

# Metro Tiles

## STANDARD TERMS & CONDITIONS

For the supply of tiles and tiling Goods by Metro Tiles Franchising Pty Ltd ACN 150 890 136 (**we/us/our**).

These terms and conditions (**Terms**), our Quote and our Credit Application form the basis of our agreement with you (together the **Agreement**) and are our offer of Goods to you.

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### 1. Acceptance

- (a) You accept our offer, if after receiving it, you:
  - (i) communicate your acceptance of our Quote (either orally or in writing);
  - (ii) make payment of the Deposit or Quote issued; or
  - (iii) request (either orally or in writing) that we supply you with the Goods.
- (b) Our Quote will automatically expire 14 days from the date of issue if not accepted.

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### 2. Quote

- (a) Our Quote may take different forms and may also be made up of separate parts, which are to be taken as joined and to form one single document.
- (b) Our Quote may include information such as the type, grade, cost and required quantities of the Goods ordered.
- (c) You must tell us immediately if you disagree with anything contained in our Quote or if you think we have misunderstood your requests.
- (d) We reserve the right to reasonably amend our Quote following the Acceptance Date and before fulfillment of your Order where there has been a material rise or fall in the cost of supply.
- (e) We will notify you as soon as practicable after we become aware of a fluctuation that will cause an amendment to the Quote.
- (f) If there is any inconsistency between these Terms and the Quote, the Quote will prevail to the extent of that inconsistency.

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### 3. Processing, collection or delivery and inspection

#### 3.1 Processing and lead time

- (a) Unless your Order has been made using a Credit Account, we may not commence processing your Order until we have received payment of the Deposit or the relevant invoice in full (as required)
- (b) Any lead times we give are an estimate only. We will not be responsible for any Loss suffered by you as a consequence of a delay.

- (c) We will take reasonable steps to mitigate and minimise delay on our part and the impact such delay may cause. We will also use our best endeavours to notify you of any adjustments to lead times previously detailed.

#### 3.2 Collection

Where you are responsible for collection as detailed in the Quote, you must collect the Goods at your cost and expense within the time agreed during Business Hours from the nominated store.

#### 3.3 Delivery

- (a) Unless otherwise specified, all Goods are sold ex-store and you are responsible for organising delivery of the Goods to your address via a carrier.
- (b) Where we, in our sole discretion, organise the delivery of Goods to you, you acknowledge and agree that delivery will be effected at your cost and risk passes to you upon our transfer of the goods to a carrier on your behalf.
- (c) Any time or date stated as the estimated time of delivery of the Goods by us, is a bona fide estimate only, and we will not be responsible in any way for any damage or consequential loss suffered by you as a consequence of late or non-delivery.

#### 3.4 Inspection

- (a) You are responsible for inspecting the Goods within 24 hours of collection or receipt of the Goods, including ensuring the correct item and quantity has been supplied.
- (b) Any claim relating to the quantity or quality of the Goods will not be accepted once the Goods are installed.
- (c) If the Goods do not satisfy the criteria in the Quote, you must provide us with notice of the issues and access to inspect the Goods, or alternatively pictures illustrating the issues where we are not able to inspect the Goods.

#### 3.5 Risk

Risk in the Goods passes to you immediately upon collection of the Goods by you or the nominated carrier.

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### 4. Credit Account

- (a) Upon completion of a Credit Application and Guarantee, we may in our sole discretion accept you for a Credit Account and advance you credit for the Goods up to the credit limit agreed in the Credit Application.
- (b) Your approved credit may be reviewed, altered or withdrawn at any time, without prior notice to you and at our absolute discretion.
- (c) We will have no liability or responsibility for any loss, however arising, incurred by you due to a review, alteration or withdrawal of your credit.

- (d) You must notify us of any change in ownership, legal name, or address of any entity with a Credit Account within 7 days of the change occurring.

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## 5. Charges and payment

### 5.1 Deposit

- (a) We will require you to make payment of the Deposit before we commence processing your Order.
- (b) The Deposit will be applied by us against any amount owing to us under this Agreement, following the issue of our invoice/s to you.

### 5.2 Payment terms

- (a) You must pay the amounts set out in the Quote for the Goods, and any associated charges (including freight), in the manner specified in our Quote.
- (b) Unless you have a Credit Account, we will require full payment of the Goods and any associated charges (including freight) before we allow collection or cause for delivery of your Order.
- (c) We will issue you with a tax invoice following receipt of your payment.

### 5.3 Credit Account payment terms

- (a) Where you have a Credit Account with available credit we will issue a tax invoice following dispatch of the Goods or at such other reasonable times.
- (b) Payment for the Goods is to be made in the manner and within the time frame set out in the tax invoice.

### 5.4 Payment generally

- (a) All payments must be made in cleared funds without set-off, or counterclaim, deduction or withholding.
- (b) If you fail to pay any amount owing under this Agreement when due, we may:
  - (i) charge you for all costs and expenses incurred by us in recovering the outstanding amount from you including debt collection costs;
  - (ii) charge you compound interest at a rate of 10% per annum on the overdue amount which will begin accruing on the first day that payment is overdue; and
  - (iii) immediately suspend the provision of any and all Goods to you until payment of all arrears is received by us.
- (c) Payments made using credit card will be subject to our then prevailing credit card fees.

### 5.5 GST

Unless otherwise expressly stated, all amounts under this Agreement are exclusive of GST. If GST is imposed on any supply made under or in accordance with this engagement and GST has not been accounted for in determining the consideration

payable for the supply, then we may recover from you an amount on account of GST.

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## 6. Goods

### 6.1 Installation and maintenance

- (a) You acknowledge and agree that:
  - (i) it is your responsibility to ensure installation of the Goods occurs in accordance with the relevant Australian standards for tiling;
  - (ii) your installation of the Goods is done entirely at your own risk and that, in conducting the installation, you have relied entirely upon your own knowledge, skill and judgment and have not relied upon our skill and judgment nor upon any promise or representation made or allegedly made by us;
  - (iii) we will not be held responsible for any faults or loss caused if the installation of the Goods is not performed by a licensed builder, licensed tiler, licensed plumber, licensed electrician and licensed water proofer;
  - (iv) it is your responsibility to ensure that you order sufficient Goods for your purposes and we cannot guarantee the future supply of any products, shades or designs; and
  - (v) we are not liable for any loss or damage resulting from any acids, chemical compounds, abrasives or solvents used in the cleaning or installation of any Goods, irrespective of whether conducted by you or a third party. Hydrochloric acid in particular, should never be used on the surface of any type of tile, natural stone or terracotta.

- (b) You hold us harmless against loss or damaged caused by your installation of the Goods or maintenance which is not in accordance with our instructions.

### 6.2 Natural Goods

- (a) Some types of Goods supplied such as natural stone and terracotta products, are subject to variations in colour, texture, internal markings and other physical properties.
- (b) You acknowledge and agree to accept the Goods supplied containing the range of colour and textural variations common to stone and other similar natural Goods, including natural defects which might reasonably be expected in the type and grade of the Goods ordered.

### 6.3 Ceramic and porcelain tiles

You acknowledge and agree that:

- (a) crazing of glazed ceramic and porcelain tiles is an inherent characteristic of the product and may occur naturally over time. We do not guarantee that

glazed ceramic and porcelain tiles will be free from crazing;

- (b) Goods supplied may exhibit variations in colour, shade, texture, size, weight, dimensions and finish. We will make every effort to match batches of product supplied, or to match batches of product to sales samples, catalogues, marketing literature or website images in order to minimise such variations but no returns will be accepted for slight variations, crazing, sealing, water absorption or other qualities of ceramic and porcelain tiles.

#### 6.4 Polished tiles

- (a) You acknowledge and agree that Goods produced through polishing, grinding or honing processes may, with varying light sources and at differing angles, display optical effects such as hazing or smudging as an inherent characteristic. Given the mirror finish of the tile and its production processes, polished tiles may show fine scratch marks when viewed with varying light source and at differing angles. These are visual effects only and do not affect the performance or life span of the Goods and is not considered a defect by the relevant Australian Standards.
- (b) Where a polished tile is ordered, extra care must be taken in the storage, handling, installation and maintenance of the product. Special care should be taken when installing the product to avoid damaging the surface with handling adhesive and grouts.

#### 6.5 Slip resistance classification

- (a) We carry out wet pendulum slip resistance tests by NATA accredited providers in accordance with AS4586.2013 *Slip Resistance Classification of New Pedestrian Surface Material* and a copy may be supplied to you upon request. These tests and results are provided as guide only of the product range and serve as a general indication of the product's slip resistance to assist you in selecting a product that best suits your needs.
- (b) We do not warrant the slip resistance of Goods affected by factors out of our control, including the way in which you store the Goods prior to installation and/or the onsite treatment of flooring once installed, and you hold us harmless for any loss or damage as a result of any variation in slip resistance of the installed Goods.
- (c) As the physical properties of kiln fired products may vary between batches, it is recommended that slip resistance and other required testing is conducted by you before installation in your specific project or site to ensure that the Goods are suitable for your purposes.
- (d) Where a specific slip resistance factor is required, we recommend that you install a small section of the product according to Australian Standards and test in situ under AS4663-2013 *Slip Resistance of Existing*

*Pedestrian Surfaces* to confirm its suitability under the Australian Building Code.

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### 7. Returns

- (a) Except where the Goods were not to specification or wrongfully supplied, the Goods are not capable of being returned to us for any reason, unless:
  - (i) we have expressly agreed;
  - (ii) you have delivered the Goods to us at your cost;
  - (iii) you have delivered the Goods to us within 30 days of the date of purchase; and
  - (iv) they are undamaged, in good condition, in original packaging (if applicable) and accompanied by a dispatch note stating the invoice number, date of supply and reason for return.
- (b) Returns will not be accepted for special orders, goods sold at wholesale prices, sale items or second quality items.

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### 8. Cancellation and termination

#### 8.1 Cancellation by you

- (a) If you wish to cancel your Order you must notify us in writing as soon as possible, subject to sub-clauses (b) and (c).
- (b) You cannot cancel your Order if we have already dispatched the Goods for delivery, unless we otherwise agree in writing.
- (c) Cancellation will not be effective unless confirmed by us in writing.

#### 8.2 Cancellation by us

- (a) We may refuse to supply the Goods outlined in our Quote at any time where:
  - (i) the Goods are unavailable for any reason whatsoever;
  - (ii) our Quote is more than 14 days old;
  - (iii) you become insolvent, enter to administration or you otherwise cease to conduct your business in the normal manner (where the Goods are purchased using your Credit Account);
  - (iv) you have not complied with your obligations under this Agreement; or
  - (v) there is a dispute between the parties.
- (b) Upon cancellation under sub-clause (a)(ii) we may issue you with an updated Quote (**Updated Quote**) for your acceptance in accordance with clause 1.
- (c) A refusal to supply under sub-clause 8.2 will not affect our right to institute legal proceedings for the recovery of any monies owed to us.

### 8.3 Termination for breach

- (a) If either party breaches any of these Terms and such a breach is capable of rectification, the other party must give the defaulting party written notice requesting that the breach be rectified within 5 business days (**Breach Notice**).
- (b) If a breach has not been rectified within 5 business days of the giving of a Breach Notice, the party giving the Breach Notice may terminate this Agreement immediately by notice in writing to the other.
- (c) If any party breaches a material term and the breach is not capable of rectification, the other party may terminate this Agreement immediately by notice in writing to the party in breach.

### 8.4 Refund of Deposit

Where you have paid a Deposit and:

- (a) successfully cancelled your Order under clause 8.1;
- (b) we have cancelled your Order under clauses 8.2(a)(i) or 8.2(a)(iii) to 8.2(a)(v); or
- (c) this Agreement has been terminated under clause 8.3,

we will refund the Deposit to you less any amount deducted to cover any monies owed to us under this Agreement.

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## 9. Retention of title

- (a) Legal and equitable title and property in the Goods remains with us until full payment of all amounts owing under this Agreement are received by us. Title will not pass to you nor to any person the Goods are purported to be sold to by you until full payment has been received by us.
- (b) You may, on your own account as principal, sell the original Goods supplied in the ordinary course of your business subject always to our title in respect of the Goods under clause 9(a).
- (c) Until payment in full has been received by us, you will:
  - (i) hold the Goods as our agent;
  - (ii) store the Goods separately so that they can be identified as our property, and must not mix the Goods with other Goods;
  - (iii) to the extent that the sale of Goods results in proceeds, hold such proceeds (up to the total amount owing to us) as trustee for us.
- (d) Until payment in full has been received you must not:
  - (i) claim any interest in the Goods to secure any liquidated or unliquidated debt or obligation;
  - (ii) claim a lien over the Goods or any part of them; or

- (iii) create or purport to create any interest in the Goods in favour of any other person without our consent.

- (e) Where the Goods are in your possession, custody or control, we may, with or without prior notice to you, enter upon any premises at which the Goods or any part of them are stored, or at which we reasonably believe they are stored, to inspect and/or take possession of them. You agree to provide us with access and authority to any such premises for that purpose. We may direct you to deliver the Goods to us and you must comply with such a direction.
- (f) You must pay our costs and expenses in exercising our rights under this clause 9 and must indemnify us against any Claim arising directly or indirectly out of the exercise by us of any power or right under this clause. Where we exercise any power to enter premises, that entry will not give rise to any action of trespass or similar action on your part against us or any of our Representatives.
- (g) We may sell or otherwise deal with the Goods we have repossessed.

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## 10. Personal Property Securities Act

- (a) You acknowledge and agree that our retention of title in clause 9 constitutes a security agreement for the purposes of the PPSA and creates a security interest in our favour in the Goods supplied under this Agreement.
- (b) It is the intention of the parties that the security interest in the Goods is a purchase money security interest (including proceeds from the sale of the Goods).
- (c) You agree that immediately upon:
  - (i) the creation of your Credit Account; or
  - (ii) your failure to adhere to the payment terms in clause 5,all amounts owing to us under this Agreement are a secured debt, with the security being a security interest in all your present and after-acquired property (including any proceeds from the sale of such property).
- (d) You agree that we may attend to registration of any of our security interests on the PPSR without notice to you.
- (e) You undertake to:
  - (i) promptly sign any further documents and/or provide any further information which we may reasonably require to:
    - (A) register a financing statement or financing change statement in relation to a security interest on the PPSR;

(B) register any other document required to be registered pursuant to the PPSA; and

(C) correct a defect in a statement or document referred to in clauses 10(c)(i) & (ii);

(ii) pay us for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any property we have a security interest in;

(iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party, without our prior written consent;

(iv) give us not less than 14 days written notice of any proposed changes in your personal details, including but not limited to changes in name, address, email address, trading name or business practices; and

(v) pay us for any costs incurred by us, including legal fees and disbursements on a solicitor-client basis, in obtaining an order pursuant to s182 of the PPSA and/or enforcing or attempting to enforce any security interest created in favour of us under this Agreement or otherwise.

(f) The parties agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by this Agreement.

(g) Pursuant to section 144, you waive your rights to receive notices under sections 95, 118, 121, 130, 132 and 135 of the PPSA.

(h) You waive your rights as a grantor and debtor under sections 14.2 and 14.3 of the PPSA.

(i) You waive your rights to receive a verification statement in accordance with section 157 of the PPSA.

(j) Any payments by the you under this Agreement will be applied in the order specified in section 14(6)(c) of the PPSA regardless of any direction or request by you, any agreement between the parties (express or implied) or the application of any such payment by us. We do not waive any rights under this clause by applying any payment in a different order.

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## 11. Warranties

You acknowledge and agree that:

(a) we give no warranty that the Goods are sufficient or adequate for your purposes; and

(b) in choosing the type of the Goods and assessing their suitability for your required purposes, you have relied entirely upon your own knowledge, skill and judgment and have not relied upon our skill and

judgment nor upon any promise or representation made or allegedly made by us.

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## 12. Limitation of liability and indemnity

### 12.1 Limitation of liability

(a) All information, specifications and samples provided by us are approximations only and, subject to any guarantees under the ACL, small deviations or slight variations which do not substantially affect your use of the Goods will not entitle you to reject them upon delivery, or to make any Claim in respect of them.

(b) Unless otherwise required by law, our liability for any breach of the Agreement in contract, tort (including negligence) or equity is limited, at our option, to:

(i) the replacement of Goods supplied;

(ii) the supply of equivalent Goods;

(iii) the cost of replacing the Goods supplied or of acquiring equivalent Goods;

(iv) the amount paid by you to us under the Agreement; or

(v) the amount paid out under an insurance policy we hold (less any excess).

(c) To the maximum extent permitted by law, we will not be liable for any Loss or Consequential Loss incurred by you or any other person whether directly or indirectly related to this Agreement.

### 12.2 Indemnity

You agree to indemnify us and keep us indemnified against any Loss that may be incurred by us arising from or in connection with any breach or default by you of this Agreement.

### 12.3 Limitation

To the extent that any Claim or Loss occurs as a result of any negligent act or omission caused by us or our failure to comply with the material obligations of this Agreement, your liability under clause 12.2 will be proportionately reduced.

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## 13. General matters

### 13.1 Interpretation

In interpreting this document:

(a) headings are for convenience only and will not affect interpretation of this Agreement;

(b) words in the singular include the plural and words in the plural include singular, according to the requirements of the context;

(c) a reference to legislation or other law includes delegated legislation and consolidations, amendments, re-enactments or replacements of any of them;

- (d) a reference to any of the words "include", "includes" and "including" is read as if followed by the words "without limitation"; and
- (e) terms used that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or the *Corporations Act 2001* (Cth) have the meaning given in that Act, unless the context otherwise requires.

### 13.2 Survival and essential terms

- (a) Clauses 5, 6, 9, 10, 11, 13.3 and 13.8 and are taken to survive this Agreement.
- (b) Clauses 3, 5 and 9 are essential terms of this Agreement.

### 13.3 Assignment

- (a) Subject to clause 13.3(b), a party cannot assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party.
- (b) You agree that if we merge or amalgamate with another entity or otherwise sell or dispose of our business, we may assign or novate this Agreement, including all materials, personal information, confidential information and ideas supplied by you, to that other entity, provided that entity agrees to be bound by the stipulations in this Agreement or to stipulations equivalent in effect.

### 13.4 Further assurances

Each party must promptly do all further acts and execute and deliver all further documentation reasonably requested by the other party to give effect to the contemplations of this Agreement.

### 13.5 Consents

Unless these Terms expressly state otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under these Terms. To be effective any consent under these Terms must be in writing.

### 13.6 Force majeure

A party will not be liable for any failure or delay in the performance of its obligations under the Agreement to the extent that such failure or delay:

- (a) is caused by a circumstance not within the reasonable control of the party; and
- (b) could not have been reasonably avoided, prevented or circumvented by the party.

### 13.7 Waiver

The non-exercise of or delay in exercising a right of a party will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by written notice signed by the party to be bound by the waiver.

### 13.8 Jurisdiction

This engagement is governed by the law in force in the State of Queensland and each of us submit to the non-exclusive jurisdiction of the courts of Queensland.

### 13.9 Severability

Any provision of these Terms that is illegal, void or unenforceable will be severed without prejudice to the balance of the conditions which will remain in force.

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## 14. Definitions

**Acceptance Date** means the date on which this Agreement is deemed accepted under clause 1(a).

**ACL** means the Australian Consumer Law as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and includes any regulations forming part of or passed under it.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are ordinarily open for business in Rockhampton, Queensland, Australia.

**Business Hours** means 7:30am to 3:30pm (AEST) on any Business Day.

**Credit Account** means your credit account established for you to receive Goods on credit from us.

**Claim** includes, in relation to a person, a demand, claim, action, dispute or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

**Consequential Loss** means indirect economic Loss, Loss of income or profit, Loss resulting from wasted time, damage to goodwill or business reputation, Loss of opportunity or any other special, indirect, remote or punitive Loss.

**Deposit** means an amount typically 30% of the total cost of the Goods, as outlined in our Quote.

**Goods** means the Goods supplied or to be supplied by us in accordance with our Quote and these Terms and, for the purposes of clause 9, includes commingled Goods and any other item in which any Goods may be incorporated as parts, components or materials and the proceeds of sale of any of them.

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under *A New Tax System (Goods and Development Services Tax) Act 1999* (Cth).

**Guarantee** means the directors guarantee given to secure the payment of any amounts due and owing by you under this Agreement, including our guarantee document or a guarantee given via our payment processing provider.

**Loss** includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether prospective or contingent and any amounts that for the time being are not ascertained or ascertainable.

**Order** means the order of Goods as notified to us verbally or in writing or as otherwise detailed in our Quote.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any Regulations forming part of or passed under it.

**Quote** means our formal notice to you of the price charged for the Goods in your Order, and includes notice by way of email, pricelist or invoice.