

Shaws of Darwen - Terms and Conditions

A division of Shires Limited. Registered in England No. 485334

TERMS AND CONDITIONS

1 EXISTANCE OF CONTRACT

(a) In these conditions 'the Company' means Shires Limited and 'the Customer' means the individual, firm, company or other party with whom the Company contracts. 'Supply' includes (but is not limited to) any supply under a contract of sale. 'International Supply contract' means such a contract is described in section 26(3) of the Unfair Contract Terms Act 1977.

(b) No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. Any contract made between the Company and the Customer (herein called 'the Contract') shall be subject to these conditions and save as aftermentioned no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them; any such term representation or contract varying these conditions will bind the Company only if in writing and signed by a Director or the authorised representative of the Company. Note – this will not apply to a 'firm' lender by the Company which would probably be 'the offer'.

(c) Unless otherwise agreed in writing by the Company signed as above these conditions shall override any terms and condition stipulated or referred to by the Customer in his order of pre-contract negotiations.

(d) Any description contained in the Company's catalogues, samples, price lists estimates or other advertising material is intended merely to present a general picture of the company's products and shall not form a representation or be part of the Contract.

(e) All goods are subject to the variations in dimensions and colour unavoidable in the manufacture of ceramic material. Samples are submitted whenever possible from current bulk production but it is hereby declared that such samples are exhibited and inspected solely to enable the Customer to judge for himself the quality of the bulk and not so as to constitute a sale by sample under the Contract. All goods shall be checked and matched by the Customer before incorporation into any equipment or construction as provided by Clause 2(d) hereof.

(f) In the event that the Company has not given a written acknowledgement of the Customer's order these conditions, provided the Customer shall have had prior notice of them, shall nonetheless apply to the Contract.

(g) The Company reserve the right to correct any clerical or typographical errors made by its employees at any time.

2 CUSTOMER RESPONSIBILITIES

(a) Where goods are made to the Customer's specification, instructions or design, the customer undertakes full responsibility for the suitability and accuracy of the specification, instructions or design and undertakes to indemnify the Company against any infringement of any patent, registered design, trade mark, trade name or copyright and any loss, damage or expense which or may incur by reason of such infringement in any country and the Customer undertakes further to indemnify the company for any loss, damage or expense in respect of any liability arising under the provisions of the Consumer Protection Act 1987 in relation to the specification or design of such goods.

(b) The Customer warrants that it will pass on to all third parties to whom it may supply the use and safe handling of the goods all information as to the use and safe handling of the goods as may have been passed on to the Customer by the Company.

(c) Whilst every effort will be made to assist the Customer when the Customer requests technical information and advice the Company shall be under no liability (subject to clause 9 hereof) for any loss, damage or expense whether direct or consequential incurred as a result of such information or advice where design or construction work not under the direct control of the Company is carried out using the goods.

(d) The Customer shall be responsible for checking the goods for defects and for matching purposes before incorporation into any equipment or construction and shall comply with clause 7(a) hereof when alleging any defect.

(e) If colours other than the standard range are ordered it is the customer's responsibility to order adequate quantities and sizes as the Company cannot be responsible for holding stocks for future orders.

3 PRICE

(a) Subject to any agreement to the contrary the Company's quotations are provisional and may be altered to take account of any changes taking place between the date of quotation and the Company's acceptance of the Customer's order in the price of raw materials, rates of wages and other costs of production or in the Customer's specification, instructions or design or in the event that the Customer orders part only of the quantity referred to in any quotation.

(b) The Company shall be entitled to increase its price at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or manufacturing working on or supplying any goods (including any such increase arising from any error or inadequacy in any specification,

instructions or design provided by the Customer or any modification carried out by the Company at the customer's request) and such increased prices ruling at the date of despatch by the Company shall be substituted for the previous Contract price. All prices quoted are exclusive of VAT and the Customer shall pay any and all taxes duties and other government charges payable in respect of the goods.

(c) An extra charge will be made for the carriage of the goods unless specifically stated otherwise.

(d) In order to qualify for a quantity based price the goods must be of one colour and module. Round edge or quoin edge fittings may be added to plain tiles to arrive at total quantities.

(e) Colours other than our standard range will be (unless specified) subject to an extra charge.

(f) Drawing office services and taking off of quantities are not included in the contract (unless specified) and the Company reserves the right to make an extra charge should it agree to provide such services.

(g) Pallets are charged extra to the contract price and full allowance will be credited to the Customer only if pallets are returned in good condition within three months of receipt of the same by the Customer to the sending works of the Company from which the pallets were despatched. The Company must be advised by the Customer immediately upon despatch of the pallets to the Company.

4 DELIVERY AND RISK

(a) Unless otherwise agreed in writing by the Company

(i) the Customer shall take delivery of the goods or any instalments thereof at the Company's premises within 14 days after receiving notification from the Company that such goods are ready and

(ii) if the Company agrees to deliver goods elsewhere the Customer shall when so required by the Company forthwith give to the Company all necessary instructions; the Company shall be entitled to add to the Contract price a reasonable charge for packaging and delivery and off-loading shall be at the Customer's risk and expense.

(b) Orders for delivery ex-stock will be accepted only where the goods remain unsold on receipt of order.

(c) If the Contract is an International Supply Contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Contract save

that in the event of any inconsistency between Incoterms and any express term of the Contract the latter shall prevail. The Company shall be under no obligation to give the Customer the notice specified in section 32(3) if the Sale of Goods Act 1979.

(d) Save in the case of International Supply Contracts and subject to any agreement in writing by the Company, the risk in goods which the Company agrees to supply shall pass to the Customer upon despatch of the goods by the Company.

(i) where the Company is to transport the goods upon despatch of the goods by the Company

(ii) where the Customer is to take delivery at the Company's premises on the expiry of 14 days from notification that the goods are ready or on actual delivery if earlier.

(e) The Company shall not be liable for any loss or damage sustained by any goods left with the Company after the risk has passed howsoever caused and whether or not attributable to negligence on the part of the company or negligence or wilful default on the part of any servant or agent of the Company.

(f) Should the Company be delayed in or prevented from making delivery of the goods due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of the goods, breakdown of machinery, shortage of labour or of raw materials of Act of God or due to any other cause whatsoever beyond the reasonable control of the Company the Company shall be at liberty to cancel or suspend the order placed by the customer without incurring any liability for any loss or damage arising therefrom.

(g) While the company will endeavour to deliver the goods by any date or within any period agreed upon, such dates and periods are estimates only given in good faith and the Company will not be liable for any failure to deliver by such a date or within such a period. Moreover, the Company shall be entitled to defer delivery until any monies due from the Customer have been received.

5 PAYMENT

Unless otherwise specified in writing by the Company payment shall be made by the Customer no later than the first day of the second month following the date of invoice whether or not delivery is made. Settlement discount will only be allowed if stated by the Company in writing subject to the conditions on the order acknowledgement being met. The Company shall be entitled to charge interest at the rate of 4% per month on all overdue payments.

6 RESCISSION

(a) If the Customer shall fail to make any payment when it becomes due or shall enter into any composition or any arrangement with his creditors or if being an incorporated company shall have an administrative receiver or administrator appointed or shall pass resolution for winding up or a Court shall make an order to that effect or if there shall be any breach by the Customer of any of the terms and conditions hereof the Company may defer or cancel any further deliveries and treat the Contract as determined but without prejudice to its right to the full purchase price for goods delivered and damages for any loss suffered in consequence of such determination.

(b) Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing signed as aforesaid. The Company does not accept the return of goods which are surplus to the Customer's requirements.

(c) A charge will be made for any costs incurred by the Company due to suspension or deferment of any order by the Customer or in the event that the Customer defaults in collecting, or giving instructions for the delivery of, any goods.

7 LIABILITY

(a) The Company accepts no liability for breakage, marine or war risks in the case of International Supply Contracts unless otherwise agreed in writing signed as aforesaid, in all other contracts no claim for damage in transit, shortage of delivery or loss of goods will be entertained.

(i) if goods are sold ex-works and carriage is for the Customer's account

(ii) where the Company provides transport and a client signature is obtained from the customer or his agent.

(iii) if the roads and approaches to and at the destination are not such as to provide easy and proper access for the carrying vehicle.

(iv) if, in the case of damage or partial loss, a claim is not made in writing within seven days of receipt of the invoice or other notification of despatch.

(b) Save as otherwise provided in these conditions the Company's liability in respect of any defect in or failure of goods supplied or work done is limited to replacing or (in its discretion) repairing or paying for the repair or replacement of goods which within 28 days of delivery to the Customer are found to be defective by reason of faulty or incorrect design workmanship parts or materials. In the

event of any error in any weight, dimension, capacity, performance or other description or information which has formed a representation or is part of a contract the Company's liability in respect of any direct loss or damage sustained by the Customer as a result of such error shall not exceed the price of the goods in respect of which the description or information is incorrect. Conditions precedent to the Company's liability hereunder shall be that as soon as reasonably practicable the Customer

(i) shall have given to the Company reasonable notice of the defect, failure or error

(ii) shall either have returned the goods to the Company or provided authority for the Company's servants or agents to inspect them, as the Company may request.

The Company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with any such defect failure or error as aforesaid.

(c) Where the Company agrees to repair or replace goods in accordance with the foregoing provisions of this paragraph any time specified for delivery under the contract shall be extended for such period as the Company may reasonably require.

(d) Save for such terms as may be implied on the Contract by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982, all conditions, warranties and other terms express or implied statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing signed as aforesaid PROVIDED that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the Contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph will not apply to any such term.

8 RETENTION OF TITLE

The following provisions shall apply to all goods which under the Contract the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliance by the Customer with such provisions shall constitute a waiver thereof and no termination of the Contract shall prejudice limit or extinguish the Company's rights under this paragraph.

(i) Goods remaining on the Company's premises shall remain the property of the Company until the full purchase price has been paid.

(ii) Upon delivery of the goods the Customer shall hold the goods solely as bailee for the Company and the goods shall remain the property of the Company until such time as the Customer shall have paid to the Company the full purchase price thereof. Until such time the Company shall be entitled to recover the goods or any part thereof and for the purpose of exercising such rights the Company its employees and agents with appropriate transport may enter upon the Customer's premises and other location where the goods are situated and the following shall apply to goods within this paragraph.

(iii) The Customer is hereby granted a licence by the Company to incorporate the goods in any other products.

(iv) The Customer is hereby licensed to sell on the goods and any products incorporating any of them. The Customer shall, immediately upon receipt of the proceeds of sale, and whether or not payment has become due under clause 5 hereof, remit to the Company the full purchase price of the goods sold on less any part thereof which has already been and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.

(v) The Customer shall maintain all appropriate insurance in respect of the goods from the date or dates on which the risk therein passes to him in the event of any loss or damage occurring while the goods remain the property of the Company the Customer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.

(vi) The licences granted under sub-paragraphs (ii) and (iii) above shall be terminable forthwith at any time upon notice by the Company to the Customer.

9 NEGLIGENCE

Save as herein before provided and subject to the provisions of section 2(i) of the Unfair Contract Terms Act 1977 the Company shall not be liable to the Customer for any damage or for any direct or consequential loss incurred by the Customer in consequence of any negligence on the part of the Company or negligence or wilful default on the part of its servants or agents in or in connection with the supply of any goods or the design or manufacture thereof or in the carrying out of any work or the provision of any information.

10 CONSUMER PROTECTION ACT

Nothing in these Conditions shall exclude or restrict any liability that the Company may have by virtue of the Consumer Protection Act 1987.

11 PROPER LAW AND HEADINGS

(a) The proper law of all contracts with the Company shall be English Law which shall govern in all respects the construction and effects of such contracts and of

these Conditions. The Customer agrees that in the event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English Courts.

(b) The headings in these conditions are for convenience of reference only and shall not affect their interpretation.