

## **TERMS & CONDITIONS**

### **1. General**

- 1.1 These Terms set out the entire agreement between Ultimate Tiles and the Customer (the "Agreement")
- 1.2 In these Terms:
  - Business Day means a day on which banks are open for business in Victoria;
  - Goods mean the goods offered to and ordered by the Customer from Ultimate Tiles as set out on the Order Form;
  - Customer means the individual or company described as such on the Order Form;
  - Order means the request to Ultimate Tiles to supply Goods to the Customer pursuant to the Order Form;
  - Order Form means the form overleaf;
  - Purchase Price means the price of the Goods as set out on the Order Form;

Terms means these Terms and Conditions;

### **2. Payment**

- 2.1 A minimum non-refundable deposit of 25% of the Purchase Price shall be paid on the ordering of the Goods.
- 2.2 Payment for the Goods shall be due in full, prior to the collection or delivery of goods and or thirty (30) days from the date of the Order Form (the "due date"). Whichever occurs first.

### **3. Failure to Pay**

- 3.1 If Ultimate Tiles does not receive payment of the Purchase Price in full by the date, Ultimate Tiles may on the day following the due date (the "date of default") without prejudice to any other rights it may have:-
  - (a) Charge interest on any amount outstanding by the Customer at a rate equal to the rate prescribed from time to time under the Penalty Interest Rates Act 1983 (Vic) plus 2%; and/or
  - (b) Suspend provision and/or delivery of the Goods until such time as payment of the Purchase Price in full, interest and any other amount payable under this Agreement is made to Ultimate Tiles.
- 3.2 Clause 3.1 shall survive the termination of this Agreement.
- 3.3 The Customer shall be liable for all reasonable expenses (including recovery of monies owed) and legal expenses (on an indemnity basis from the date of default) incurred by Ultimate Tiles in the enforcement and or recovery of monies outstanding to Ultimate Tiles.
- 3.4 Any monies received by Ultimate Tiles in respect of monies owing by the Customer shall be first applied to interest if any that has accrued, secondly to any expenses incurred by Ultimate Tiles under clause 3.3, and then thirdly to any part of the Purchase Price outstanding.
- 3.5 Failure on the part of Ultimate Tiles to enforce and/or insist on the timely performance of any Terms, or Ultimate Tiles' failure to exercise any right or remedy available to Ultimate Tiles under these Terms or generally, or Ultimate Tiles' failure to insist upon the timely payment of any monies, interest and other expenses incurred as provided for under this Agreement shall not constitute a waiver of any of Ultimate Tiles' rights to demand timely payment of any fees or expenses incurred pursuant to this Agreement.

### **4. Title to goods and risk**

- 4.1 Until payment in full of the Purchase Price and any other sums due under this Agreement is made to Ultimate Tiles, title to the Goods shall not pass to the Customer. Should the Customer have possession of the Goods before payment for the Goods is made in full, the Customer

does so as a Bailee for Ultimate Tiles and therefore shall immediately return the goods to Ultimate Tiles upon request.

4.2 If Goods are not returned on request under clause 4.1, Ultimate Tiles may recover possession of any Goods held by the Customer as delivered and/or supplied by Ultimate Tiles at any premises owned, possessed or controlled by the Customer under an irrevocable licence which hereby granted by the Customer to Ultimate Tiles.

4.3 Risk in the Goods passes to the Customer when the Goods are collected by, or delivered to, the Customer.

## **5. Delivery and Supply**

5.1 Ultimate Tiles reserves the right to stop or refuse the supply of Goods at anytime without reason.

5.2 If agreed as per the Order Form, Ultimate Tiles will deliver the Goods to the Customer's address set out on the Order Form, and the Goods shall be deemed to be delivered when Ultimate Tiles obtain an acknowledgement of delivery from a person with apparent authority at the delivery address.

5.3 Delivery times quoted for delivery are estimates only. Ultimate Tiles does not accept any responsibility or liability for any loss of any kind suffered as a result of failure and/or delay in the delivery or supply of any Goods.

5.4 Delay in the delivery of Goods shall not entitle the Customer to any refund or discount of the Purchase Price, nor shall it relieve the Customer of its obligation to accept and make full and final payment for the Goods by the due date.

## **6. Cancellations, Returns and Claims (Liability)**

6.1 Ultimate Tiles will not accept any cancellations or partial cancellations of an Order made 24-hours after an Order has been confirmed, unless a cancellation charge of 25% of the Purchase Price is paid to Ultimate Tiles.

6.2 No goods will be accepted for return after 30 days from invoice date

(a) Subject to Clause 6.3, if Goods are returned the Customer must provide proof of purchase of all such Goods. No refund for returned goods will be made but the Customer shall be entitled to a credit of the Purchase Price (excluding GST) less a 30% storage, administration and handling fee.

6.3 Goods must be inspected and any claim made before the Goods are fixed or installed and no claims may be made and no liability will be admitted once the Goods are fixed or installed.

6.4 Subject always to the provisions of the Trade Practices Act 1974 and any applicable State legislation:-

(a) all terms, conditions and warranties, other than those set out in these Terms or which cannot be excluded, are excluded;

(b) Ultimate Tiles shall not be liable to the Customer or to any third party for any loss or damage (including indirect, special, incidental or consequential loss or damage) howsoever caused which may arise out of failure or omission on the part of Ultimate Tiles;

(c) Ultimate Tiles' liability for any breach of any term or condition set out in these Terms shall at the Ultimate Tiles be limited to:-

(i) a refund of the Purchase Price;

(ii) the replacement of the Goods or the supply of equivalent Goods; or

(d) the payment of the cost of replacing the Goods or acquiring equivalent Goods no claims or liability shall be accepted by Ultimate Tiles in respect of-

(i) crazing and shade variations which are an inherent characteristic of all ceramic products and different shades are to be expected from shipment;

(ii) reasonable variations between samples provided, Goods displayed, and actual Goods supplied, and between deliveries of Goods;

- (iii) second quality Goods, which may be subject to colour and/or size variation, surface warpage and glaze imperfections;
  - (iv) quantities quoted by Ultimate Tiles' staff. Any such quantities are estimates and approximate only, and it is the Customer's responsibility to ensure that the correct quantities are ordered;
  - (v) marble tiles if these are not used and cleaned in accordance with the manufacture's guidelines; and
- (e) credits will not be allowed in respect of:-
- (i) Goods purchased at special or discounted prices or as second quality Goods;
  - (ii) Goods or shades no longer available or which were specially ordered;
  - (iii) Goods not in perfect condition, in opened boxes or which are damaged in any way.
- 6.5 Any claims, complaints or notification of missing or damaged Goods delivered to the Customer must be made to Ultimate Tiles within 3 Business Days of delivery or supply of Goods, and before the Goods are fixed and/or installed. The Customer shall be deemed to have accepted the Goods and to have waived any and all rights if no claim, complaint or notification is made within this time. Any claim, complaint or notification made outside this time, or after the goods have been fixed or installed shall not be accepted.

## **7. Warranties**

- 7.1 The Goods supplied by Ultimate Tiles are guaranteed only to the extent that any guarantee is provided by the manufacturer of the goods.
- 7.2 Ceramic tiles are not guaranteed against cracking, crazing, chipping or breaking.