

Shackerley (Holdings) Group Limited

Standard Terms and Conditions of Sale

1. The Contract

- 1.1 All orders are accepted by Shackerley (Holdings) Group Limited, herewith referred to as the Company, only under these terms and they may not be altered, other than with the written agreement of an authorised Director of the Company. Any contrary or additional terms unless so agreed are excluded.

2. Termination/Suspension

- 2.1 If the person or company buying goods from the Company, herewith referred to as the purchaser or the customer, shall commit any breach of his contract or become insolvent or commit any act of bankruptcy (being a company) or go into liquidation or have a receiver appointed of its undertaking the Company may stop any goods or services supplied by the Company, herewith referred to as 'the goods', in transit and suspend any other deliveries and by notice in writing to the customer may forthwith determine the contract without prejudice to the provisions of condition 8.4 hereof and to any existing claim.
- 2.2 Items ordered including, but not limited to, specially manufactured items or items which have to be procured by the Company to fulfil the customer's order, cannot be cancelled without the written agreement of the Company. Cancellation requests must be made in writing by the customer. Such request will be confirmed by the Company in writing, as accepted or rejected.
- 2.3 Where any order involves more than one delivery and default is made in payment on the due date (either under this contract or any other contract made between the seller and the purchaser) the seller shall have the right to suspend all further deliveries until payment is made or to terminate the contract.
- 2.4 Utilisation of the Company's monthly account facilities is deemed to be an acceptance of the Company's conditions of sale.

3. Payment

- 3.1 Unless the sale is for cash or other credit terms have been agreed in writing by the Company all accounts are due for payment on the last day of the month following the month of invoice.
- 3.2 Late payments will incur interest at the rate of 2.5% per month compound, from the date of invoice until the date of payment.
- 3.3 Credit facilities may be withdrawn or reduced at any time at the Company's sole discretion.
- 3.4 Even if the Company have previously agreed to give the customer credit the Company reserve the right to refuse to execute any order or contract if the arrangements for payment or your credit rating is not satisfactory to the Company. In our discretion the Company may require security satisfactory to the Company or payment for each consignment when it is available and before it is despatched in which case delivery will not be affected until the Company are in receipt of security or cleared funds as requested by the Company.
- 3.5 The customer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set off or counterclaim which the customer may have or allege to have for any reason whatsoever.
- 3.6 The Company shall be entitled at all times to set off any debt or claim of whatever nature which the Company may have against the customer against any sums due from the Company to the customer.

4. Non-Payment/Insolvency

- 4.1 "Insolvent" means the customer becoming unable to pay their debts within the scope of section 123 of the Insolvency Act 1986; the levying or the threat of execution or distress on any of your property; the appointment of a receiver or administrative receiver over all or any part of your property; a proposal for a voluntary arrangement or compromise between the customer and your creditors whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding-up or summoning a meeting to pass such a resolution otherwise than for the purposes of a bona fide amalgamation or reconstruction; the presentation for a petition for your winding-up for an administration order in relation to the customer; if the customer suffers from any analogous step or proceedings under foreign law or the customer ceasing or threatening to cease to carry on your business.
- 4.2 If the customer fails to pay the price for any goods on the due date or fails to pay any sum due to the Company under any contract on the due date or the customer becomes insolvent or if the customer are a limited company or partnership and there is a material change in your constitution or the customer commits a material breach of this contract and fails to remedy that breach all sums outstanding between the customer and the Company shall become immediately payable and the Company shall be entitled to do any one or more of the following (without prejudice to any other right or remedy the Company may have):-
 - 4.2.1 Require payment in cleared funds in advance of further deliveries
 - 4.2.2 Cancel or suspend any further deliveries to the customer under any contract without liability on the Company's part
 - 4.2.3 Without prejudice to the generality of clause 8 of these terms exercise any of our rights pursuant to that clause.
- 4.3 If the Company reasonably incur third party costs such as trading or debt collection agency costs or seek legal advice or take legal proceedings to enforce our rights as a result of your breach of this contract including but not limited to recovery of any sums due, the customer will reimburse the Company such reasonable agency costs or legal costs incurred on an indemnity basis.

5. Prices

- 5.1 All prices are quoted as current, ex-works Chorley, unless explicitly shown otherwise in writing by the Company.
- 5.2 All prices are net and exclusive of VAT which shall be charged at the rate ruling on the date of issue of the VAT invoice.
- 5.3 Prices listed or quoted are applicable to the quantity specified and on the information provided by the customer at the time of quoting. In the event of orders being placed for lesser quantities or if there is any change in specifications, the Company shall be entitled to adjust the price of the goods as ordered to take account of the variations.

6. Delivery

- 6.1 Delivery will be affected when the goods leave our premises whether carried by the Company or an independent carrier or the premises of our suppliers when the goods are delivered direct from suppliers.
- 6.2 Delivery dates are given in good faith but are estimates only.
- 6.3 Time for delivery shall not be of the essence of the contract.
- 6.4 The Company shall not be liable for any damages whatsoever whether direct or indirect (including any liability to any third party) resulting from any delay in delivery of the goods or failure to deliver the goods within a prescribed timescale.
- 6.5 The Company reserve the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Our failure to deliver any one or more instalments 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.
- 6.6 The customer must provide the necessary labour for unloading the goods and unloading is to be completed with reasonable speed. If our delivery vehicle is kept waiting for an unreasonable time or is obliged to return without completing delivery of if the Company provide additional staff to unload goods an additional charge will be made.
- 6.7 If the customer fails to take delivery accept or collect the goods within the agreed time in our discretion the Company may make an additional charge, invoice the customer for the goods or treat the contract as repudiated and in any case recover our losses from the customer.
- 6.8 If the customer collects goods from the Company the customer is solely responsible for the size weight and positioning of the load on the vehicle.

7. Receipt of Goods

- 7.1 The Company shall inspect the goods at the place and time of unloading or collection but nothing in these terms shall require the customer to break packaging and/or unpack goods which are intended to be stored before use.
 - (A) The seller shall not be liable for any shortage in quantity delivered nor for any defect in the quality, nature or condition of the goods nor for non-compliance with any specification unless a claim in writing shall have been received by the Company/carrier from the purchaser within seven days of delivery of the goods, subject to the following limitations.
 - (B) The Company will not accept liability for shortages advised which are contradicted by signature stating goods received in 'good condition'. The Company recommends that if receiving the goods by carrier they should sign for them received as 'unexamined'.
 - (C) In the event of any shortage, defect or non-compliance as aforesaid the seller shall subject to condition 7(A) make good the shortage and/or as appropriate replace or repair free of charge any goods found to be defective.
 - (D) Subject to the foregoing all conditions or warranties implied by statute common law or otherwise in relation to the goods are hereby excluded and the seller shall be under no liability to the purchaser for any loss damage or injury, direct or indirect.
 - (E) Materials shipped by carrier are limited in liability to the conditions of carriage imposed by the carrier.

8. Title and Risk

- 8.1 Risk shall pass to the customer so that the customer is responsible for all loss damage or deterioration of the goods if
 - (A) The Company delivers its goods by its own transport at the time when the goods or a relevant part thereof arrive at the place of delivery or
 - (B) In all other circumstances at the time when the goods or a relevant part thereof leave the premises of the Company whether or not the Company arranges transport and where the goods are delivered by carrier any claims for loss or damage in transit must be made by the customer against the carrier in accordance with the carriers conditions.
- 8.2 Title in the goods or any part thereof shall pass to the customer when payment in full thereof has been made or when the Company serves written notice upon the customers specifying that title in the goods or such part thereof has passed whichever shall be the earlier in time and the customer shall permit the servants or agents of the Company to enter on the customer's premises and to repossess the goods at any time prior to passing of title and in the event of the goods being at the premises of a third party by the direction of the customer then the customer shall if so required by the Company in writing remove the goods from such premises and return them to the Company forthwith.
- 8.3 The customer shall store mark or designate all goods supplied hereunder in respect of which title has not passed to the customer as herein provided so as clearly to show that they are the property of the Company.

- 8.4 The customer shall only be at liberty to resell the goods purchased from the Company prior to the passing of the title on the understanding that if it does resell the goods then it will hold on trust for the Company so much of the proceeds of sale received by it under contracts which include any of the goods hereby said as are necessary to discharge payment in full to the Company.
- 8.5 The goods shall be at the purchaser's risk from the date of delivery of the goods or to the order of the purchaser.

9. Liabilities

- 9.1 The Company shall not be liable by reason of any misrepresentation or any breach of warranty condition or other term expressed or implied or any breach of duty (common law or statutory) or negligence for any damages whatsoever. Instead of liability in damages the Company undertake liability under clause 9.2 below.
- 9.2 Where the customer would have been entitled to damages against the Company the Company shall not be liable to pay damages but subject to conditions set out in clause 9.3 below shall in its sole discretion either repair the goods at our own expense or supply replacement goods free of charge or refund all (or where appropriate part) of the price paid for the relevant goods.
 - 9.3 The Company will not be liable under clause 9.2:
 - 9.3.1 If the defect arises from fair wear and tear.
 - 9.3.2 If the defect arises from wilful damage, negligence, abnormal working conditions, mis-use, alteration or repair of the goods, failure to follow British Standard or industry instructions relevant to use of the goods and storage.
 - 9.3.3 Unless after discovery of the defect the Company are given a reasonable opportunity to inspect the goods before they are used or in any way interfered with, liability for any defective or damaged materials which have been fixed or installed.
- 9.4 Goods are not tested or sold as fit for any particular purpose. Any term warranty or condition express implied or statutory to the contrary is excluded. In no circumstances whatsoever shall the Company's liability (in contract delict or otherwise) to the customer arising under out of or in connection with this contract or the goods supplied exceed the invoice price of the particular piece(s) in regard to which any complaint is made.

10. Specification

- 10.1 In common with most manufactured fired natural materials there can be shade and size variations from batch to batch, also known as shade and calibre.
 - (A) Samples and displays are indicative only and may not be identical to the shade supplied by the Company or the manufacturer.
 - (B) It is important to purchase sufficient materials from one batch to complete the job as it may not be possible to obtain the same shade or calibre for subsequent orders.
 - (C) It is the responsibility of the customer to ensure that they have an acceptance blend and to check materials before fixing as no claim can be accepted once materials are fixed. Particular attention should be made to this when receiving part orders.
 - (D) Where tiles or special pieces are cut specifically to ordered sizes the tolerances may vary to that of the original manufactured item.
 - (E) Specially manufactured ceramic granite (porcelain) materials are subject to shade and calibration variation within production, especially, but not exclusively, when requiring large quantities (500 M2+), which is deemed to be a characteristic of the product.

11. General

- 11.1 Quotations are invitations to treat only.
- 11.2 Orders may be cancelled in writing and will only be valid if confirmed with written agreement from the Company. Orders may not be cancelled if production has commenced, or items have been ordered and shipped by the Company specifically to fulfil the order. Any cancellation accepted by the Company, which may involve handling goods or re-stocking, will be subject to a 35% re-stocking charge. See our existing conditions.
- 11.3 The customer shall be responsible to the Company for ensuring the accuracy of the terms of any order including any applicable design drawing or specification provided to the Company by the customer and for giving the Company any necessary information relating to the goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 11.4 This contract shall be governed and interpreted according to the Law of England and Wales and the customer agreed to submit to the non-exclusive jurisdiction of the English courts.
- 11.5 The Company shall not be liable for any delay or failure to perform any of our obligations in relation to the goods due to any cause beyond our reasonable control including industrial action.
- 11.6 The waiver by the Company of any breach or default of these terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 11.7 If any clause or sub-clause of these terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these terms shall not be affected and they shall remain in full force and effect.
- 11.8 Nothing in this contract is intended to or will grant any right to any third party to enforce any terms of this contract whether expressed or implied.