

TILE STUDIO TERMS OF SALE

Definitions

“**Documents**” mean and include the attached invoice and any quotation, order, document or statement issued and/or accepted by Tile Studio.

“**Goods**” means the goods sold or supplied to the Purchaser by Tile Studio.

“**Indent Orders**” means any Goods purchased or ordered by Tile Studio specifically for the Purchaser's project.

“**Purchaser**” means the person or entity to or for whom the Goods are to be supplied by Tile Studio as set out in the attached invoice.

“**Purchase Price**” means the price listed for the Goods in the attached invoice or such other price as may be agreed by Tile Studio and the Purchaser prior to delivery of the Goods.

“**Terms**” means these terms and conditions as amended from time to time by Tile Studio and notified to the Purchaser.

“**Tile Studio**” means Tile Studio NZ Limited.

1 Acceptance

All orders for Goods (each an **Order**) must be made in writing and cannot be cancelled or varied without the written consent of Tile Studio. The Purchaser will pay the cost of any variations or cancellations. Orders are subject to the acceptance of Tile Studio. Tile Studio may vary these Terms or its prices for the Goods at any time.

These Terms and any other Document accepted by Tile Studio describing the Goods shall form the agreement between Tile Studio and the Purchaser in relation to the supply of the Goods.

Where a quotation is given by Tile Studio, such quotation is open for acceptance for a period of 7 days from the date of the quotation unless withdrawn by Tile Studio prior to this date.

Any special conditions specified by Tile Studio in any Document will prevail over these Terms to the extent of any inconsistency.

2 Price

All prices quoted are exclusive of GST

3 Payment

Unless otherwise agreed between Tile Studio and the Purchaser in writing, payment of the Purchase Price for the Goods must be paid (in full) without deduction or set off before an Order is dispatched.

4 Risk

Risk in the Goods passes to the Purchaser on delivery.

5 Storage

Should Tile Studio not receive forwarding instructions sufficient to enable Tile Studio to dispatch the Goods on the Purchaser's behalf, within a period of 7 days after the date of notification that they are ready for dispatch, the Purchaser shall take delivery or arrange for storage of the Goods. If the Purchaser does not take delivery or arrange for storage, Tile Studio shall be entitled to arrange storage either at Tile Studio's works or elsewhere on the Purchaser's behalf, and all charges for storage, insurance, demurrage, handling and any other loss, costs, claims, damages, expenses (including all legal costs and expenses incurred on a solicitor/own client basis) incurred by Tile Studio, or any of its employees, agents or subcontractors, shall be payable by the Purchaser.

6 Delivery

Any delivery period referred to in the Documents is subject to confirmation by Tile Studio on receipt of the Order, and will commence from the date on which Tile Studio has both the Order and all particulars required to enable Tile Studio to proceed with the supply of the Goods. Times quoted for delivery are estimates only and Tile Studio is not liable for delay in delivery of the Goods.

Unless otherwise agreed, delivery shall be deemed to be completed when Tile Studio delivers the Goods to the address the Purchaser gave Tile Studio and such Goods will be the Purchaser's responsibility from that time. The Purchaser shall pay all taxes, duties and all other delivery costs.

Tile Studio reserves the right to supply the Goods in instalments, with each installment to be separately invoiced for payment upon these Terms, and paid accordingly, notwithstanding late delivery or non-delivery of any other

installment. Failure of the Purchaser to pay for any one or more of the installments of the Goods on the due date, shall entitle Tile Studio (at the sole option of Tile Studio), without notice, to suspend further deliveries of the Goods pending payment by the Purchaser and/or treat these Terms as repudiated by the Purchaser.

Failure to deliver any installment does not entitle the Purchaser to cancel any further installments, cancel the Order in full and/or treat this agreement as repudiated.

7 Damage or Loss in Transit

To the extent permitted by law, no claim for damage in transit, or shortage in delivery, will be entertained by Tile Studio unless a separate notice in writing is given to the carrier concerned and to Tile Studio by the Purchaser immediately upon the Purchaser becoming aware of the circumstances giving rise to the claim, followed by a detailed and complete claim in writing, within seven days of delivery.

8 Force Majeure

Should Tile Studio be delayed in or prevented from supplying the Goods, owing to any cause whatsoever beyond Tile Studio's control, Tile Studio shall be at liberty to cancel, delay or suspend the Order. Tile Studio shall not be liable in any way for any injury or damage whatsoever to the Purchaser, and/or for any consequential loss or damage to a third party, for any delay in or failure to supply the Goods owing to any cause whatsoever beyond Tile Studio's control, and in that event, the Purchaser shall not be entitled to cancel any Order, refuse to accept the Goods, or treat the delay or failure to supply or deliver as a repudiation of these Terms.

9 Returns

Any returns are subject to prior approval of Tile Studio. Proof of purchase must accompany all returns.

Tile Studio will not accept return for Indent Orders, sale or clearance stock, or damaged or partly opened boxes. Tile Studio will not accept returns for any Goods received later than 14 working days after the date of delivery. Goods returned must be in a condition fit for sale.

All Goods must be returned to the address recorded on the invoice attached. Any freighting costs for returns will be at the Purchaser's expense. All returns will incur a 25% handling and processing fee.

All refunds will be by way of eftpos or credit card. Tile Studio will not give cash refunds.

If the Purchaser believes there is a defect or fault with the Goods supplied, they must notify Tile Studio in writing within 14 days of the date of delivery so Tile Studio can address this.

10 Installation

All Goods must be installed in accordance with best tiling practices, manufacturer's directions and any relevant New Zealand building standards. Tile Studio takes no responsibility for the installation of the Goods and any faults or failures arising from incorrect installation of the Goods. Any claims once Goods are installed will not be accepted. The quality of the Goods should be checked, and any issues raised with Tile Studio prior to installation. The Purchaser is to take all responsibility for ensuring that the Goods ordered meet all technical and safety requirements for the area being laid.

11 Quantities and Product Variation

The Purchaser should ensure that their Order includes sufficient quantities of Goods to complete their project (including a percentage for cutting). Any quantities quoted by Tile Studio are only an estimate based on the information provided. If further Goods are required, Tile Studio will endeavor to obtain the same batch at the Purchaser's cost, however, this is not always possible.

The Purchaser acknowledges that there may be variations in shade and size between any samples provided and the Goods. The Purchaser further acknowledges that there may be variations in shade and size between different batches of Goods. Variations in shade and size are not a defect in the Goods. Orders of Goods will be calculated to the nearest full box.

12 Consumer Guarantees Act 1993

The Purchaser acknowledges that if it has entered into these Terms for business purposes, the provisions of the Consumer Guarantees Act 1993 are expressly excluded.

All warranties, guarantees or conditions, express or implied (including any

implied warranties under the Sale of Goods Act 1908) that may be excluded by law are excluded to the maximum extent permitted by law.

It shall be the Purchaser's responsibility to check the quality of delivered Goods before their incorporation into any other work. If the quality is not in accordance with the quality contracted for and if the Purchaser has reason to believe the quality of the Goods is such as to give rise to difficulties in use, processing or incorporation, then the Purchaser shall not allow such incorporation or use to commence unless the Purchaser has received permission from an approved representative of Tile Studio in writing.

If any goods are faulty or defective the Purchaser must notify Tile Studio of the fault or defect in writing and return those goods to Tile Studio at the Purchaser's cost within 14 days of the date of delivery. Upon receipt of the returned goods Tile Studio may replace them or provide a refund at its sole discretion, provided Tile Studio is satisfied that the fault or defect was caused by defective workmanship or faulty materials rather than any neglect or misuse by the Purchaser or a third party.

The Purchaser must not misrepresent to anyone the specifications, performance or purpose of the Goods and must not make or give any warranties, guarantees or representations in relation to the Goods whatsoever without Tile Studio's prior written consent.

13 Manufacturer's Warranty

Tile Studio will use its reasonable endeavors to assign the benefit of any manufacturer's warranties to the Purchaser on request (to the extent it is assignable). Tile Studio will not be liable for any failure of any guarantee made by the manufacturer of the Goods other than as stated on the packaging or label.

14 Limitation of liability

Notwithstanding any other provision of these Terms and to the maximum extent permitted by law, Tile Studio's liability arising out of, or in connection with, these Terms in respect of any claim whether under contract, tort (for negligence or otherwise) or on any other basis, is limited to replacing the Goods pursuant to the relevant Order or an amount not exceeding the total invoice price for the relevant Order.

Tile Studio is not liable for any physical or financial injury, loss or damage or consequential loss or damage, of any kind arising out of any defect in the Goods, or the supply, installation or use of the Goods, or arising out of Tile Studio's negligence, or in any way whatsoever to the extent permitted by law.

15 Indemnity

To the full extent permitted by law, the Purchaser will indemnify and keep indemnified Tile Studio and its employees, agents and contractors, and holds all of them harmless from and against all loss, costs, claims, damages, expenses

(including all legal costs and expenses incurred on a solicitor/own client basis) incurred by Tile Studio, or any of its employees, agents or subcontractors and all actions, suits, claims, demands and any other proceedings whatsoever made or brought against Tile Studio or any of its employees, agents or contractors, caused by any breach of these Terms, or by any representation made, or any act or omission, or negligence committed, by the Purchaser or by any of the Purchaser's employees, agents, contractors or customers.

16 Intellectual Property

All ideas, concepts, technical information, trade secrets, know-how, designs, drawings, copyright material and any other information and intellectual property whatsoever owned or used by Tile Studio in connection with the Goods and/or services (**Intellectual Property**) remain the exclusive property of Tile Studio. The Purchaser will not, and will not permit anyone else to, use or copy the Intellectual Property, unless Tile Studio expressly agrees in writing.

17 Termination

Without prejudice to any of Tile Studio's rights or remedies, Tile Studio may terminate these Terms immediately if the Purchaser (i) fails to pay any amount owing to Tile Studio under these Terms; (ii) breaches these Terms, and such breach is not capable of remedy, or if capable of remedy, is not remedied to Tile Studio's satisfaction within 10 days after Tile Studio notifies the Purchaser of such breach; or (iii) an event occurs which in Tile Studio's sole opinion effects or may affect the Purchaser's ability to meet its obligations under these Terms, including the voluntary administration, receivership, liquidation or bankruptcy of the Purchaser.

Upon termination of these Terms, the Purchaser must immediately pay all amounts owing to Tile Studio.

18 General

These Terms are governed by New Zealand law, and the parties submit to the jurisdiction of the New Zealand Courts.

The Purchaser will pay all Tile Studio's costs and expenses (including legal costs and expenses incurred on a solicitor/own client basis) incurred by Tile Studio in the enforcement of its rights and remedies under these Terms, any Document and at law, upon demand being made by Tile Studio.

These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

Any conditions found to be void, unenforceable or illegal may, to that extent are severed from these Terms.

No waiver of any of these Terms or failure to exercise a right or remedy by Tile Studio will be considered to imply or constitute a further waiver by Tile Studio of the same or any other term, condition, right or remedy.

The Purchaser warrants it has had the opportunity to obtain independent legal advice about its obligations under these Terms, and confirms the Terms are fair and reasonable.