirmation, and if the Customer fails to bring any such discrepancies to the Company's notice within the said time period, the Customer shall be bound by the details contained, mentioned or referred to in the written confirmation of the Contract.
- 2.11 If either party requests a change to the Goods to be delivered under the Contract, including any requested change in quantity, Delivery Location or Estimated Delivery Date, such request must be presented to the other party in writing. The Company shall, within a reasonable time following such request and where reasonably practicable, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the price for the Goods or the total price under the Contract arising from the change;
- (c) the likely effect of the change on the Contract Details; and
- (d) any other impact of the change on the Contract,

and if, following receipt of the written estimate from the Company, the Customer wishes to proceed with the requested change, the Company has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to the price for the Goods, the total price under the Contract and the Contract Details.

- 2.12 The Company sells in full pallets only. Where the Customer places an order for a quantity of Goods which is not a full pallet lot, the Company reserves the right to amend the Customer's order to the nearest full pallet lot by written notice to the Customer, provided the Company will not deliver less than the quantity of Goods ordered by the Customer. Where the Company does amend an order in accordance with this clause 2.12 the Customer shall pay for the Goods actually delivered at the pro-rata Contract price.
- 2.13 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the strengths or use of the Goods by the Company is followed or acted upon entirely at the Customer's own risk. It is the Customer's responsibility to understand and verify the detail, accuracy and fitness for purpose of any advice or recommendation and the Company shall not be liable under warranty or otherwise for any liability, including but not limited to defects, failures, damages, losses, costs or expenses, resulting from any failure by the Customer to verify the detail, accuracy and fitness for purpose of any advice or recommendation given by the Company, to the greatest extent permitted by applicable law.
- 2.14 Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.15 The description of the Goods shall be set out in the Contract Details.
- 2.16 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions, details or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and they will not form part of the Contract unless otherwise agreed in writing.

### **3 Delivery and Acceptance of Goods**

- 3.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place in normal business hours on the Estimated Delivery Date at the Delivery Location.

- 3.2 The Estimated Delivery Date specified by the Company for delivery of the Goods is intended to be an estimate only and time for delivery shall not be of the essence. If no dates or times are so specified, delivery will be within a reasonable time.
- 3.3 If for any reason the Customer does not accept delivery of any of the Goods within 3 Working Days of the Company notifying the Customer that they are ready for delivery at the Delivery Location or the Company is unable to deliver the Goods on the Estimated Delivery Date because the Customer has not provided appropriate instructions, documents, licences, authorisations or access to the Delivery Location then, without prejudice to any other right or remedy available to the Company:
- (a) the Goods will be deemed to have been delivered at 9.00am on the third Working Day following the day on which the Company notified the Customer that the Goods were ready for delivery; and
  - (b) the Company may in its absolute discretion:
    - (i) store the Goods until actual delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation reasonable storage, redelivery and insurance costs); or
    - (ii) sell the Goods at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge the Customer for any shortfall below the amounts due under the Contract.
- 3.4 Unless otherwise set out in the Contract Details, the Company or the Company's carrier shall not be responsible for unloading the Goods and the Customer shall be charged for wasted time at the Company's standard rate together with any other expenses incurred by the Company:
- (a) for any delay in unloading the Goods;
  - (b) for each repeat delivery where the Company or the Company's carrier leaves the Delivery Location and subsequently returns to the Delivery Location with the Goods; or
  - (c) as a result of the Customer's inability or unwillingness to accept delivery of, or to collect, the Goods.
- 3.5 The Customer will provide at its expense at the Delivery Location appropriate equipment and manual labour for unloading the Goods.
- 3.6 The Customer shall not be entitled to object to or reject the Goods by reason of the surplus or shortfall and shall pay for the Goods delivered at the pro rata Contract rate if the Company delivers to the Customer a quantity of Goods of up to one full pallet more or less than the quantity ordered by the Customer or, where the Goods are ordered in quantities other than by full pallet, if the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity ordered by the Customer.
- 3.7 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the

quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

- 3.8 The Customer shall ensure that an authorised person shall sign a delivery docket on delivery to the Delivery Location as conclusive evidence that delivery was made and of the quantity of Goods delivered.
- 3.9 The Company shall be entitled at its discretion to make delivery of the Goods by instalments and to invoice the Customer for each instalment individually. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated or to refuse to accept subsequent instalments.
- 3.10 The Customer will be deemed to have accepted the Goods as being in accordance with the Contract unless:
  - (a) within 2 days of the date of delivery of the Goods, the Customer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods within 2 days). For the avoidance of doubt, any discrepancy in colour or finish would be apparent upon reasonable inspection and testing of the Goods within 2 days; or
  - (b) the Customer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract within a reasonable time where the defect or failure would not be so apparent within 2 days of the date of delivery, failing which the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 3.11 Goods, once delivered, may not be returned unless their return is agreed in advance in writing by the Company, and subject to the following conditions and current trading criteria:
  - (a) Goods are returned in a new and unused condition;
  - (b) Any packaging remains unbroken and in resaleable condition;
  - (c) Returns are made within 7 days of delivery of those Goods, all transport and other re-delivery costs of whatever nature are paid by the Customer;
  - (d) Payment by the Customer to the Company of a restocking charge of 20% of the net invoice value of the relevant Goods; and all associated distribution costs;
  - (e) Returned goods shall be accompanied by a written record of invoice number, date and a note of reasons for their return.

- 3.12 The Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract.
- 3.13 The Company shall only be liable for any non-delivery or shortfall greater than that permitted under clause 3.6 if the Customer gives written notice to the Company within 7 days of the date when the Goods would, in the ordinary course of events, have been delivered.
- 3.14 If the Customer gives notice to the Company in accordance with Condition 3.13, the liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

#### **4 Passing of Risk and Legal Title**

- 4.1 The Goods shall be at the risk of the Customer from the time of delivery at the Delivery Location (and for the avoidance of doubt shall be at the Customer's risk during unloading) or, where the Customer fails to take delivery in accordance with Condition 3.3, shall pass to the Customer on deemed delivery in accordance with Condition 3.3(a). If delivery is to a location outside the United Kingdom, then risk shall pass on loading of the Goods at the Company's premises or as otherwise agreed in the Contract Details or in writing between the parties.
- 4.2 Full legal, beneficial and equitable title to and property in the Goods shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until:
- (a) payment in full, in cash or cleared funds, for all the Goods has been received by the Company; and
  - (b) all other sums payable by the Customer to the Company on any other account or under the Contract or any other contract have been received by the Company in cash or cleared funds.
- 4.3 Until full legal, beneficial and equitable title to and property in the Goods passes to the Customer:
- (a) the Customer shall hold the Goods on a fiduciary basis as the Company's bailee and shall keep the Goods separate from those of the Customer and third parties;
  - (b) the Customer shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods and shall insure them, without any charge to the Company, and not tamper with, remove or deface any identification or mark upon the Goods or their packaging and shall ensure that they are stored separately from any other goods (whether or not supplied by the Company) and are clearly identifiable as belonging to the Company and the Company shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Customer reasonable notice of its intention to do so;

- (c) if the Goods are damaged or destroyed by an insured risk prior to the same being paid for by the Customer, the Customer shall receive the proceeds of any such insurance as trustee for the Company;
- (d) the Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable;
- (e) the Company may at any time, on demand and without prior notice, including but not limited to if any of the events specified in Condition 12 occurs or if any sum due to the Company from the Customer under the Contract or on any other account or under any other contract is not paid when due, require the Customer to deliver the Goods up to the Company and if the Customer fails to do so forthwith, the Company may enter upon any premises of the Customer or any third party where the Goods are stored and mark, identify and repossess the Goods and the Customer grants the Company, its employees, agents and subcontractors, and shall procure from any necessary third party, an irrevocable licence to enter any premises of the Customer or any premises of a third party where any of the Goods are situated for such purposes;
- (f) the Company shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Customer;
- (g) the Company authorises the Customer to use and/or sell the Goods in the normal course of the Customer's business and to pass good title in the Goods to its customers, if they are purchasers in good faith without notice of the Company's rights. This right shall automatically cease on the occurrence of any event set out in Condition 12 or if any sum owed to the Company by the Customer is not paid when due; and
- (h) if the Customer sells the Goods in accordance with Condition 4.3(g) prior to paying the amounts specified in Condition 4.2, the Customer shall hold the proceeds of sale on trust for the Company and shall immediately pay the proceeds of the sale into a separate bank account. At the Company's request, the Customer shall assign to the Company all claims that the Customer may have against purchasers of the Goods from the Customer.

4.4 The Company's rights and remedies set out in this Condition 4 are in addition to and shall not in any way prejudice, limit or restrict any of the Company's other rights or remedies under the Contract or in law or equity.

## **5 Price and Payment**

5.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Contract Details or, where not set out in the Contract Details, in accordance with the Company's account price list relevant to the Customer, where there is no such account price list, the Company's current price list.

5.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the



Company which is due to any factor beyond the control of the Company (including, without limitation, any increase in the costs of labour, materials, or other costs of manufacture or supply), any change in the quantities of the Goods requested by the Customer or any change in the delivery dates or location for the Goods requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

- 5.3 Unless otherwise agreed in writing the price for the Goods shall be inclusive of all costs or charges in relation to loading, carriage and freight. For the avoidance of doubt, this does not affect the Company's right to charge for delivery related charges as set out in Condition 5.6 and the Contract Details.
- 5.4 The price for the Goods shall be exclusive of value added tax and any other taxes, duties or levies and insurance all of which amounts the Customer will pay in addition when it is due to pay for the Goods.
- 5.5 The Company reserves the right to levy a "part load" charge, the amount to be determined by the Company, where the Customer orders less than a full load. Details of load capacities are set out in the Trading Criteria or can be obtained from the Company on request.
- 5.6 The Company reserves the right to make a charge for delivery of the Goods on the request of the Customer at a specific time or outside normal working hours where set out in the Contract Details.
- 5.7 The Company shall be entitled to invoice the Customer for the price of the Goods and any other amounts due under the Contract on or at any time after the Contract is formed, notwithstanding that the Goods may not have been delivered. In the event that any additional amounts become due following the issue by the Company of an invoice, the Company shall be entitled to invoice the Customer as and when such amounts arise.
- 5.8 Except where otherwise agreed by the Company or where the Customer has a valid credit facility with the Company which is sufficient to cover the price of the Goods, payment of the price for the Goods is due prior to delivery of the Goods. Time for payment shall be of the essence.
- 5.9 The Customer shall make payment for all amounts due under the Contract in sterling by telegraphic transfer into such bank account as notified by the Company in writing from time to time. Unless otherwise agreed in writing by the Company, any payment received by the Company in any other currency or by any other method will not be deemed to be valid payment under the Contract. Payment will not be deemed payment under the Contract unless and until it is received in full and cleared funds.
- 5.10 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.
- 5.11 The Company shall be entitled to apply any amount due to the Customer under this or any other agreement in or towards payment of any sum owing by the Customer to the Company in relation to any matter whatsoever.
- 5.12 If any sum due from the Customer to the Company under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by

the Customer to the Company shall become due and payable immediately and the Company shall, without prejudice to any other right or remedy the Company may have, be entitled to:

- (a) cancel or suspend its performance of the Contract or any order including suspending deliveries of the Goods;
- (b) sell or otherwise dispose of the Goods and/or any goods which are the subject of any order by the Customer, whether or not appropriated thereto, and, where applicable, apply the proceeds of sale to the unpaid amount;
- (c) require the Customer to pay for Goods prior to their despatch or collection from the Company's place of business;
- (d) alter or withdraw any credit facility granted to the Customer by the Company; and
- (e) charge the Customer:
  - a interest calculated on a daily basis on all overdue amounts (both before and after judgement) until actual payment at the rate of eight per cent (8%) per annum above the base lending rate of National Westminster Bank plc prevailing from time to time until payment is made in full; and
  - b the cost of obtaining judgement or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

5.13 Unless otherwise agreed in writing by the Company, all queries from the Customer regarding any amount payable under the Contract must be received prior to the due date for payment of such amount and in any event within 5 Working Days of receipt of the relevant invoice.

5.14 Any credit facility given to the Customer by the Company may be altered or withdrawn by the Company at any time.

5.15 Any payment due under a Rebate Agreement or otherwise due to the Customer will not be payable in whole or in part where:

- (a) the Customer fails to comply with the Contract or the Trading Criteria; or
- (b) the Customer, any Indirect Customer or any third party fails to comply with any applicable Rebate Agreement.

## **6 Warranty of Quality of Goods**

6.1 Subject to the Conditions set out below, the Company warrants that upon acceptance in accordance with Condition 3.10, the Goods will:

- (a) be free from material defects in quality or workmanship; and

- (b) comply with any specification set out in writing as part of the Contract. For the avoidance of doubt the Company may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality of the Goods;

for the avoidance of doubt, the warranty set out in this Condition 6.1 shall not extend to cover any goods not manufactured, designed, created or provided by the Company, for which the Company shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

6.2 If the Customer establishes to the Company's reasonable satisfaction that there is a defect in the materials or workmanship of the Goods manufactured or there is some other failure by the Company in relation to the conformity of the Goods with the Contract, then the Company shall at its option, at its sole discretion and within a reasonable time:

- (a) repair or make good such product defect or failure in such Goods free of charge to the Customer (including all costs of transportation of any Goods or materials to and from the Customer for that purpose);
- (b) replace such Goods (except for colour) with Goods which are in all respects in accordance with the Contract; or
- (c) issue a credit note to the Customer in respect of the whole or part of the Contract price of such Goods as appropriate having taken back such Goods or materials relating to such Goods subject, in every case, to the remaining provisions of this Condition 6 provided that the liability of the Company under this Condition 6 shall in no event exceed the purchase price of such Goods and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty.

6.3 The Company shall be under no liability under the warranty at Condition 6.1 above:

- (a) in respect of any defect arising from fair wear and tear (including efflorescence or any other natural change in colour or finish), wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing) as to the storage, installation, proper use and maintenance of the Goods, misuse, repair or alteration of the Goods without the Company's approval;
- (b) if the Goods are mixed with, incorporated into or combined with the goods of any third party during use, including but not limited to where the Goods are affixed to a roof with a third party's fixtures;
- (c) if the total price for the Goods has not been paid by the due date for payment;
- (d) for any Goods manufactured or appropriated to the Contract in accordance with any specification, instruction or recommendation made to the Company by the Customer; or

- (e) in respect of any type of defect, damage or wear specifically excluded by the Company by notice in writing;
- (f) if the Customer makes any further use of the Goods after giving notice in accordance with Condition 6.4 below.

6.4 The Company shall not be liable for a breach of any of the warranties in Condition 6.1 unless:

- (a) the Customer notifies the Company in writing of the alleged defect providing photographic evidence of the alleged defect and if, where the Company is responsible for delivery, the defect is as a result of damage in transit gives written notice to the Company or the Company's carrier within 2 Working Days of receipt specifying the details of the defect and delivery date. In the event of a defect which is not apparent on delivery the Customer shall inform the Company of such defect immediately on discovery of the defect but in any event within 2 days of the time when the Customer discovers or ought to have discovered the defect and in any event within 6 months of the delivery of the Goods to the Customer or such other periods as agreed by the Company in writing; and
- (b) the Company is given a reasonable opportunity to inspect the relevant Goods and, if so requested by the Company, the Customer promptly returns to the Company or such other person nominated by the Company a sample of the Goods within 7 days, carriage paid by the Customer, for inspection, examination and testing and/or otherwise permit the Company to have access to the Goods at the Customer's premises or other location where they may be for such purposes.

6.5 The Company makes no warranty that the Goods will remain the colour, pigment or shade that they appear on delivery or that the Goods will be uniform in appearance on delivery. The Customer acknowledges and agrees that variations to the colour, pigment or shade of the Goods may occur as a result of the manufacturing process and that changes to the colour, pigment or shade of the Goods may occur following delivery as a result of the environment and weather conditions to which the Goods are exposed, and that these are ordinary characteristics of the Goods and not defects or indicative of defects in the Goods.

6.6 The warranties set out in this Contract are the only warranties which shall be given by the Company and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. In particular, the Company makes no warranty as to the fitness of the Goods for any particular purpose even if that purpose is stated in the Customer's order. This exclusion includes recommendations or advice from the Company to the Customer relating to a specific enquiry. The Customer must satisfy itself as to the fitness for the purpose for which the Goods are intended.

6.7 Any claim by the Customer under this Condition 6 in respect of any Goods shall not entitle the Customer to withhold or delay payment in respect of any other Goods in respect of which no such claim has been made whether or not those Goods form part of the same consignment.

## **7 Exclusion and Limitation of Liability**

- 7.1 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence, or for fraudulent misrepresentation.
- 7.2 The Company shall have no liability (whether or not such loss or damage was foreseen, direct, foreseeable, known or otherwise) in respect of any:
- (a) loss of anticipated profits;
  - (b) loss of actual profits (direct or indirect);
  - (c) loss of anticipated savings;
  - (d) loss of sales or business;
  - (e) loss of or damage to goodwill;
  - (f) loss of agreements or contracts;
  - (g) indirect, special or consequential loss or damage howsoever caused; or
  - (h) any losses arising as a result of any third party bringing a claim in respect of any nature whatsoever.
- 7.3 Notwithstanding Conditions 7.1 and 7.2 above, the total aggregate liability of the Company arising out of, or in connection with the performance or contemplated performance of this Contract shall in no event exceed the value or replacement cost of the price paid or payable by the Customer for the Goods which are the subject of the Contract.
- 7.4 Subject to Condition 7.1, the Company shall have no liability under these Conditions or otherwise if the Goods have not been paid by the date due under the Contract.
- 7.5 The price of the Goods has been calculated on the basis that the Company will exclude or limit its liability as set out in these Conditions and the Customer by placing an order agrees and warrants that the Customer shall insure against or bear itself any loss for which the Company has excluded or limited its liability in these Conditions and the Company shall have no further liability to the Customer.

## **8 Customers Obligations**

- 8.1 The Customer warrants that:
- (a) it will co-operate with the Company in all matters relating to the Goods, including but not limited to using only the Company's fittings and fixtures to affix tiles produced by the Company to a roof;
  - (b) it will provide, for the Company, its employees, agents and sub-contractors, in a timely manner and at no charge, access to the Delivery Location as requested by the Company and as necessary to enable the Company to perform its obligations under these Conditions;

- (c) it will carry out all actions specified in the Contract Details by the times and dates set out therein;
- (d) it shall take all reasonable precautions to ensure the health and safety of the Company, its employees, agents or sub-contractors whilst on the Delivery Location and will inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Delivery Location;
- (e) it will comply with the Trading Criteria at all times; and
- (f) it will comply with the terms of any Rebate Agreement between the Company and the Customer and, in respect of any Indirect Customer or third party that the Customer is purchasing the Goods on behalf of or in order to fulfil a contract for, shall use reasonable endeavours to procure that such Indirect Customer or third party comply with the terms of any Rebate Agreement between such Indirect Customer or third party and the Company.

8.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Company shall not be liable for any costs, expenses, losses or charges sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

8.3 The Customer irrevocably and unconditionally agrees to indemnify the Company, its employees, sub-contractors and agents (who shall have no duty to mitigate their loss) in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including without limitation legal and other professional advisers' fees and all consequential and economic loss (including without limitation loss of profit, future revenue, reputation or goodwill and anticipated savings)) whether direct or indirect made against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Contract:

- (a) the manufacture and sale of the Goods by the Company in accordance with the Customer's specifications or other data or information furnished or instructions given by the Customer;
- (b) the cancellation of any order by the Customer after its acceptance by the Company in accordance with Condition 2.8;
- (c) any breach by the Customer of its obligations under the Contract; and
- (d) any breach by the Company of its obligations under the Contract or any other act or omission (including, without limitation, negligence) of the Company, its employees and agents in excess of the liability of the Company under the Contract.

## **9 Confidentiality and Intellectual Property Rights**

- 9.1 The Customer shall keep confidential the Confidential Information and shall only use the Confidential Information as necessary for the purpose of making reasonable use of the Goods and for performing the Customer's obligations under the Contract. The Customer shall inform its officers, employees and agents of the obligations under this Condition 9 and shall ensure that they meet such obligations.
- 9.2 The obligations of Condition 9.1 shall not apply to any information which:
- (a) was known or in the possession of the Customer before it was provided to the Customer by the Company;
  - (b) is, or becomes, publicly available through no fault of the Customer;
  - (c) is provided to the Customer without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such disclosure;
  - (d) was developed by the Customer (or on its behalf) without direct access to, or use or knowledge of the Confidential Information supplied by the Company;  
or
  - (e) is required to be disclosed by order of a court of competent jurisdiction.
- 9.3 Any Intellectual Property Rights in the Goods or created by the Company in the course of performance of the Contract or otherwise, in the manufacture of the Goods shall belong to the Company or its licensor. Nothing in this Contract shall be deemed to grant to the Customer a licence or any other right to use the Intellectual Property Rights of the Company.
- 9.4 Condition 9 shall survive termination of the Contract.

## **10 Subcontracting, Assignment and Third Party Rights**

- 10.1 The Customer shall not be entitled to assign, charge, subcontract, transfer or deal in any other manner with all or any of its rights or obligations under the Contract or any part of it without the prior written consent of the Company.
- 10.2 The Company may assign, charge, subcontract, transfer or deal in any other manner with all or any of its rights or obligations under the Contract or any part of it to any person or Group Company.
- 10.3 A Group Company may enforce any term of the Contract. Save for the Group Companies, no person who is not a party to the Contract (including any employee, officer, agent, representative or sub-contractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 (the "Act") or otherwise) to enforce any term of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Company and the Customer which agreement must refer to this Condition 10.3.
- 10.4 Even if a person who is not a party to the Contract has a right to enforce any term of the Contract by virtue of Section 1 of the Act, the parties may, notwithstanding Section 2(1) of the Act, vary or cancel the Contract by agreement between them without requiring the consent of such third party.

## **11 Force Majeure**

- 11.1 The Company reserves the right to suspend or cancel the Contract in whole or in part (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business and its obligations under the Contract due to any circumstances beyond the reasonable control of the Company including, without limitation, acts of God, fire, flood, storm, lightning, pandemic or epidemic, war, revolution, act of terrorism, riot or civil commotion, accident, malicious damage, strikes, lock outs or other industrial action (whether of the Company's own employees or others), compliance with any law or government order, rule, regulation or direction, breakdown of plant or machinery or failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services provided that, if the event of force majeure continues for a continuous period in excess of 3 months, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## **12 Termination and Consequences**

- 12.1 Without prejudice to any other rights or remedies whether under the Contract or otherwise, the Company may immediately suspend performance of the Contract, cancel any outstanding delivery of the Goods, stop any Goods in transit or by notice in writing to the Customer terminate the Contract, such notice taking effect as specified in the notice, without liability to the Company if:
- (a) the Customer commits a material or persistent breach of any of these Conditions, and (if such a breach is remediable), fails to remedy that breach within 7 days, or such other time period deemed appropriate by the Company at the time, of being notified in writing;
  - (b) any sum payable under the Contract, including any interest accrued, is not paid in full and cleared funds within 7 days of its due date for payment in accordance with the Contract;
  - (c) the Customer suspends, or threatens to suspend, payment of its debts or makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
  - (d) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of any property or assets of the Customer;
  - (e) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - (f) the Company reasonably apprehends that any of the events mentioned above is about to occur and notifies the Customer accordingly.
- 12.2 For the purposes of Condition 12.1(a), a breach shall be considered capable of remedy if the Customer can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).



12.3 Upon termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all outstanding invoices, and in respect of any sums payable by the Customer under the Contract but for which no invoice has been submitted, the Company may submit an invoice which shall be payable immediately on receipt;
- (b) each party shall return, delete or destroy all Confidential Information and all other information which has been provided to it by the other party belonging to that other party in whatever medium in accordance with the instructions of that other party; and
- (c) the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

12.4 Termination of the Contract for any reason shall be without prejudice to the rights and remedies of either party which may have accrued up to termination.

### **13 General**

13.1 Any notice required or permitted to be given by either party to the other under these Conditions or the Contract shall be in writing addressed to that other party at its registered office or principal place of business as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice:

- (a) sent by post shall be deemed served on the next Working Day following posting where the notice is sent and received within the United Kingdom, or 7 Working Days following posting where the notice is sent and/or received outside of the United Kingdom;
- (b) delivered personally shall be deemed served at the time of personal delivery, provided the same occurs on a Working Day; and
- (c) sent by email shall be deemed served at the time of transmission provided that the transmission occurs on a Working Day and a confirmatory copy of the email is sent by post within 24 hours of transmission of the email.

13.2 To provide service it shall be sufficient to show that the email was transmitted to the email address of the other party or that the envelope containing the notice was properly addressed and posted.

13.3 Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties. No party shall have authority to act as agent for or to bind another party in any way.

13.4 Each party to the Contract shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.

13.5 All rights and remedies available to either of the parties under the terms of the Contract or under the general law are to be cumulative, and no exercise by either of the parties

of any such right or remedy is to restrict or prejudice the exercise of any other right or remedy granted by the Contract or otherwise available to that party.

- 13.6 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Company to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 13.7 If any provision or part provision of these Conditions or the Contract is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.
- 13.8 Each Contract sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Goods and shall supersede and replace any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 13.9 This Contract shall be governed by and be construed in all respects in accordance with English law and all disputes or claims arising out of or relating to this Contract shall be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.