

Commercial Credit Trading Terms and Terms and Conditions of Sale – Ace Ceramics Pty Ltd

These are the entire Terms and Conditions of Sale of all products and merchandise (“the products”) supplied by ACE CERAMICS PTY LTD ABN 27 001 247 632 and its associated and subsidiary Companies (all of which are referred to as “the supplier”) to any person, firm or company placing an order with the supplier for the purchase of any products (“the customer”). Except as otherwise expressly agreed upon in writing between a duly authorized officer of the Supplier and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any customer.

1 DEFINITIONS

“Customer” means the person, business or company which is supplied goods by Ace Ceramics.

“Goods” means the materials or merchandise supplied by Ace Ceramics.

“Ace Ceramics” means ACE CERAMICS PTY LTD ABN 27 001 247 632

“GST” means goods and services tax, currently 10%.

2 GENERAL

All orders placed with the Supplier shall only be accepted subject to these Terms and Conditions. The Supplier reserves the right to change prices without notice. Further, the Supplier may at any time, and from time to time, alter these Terms and Conditions of Sale which shall apply after notification by the Supplier to the Customer.

3 GOODS AND SERVICE TAX (GST)

All prices shown in the Ace Ceramics price list, will be exclusive of GST. All quotations submitted to customers by sales representatives of Ace Ceramics will be exclusive of GST.

4 INVOICING FOR GOODS AND SERVICE TAX

Invoices will be calculated exclusive of GST (as per our price list) and then sub totalled. This sub-total will then be increased by a factor of 10% for GST, which will be identified separately on the Ace Ceramics Invoice. The invoice total will therefore include GST. The separation of our invoice into components of base wholesale price and GST will facilitate the recording of input tax credits and accounting for GST generally.

5 TERMS OF PAYMENT

- a) Unless otherwise stated on the invoice all prices are nett. **The granting of credit to a Customer shall be at the absolute discretion of the Supplier and unless otherwise demanded by the Supplier the Customer shall make payment of all amounts payable by the due date stated on the invoice.**
- b) Customers shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off.
- c) No receipt for payment to any representative of the Supplier shall be effective to acknowledge payments to the Supplier unless given on the Suppliers official printed form.
- d) Ace Ceramics shall be entitled to charge on account keeping fee at the rate of one point five percent (1.5%) **per month** on a cumulative basis on all overdue amounts (including late payment charges and amounts other than the price) calculated on a day to day basis on any money due but unpaid, such as book keeping fee to be computed from the due date for payment AND parties agree that such account keeping fee is not a penalty but is a true measure of damages incurred by the Supplier. Payments received from the Customer will be credited first against any account keeping fees and all such fees shall be payable and demand.
- e) Ace Ceramics may offer a 30-day account facility to approved customers. Overdue accounts may lose the benefit of discounted price lists and other buying advantages which may apply to the trading account until the account is brought up to date. Accounts may be without noticed place on “Stop Credit” until any overdue amounts are settled. During this period,

no orders will be processed, including any C.O.D orders requested. Repeatedly overdue accounts will have their account status revoked.

6 DELIVERY

Any date or time quoted for delivery is an estimate only and the Supplier shall endeavour to effect delivery at the time or times required by the Customer but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer or render the Supplier liable for any loss or damage directly or indirectly sustained by the Customer as a result thereof.

The customer shall not be relieved of any obligation to accept or pay for products by reason of any delay in delivery or any strike, lockout, unavailability of materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, floods, storm or tempest, transport delays, acts of God, restrictions or intervention imposed by any laws, regulations, governments or agencies thereof and any other causes beyond the control of the Supplier or any other causes whatsoever.

The Supplier’s obligation of delivery shall be discharged on arrival of the products at the Customer’s nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. **The Customer shall unload the products upon delivery, provided that if the Customer is unable or unwilling to accept physical delivery of the products when the products are ready for delivery, the Supplier shall be entitled to charge a fee for any delay experienced or arrange for the storage of the products at the risk and cost of the Customer including all transportation, storage and other consequential costs.** The Supplier may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions of Sale.

- a) **All goods are priced to include delivery within the Sydney Metropolitan area for orders over 10m2, urgent samples or orders under the specified (10m2) will incur a delivery charge of \$20.00 + GST. Customers may elect to pick up goods from our Sydney warehouse on the same terms and conditions.**
- b) Ace Ceramics shall not be liable for any failure to provide goods due to transportation or shipping delays or any other circumstances beyond the company’s control. Goods in transit not on our vehicle are transported at the buyer’s risk, with insurance being the customer’s responsibility. It is the responsibility of the customer to check all goods on receipt for shortages or breakages. No claims will be accepted unless made within 2 days of delivery.
- c) The Customer shall examine the products immediately after delivery and the Supplier shall not be liable for any misdelivery, shortage, defect or damage unless Supplier receives details in writing within 2 days of the date of delivery of the products.
- d) **A restocking fee of 10% of the value of the order will be raised against the customer for goods ordered and packed but not delivered or taken.**

7 RETURN OF GOODS

When returning goods (the subject to our terms and conditions) please ring our office to arrange issue of a Return of Goods slip prior to return pick-up or

delivery. Goods will be not be accepted for return unless our driver or store person is presented with a Return of Goods slip. **All returns are subject to a 20% handling/restocking charge.**

Returns will only be accepted if:

- a) **Goods are accompanied by a copy of our invoice or delivery ticket and a Return of Goods slip.**
- b) **Goods are returned within one month of purchase.**
- c) **Goods are not discontinued at time of return.**
- d) **Goods are in full, undamaged, original cartons.**
- e) **Goods are of current shade.**

Returns will not be allowed if:

- a) **Tiles were ordered in especially for customer.**
- b) **Tiles were sold as on “special”.**
- c) **Tiles were sold as commercial grade, run of kiln or second choice.**

8 PROPERTY AND RISK

Notwithstanding delivery of the products or their installation, property in any given products shall remain with the Supplier until the Customer has paid and discharged any and all other indebtedness to the Supplier on any account whatsoever, including all applicable taxes, levies and duties. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer’s indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.

The risk in the products shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer.

The Customer acknowledges that it is in possession of the products solely as a bailee for the Supplier until payment as defined in clause 5 has been made in full to the Supplier and until such payment:

The Customer shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following delivery; and

- a) The Customer shall store the products separately from its own goods and those of any other party and in a manner which clearly identified the products, whether as separate chattels or as components, as the property of the Supplier.
- b) The Customer shall maintain records of products owned by the Supplier identifying them as the Supplier’s property, of the persons to whom the products are sold or disposed to and of the payments made by such persons for such products. The customer shall allow the Supplier to inspect these records and the products themselves on request.
- c) The Customer hereby irrevocably grants to the Supplier, its agents and servants, an unrestricted right and licence, without notice to enter premises occupied by the Customer to identify and remove any of the products the property of the Supplier in accordance with the Terms and Conditions of Sale without in any way being liable to the Customer or any person

claiming through the Customer. The Supplier shall have the right to sell or dispose of any such products removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.

- d) The Supplier licenses the Customer to install the products. If the products are affixed to other materials, the totality thereof shall be the sole and exclusive property of the Supplier until payment as defined in clause 5 has been made in full to the Supplier unless the other materials or part thereof are or is the property of a party or parties other than the Customer in which case the totality thereof shall be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by the customer in respect of such other party or parties.
- e) The Customer shall be at liberty to agree to sell the products (independently or affixed to other materials) subject to the conditions that until payment has been made in accordance with clause 5, the Customer shall sell as an agent and bailee for the Supplier.
- f) The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade may be revoked at any time by the Supplier and shall automatically cease if a Receiver is appointed over any of the assets on the undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or administration or calls a meeting of, or makes any arrangement or composition with, creditors or commits any act of bankruptcy or where the Customer is in default of any of its obligations to the Supplier.

9 LIMITATIONS OF LIABILITY

These Terms and Conditions of Sale do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which by Law cannot be excluded, restricted or modified.

a) Sales to Non-Consumers

i) In the case of products supplied by the Supplier a Customer who is not a "consumer" (as defined in the Trade Practices Act, 1974 as amended from time to time ("the Act")), if the products do not correspond with the description of them on the invoice or are defective, then provided that the products are preserved intact and made available for inspection by a representative of the Supplier and are returned to the Supplier in the same order and condition as that in which they were delivered, the Supplier shall at its option replace those products or reimburse the Customer for the amount of the purchase price paid for them, but any claim in this respect must be made in writing within 7 days of the date of delivery of those products.

ii) Should the Customer seek indemnity from the Supplier in respect of any claim by a consumer on the Customer as a result of a breach of condition or warranty implied by the Act in a contract for the supply of products by the Customer to that consumer, sub-paragraph (i) will not apply and in respect of products that are of a kind ordinarily acquired for personal, domestic or household use or consumption ("consumer goods") the Supplier's liability is limited to indemnifying the Customer in accordance with the Act, limited to a liability to pay to the Customer an amount equal to the cost of replacing the products or the cost of having the products repaired, whichever is the lesser amount.

b) Sales to Consumers

In the case of products supplied by the Supplier to a Customer who is a consumer, to the extent that the products are not consumer products or goods, the liability of the Supplier to the Customer for breach of any warranty or condition (other than a warranty or condition implied by section 69 of the Act) or for breach of any duty of care shall in all cases be limited, at the option of the Supplier, to any one or more of the replacement of the products or the supply of equivalent products, the repair of the products or acquiring equivalent products or the payment of the cost of having the products repaired.

c) Except for those conditions and warranties implied by the Act or other sale of products or consumer protection legislation which may not be excluded, the Customer agrees that:

i) It has not relied on any inducement, representation or statement made by or on behalf of the Supplier in purchasing the products and there are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorized representative of the Supplier);and

ii) This clause sets out the entire liability of the Supplier in respect of its liability under the Act or otherwise in respect of liabilities to a consumer for a breach of a condition or warranty with respect to the sale of products or goods. In no circumstances will the Supplier incur any liability in respect of arising out of or in connection with any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Customer.

10 CLAIMS AND WARRANTIES

No Warranty wither implied or granted is given to material sold on special, commercial grade, run of kiln or second choice.

NO CLAIMS for shade variation or quality will be considered or recognised once tiles have been fixed. Tilers are responsible to draw attention of any such matters to the supervisor/owner PRIOR to fixing.

Tiles are not guaranteed against chipping or crazing or wear unless warranted by Ace Ceramics.

No CLAIMS will be recognized or considered once the tiles have been fixed. It is the responsibility of the customer to ensure that the tiles purchased are suitable for the purpose intended and that the method by which tiles are fixed is satisfactory for the purpose intended. Specifications and wear gradings are those of the Manufacturer and have not been independently tested by Ace Ceramics. Since the use of our products are beyond the control of either the supplier or the manufacturer, our or the manufacturer's obligation under a warranty claim shall be to re-supply any quantity of product which is proven defective. We or the manufacturer cannot assume any risk or liability for results obtained, nor for damages in excess of the original purchase price itself, which does not include labour or any consequential damages resulting from the use of our products.

Samples supplied should be regarded as a guide only. Shade variation may occur in successive batches of material.

Ace Ceramics shall not be liable for any expense or injury arising from the use of any product supplied, and the customer shall assume all resultant risk and liability.

11 DISPLAY STAND EQUIPMENT

Display stands, sliders or other equipment supplied for sales promotion purposes remains the property of Ace Ceramics, unless the customer enters into an arrangement to purchase the display equipment.

12 FORCE MAJEURE

The Supplier shall not be liable for any failure or delay in supply or delivery the products where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of the Supplier including, but not limited to, war, strikes, lockout, industrial disputes or unrest, government restrictions or interventions, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

13 TERMINATION

If the Customer fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy, or being corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors or if a receiver or manager is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator is appointed, the Supplier may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any products not paid for in accordance with these Terms and Conditions.

14 GOVERNING LAW

The Customer agrees that these Terms and Conditions of Sale shall be construed according to the laws of the State or Territory as the Supplier may in its sole discretion determine. Proceedings may be instituted in such State or Territory as the Supplier may in its sole discretion determine. Failing such determination the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales.

15 SERVICE OF DOCUMENTS

The Customer agrees that service of any notices of Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Customer.

16 STATEMENT OF DEBT

The monthly statement or a certificate signed by a Director, Secretary, Financial Controller or Credit Manager of the Supplier shall be prima facie evidence of the amount of indebtedness of the Customer to the Supplier at that time.

17 PERFORMANCE OF GOODS

Ace Ceramics warrants that the goods are fit for purpose only if:

- i. The Customer is explicit in their intended use of the goods
- ii. The intended use of the goods is approved by Ace Ceramics in writing.
- iii. The goods sold are not sold as "special" and/or "end of line".
- iv. The goods have not been specially ordered for the Customer.

Special note should be made that some tiles may require surface sealing prior to grouting and consultation with your sales representative is urged.

Any form of ceramic tile can be slippery especially when wet and all necessary precaution must be taken when used in areas where tiles exposed to any liquids.