

Terms and Conditions of Sale

1. Definitions

In these conditions:

The "Seller" means Johnson Tiles, a division of Norcros Group (Holdings) Limited.

The "Buyer" means the customer of the Seller

The "Contract" means any contract entered into for the supply of Goods by the Seller to the Buyer

The "Goods" means the products forming the subject matter of any Contract including (where the context so admits) services

2. Contractual terms

(a) These conditions shall apply to all Contracts to the exclusion of any terms and conditions referred to by the Buyer.

Acceptance of any delivery or performance by or on behalf of the Buyer shall in any event be conclusive evidence of the Buyer's acceptance of these conditions.

(b) All drawings, illustrations, performance data and other details in the Seller's catalogue, web site(s), sales or promotional literature or elsewhere are included as a guide only, and while such details are printed in good faith they shall not bind the Seller. The Seller reserves the right to change specifications without prior notice at its absolute discretion. Colours shown in the Seller's literature and on the web site are as close to actual tiles as printing and digital processes will allow. No contract shall constitute a sale by sample notwithstanding that any Goods may have been exhibited or inspected by the Buyer.

(c) Typographical or clerical errors or omissions shall be subject to correction without liability on the part of the Seller.

(e) Offers, Discounts and Quotations references must be quoted at the point of placing an order. Failure to do so will mean any reduction in price will not be applied and the Seller will not be liable for the issue of any retrospective credits in this respect.

(f) The buyer must notify the Seller within 48 hours of the Seller's acceptance or acknowledgement of order if such an acceptance or acknowledgement does not accurately confirm the Buyer's order failing which the Buyer shall be bound by the terms of the acceptance or acknowledgement.

3. Creation of contractual relations

Unless previously withdrawn the Seller's quotations and tenders shall remain valid for the period stated therein or if no period is stated for 30 days from their issue date. The Seller's offers, estimates, quotations, tenders and price lists are invitations to treat only. All orders must be accompanied by sufficient information to enable the Seller, if the order is accepted, to proceed without delay with the execution of the order. All Contracts shall be subject to the Buyer's credit being approved and to cancellation without liability of the Seller should the Seller subsequently find the Buyer's credit inadequate.

4. Prices

(a) Unless otherwise specified, prices quoted include the following:

(i) In the case of Goods destined for the Buyer's own premises in Mainland UK (England, Wales and Scotland) where the order value of Goods excluding VAT is equal to or greater than £750 on a consolidated daily basis - delivery to that address.

(ii) In the case of Goods destined for an address in Northern Ireland, the Isle of Wight, the Isle of Man or any island off the United Kingdom Mainland and where the order value of Goods excluding VAT is equal to or greater than £750 on a consolidated daily basis - delivery to main land port specified in the Buyer's order. Accordingly, an additional charge may be made for deliveries to the Buyer's address.

(b) In cases where arrangements are made for Goods to be despatched by post or by special overnight delivery, an additional charge will be made for packaging and consigning.

(c) Where the order value of Goods excluding VAT is less than £750 on a consolidated daily basis, the Seller will apply a charge in accordance with sub clause 4(b) above.

(d) Unless otherwise specified prices quoted do not include Value Added Tax where applicable (which will be added at the rate prevailing at the date of invoice) or any other taxes or duties of whatever kind.

(e) The Seller's prices unless otherwise stated and subject to sub clause 4(a), 4(b), 4(c) and 4(d) hereof are those in its price lists in force at the date of despatch of the goods. The Seller reserves the right to adjust the prices of Goods for any costs incurred by the Seller after the date on which they were quoted, as a result of any fluctuations in the cost of materials, equipment, transport or utilities arising from whatsoever cause, any alterations in the specifications, quantities or times of delivery of any Goods or any suspension of work requested by the Buyer or any delay in the supply by or on behalf of the Buyer of any instructions data or materials or other matter of whatever kind or any inaccuracy, insufficiency or defect therein.

(f) Without prejudice to clause 4(a), 4(b), 4(c) and 4(d) above the Seller reserves the right to charge any such cost for delivery or where delivery is refused by the Buyer or any third party to which the Goods are despatched, including but not limited to congestion charges, parking fees if so incurred at the point of delivery or return carriage charges if the delivery is refused or frustrated.

5 Payment

(a) All invoices will be dated with the date Goods are despatched from the factory and payment is due against invoice which is submitted to the customer by Electronic means only.

(b) Payment should be received in full by the end of the month following the date of invoice. No discounts are allowed and payment must be made without any discount, set-off or other deduction whatsoever. Time of payment shall be of the essence of all contracts.

(c) Without prejudice to any other rights of the Seller invoices unpaid by the end of the month next following the date of the invoice shall be deemed to be overdue, and the Seller shall be entitled to charge interest on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgment) on a daily basis at the rate of four (4%) per cent over the base rate from time to time quoted by the Lloyds Bank plc. compounded daily. The Buyer shall also pay all legal and other costs incurred by the Seller in recovering any amounts owing from the Buyer and any Goods in which title has been retained by the Seller. Such costs shall be due for payment immediately on invoice.

(d) Unless otherwise specified all payments shall be made in pounds sterling to the Seller at Harewood Street, Tunstall, Stoke on Trent, Staffordshire, ST6 5JZ.

(e) If the Buyer fails to make any payment when and as due or other circumstances entitling the Seller to terminate the Contract occur or if the Buyer exceeds any financial limit on the Buyer's account from time to time applied by the Seller then the price of

all such Goods as have been delivered or prepared for any order or orders of the Buyer shall forthwith thereupon become immediately due and payable. The Seller reserves the right to withhold delivery of any order where the Buyer's account is not paid within the agreed terms and the Seller shall not be liable for any consequential costs arising directly or indirectly from such action.

(f) The Seller will accept payment of accounts by credit card subject to a 2.5% surcharge.

(g) Credit facilities are extended at the sole discretion of the Seller in accordance with its Credit Policy and may be reviewed, reduced or withdrawn at any time.

(i) Where payment is to be made via Direct Debit Mandate, payment for the due invoices will be arranged for collection on the last working day of the month they fall due.

6. Passing of risk

The risk in the Goods shall, subject to clause 9b of these conditions, pass to the Buyer on delivery to the Buyer or to the Buyer's carrier or, (if appropriate, in cases where the Buyer is not on the UK Mainland or where arrangements have been made for the Goods to be despatched by post, or by special overnight delivery) on delivery to the quayside or on posting or on collection for special overnight delivery (as the case may be).

7. Property

(a) Notwithstanding the earlier passing of risk until payment in full of the price of the Goods sold by the Seller to the Buyer and of all other debts for goods and services owed to it by the Buyer on any account has been received by the Seller in cash or cleared funds:

Ownership of the Goods shall remain with the Seller and not pass to the Buyer (who shall nevertheless subject to the conditions stated below, be entitled to resell them as principal only and to use them in the ordinary course of business).

(b) Until title passes:

(i) The Buyer shall hold the Goods or any part thereof as bailee for the Seller and ensure that they are at all times readily identifiable as the property of the Seller and during such time the Buyer shall ensure that the Goods are kept and maintained in the condition in which they were delivered;

(ii) The Seller shall be entitled at any time to:

(iii) Repossess, remove from other equipment (without being liable for any damage thereby occasioned) and sell all or any of the Goods and thereby terminate (without liability to the Buyer) the Buyer's right to use or sell them; and

(iv) Enter any premises where the Goods are located for the purpose of inspecting or repossessing them.

(c) The Seller shall, without prejudice to any other remedy, be entitled to maintain an action for the price of the Goods although title in them has not passed to the Buyer.

(d) The Seller transfers to the Buyer only such title and rights of use as the Seller has in any Goods and in the case of material provided by any third party shall transfer only such title and rights of use as that party had and has transferred to the Seller.

8. Delivery

(a) Time of delivery shall not be of the essence of the Contract. The period (if any) quoted for a delivery commences from the date of receipt of the Buyer's order but is an estimate only. Whilst the Seller shall use reasonable commercial endeavours to deliver the Goods by the date (if any) specified it shall not be liable in any way for any loss, damage or expense arising from any delay or failure in delivery or performance from any cause whatsoever or howsoever arising nor shall such a delay or failure entitle the Buyer to refuse to accept any delivery or performance or treat the Contract as repudiated or render the Seller liable for damage in any way. The Buyer shall inspect the Goods on delivery to ensure that they are in accordance with the order.

(b) It is the Buyer's duty to inform the Seller of the detailed delivery arrangements (including but not limited to details of any restrictions in respect of off-loading and vehicle access) in advance of the consignment leaving the Seller's premises and to provide due warning and notice of any changes in such arrangements.

(c) The Seller reserves the right to require the Buyer to pay any haulier charges incurred by the Seller which result from any unreasonable delays in off-loading the consignment.

(d) Where Goods are consigned to an address other than the Buyer's own premises, the Buyer shall be responsible for all off-loading (including without limitation, arrangements for the provision of suitable off-loading facilities such as forklifts) and the Seller reserves the right to deliver the Goods at the nearest point of suitable access.

(e) The Seller reserves the right to apply administration and carriage charges relevant to each individual order. If the Buyer requests the Seller to effect 'site' deliveries it must ensure that there are sufficient personnel to unload, and wherever possible, forklifts are available on 'site' on the agreed delivery day. Any restrictions relating to the 'site' such as limited vehicular access, delivery drivers requiring identification, specific delivery times, on-street unloading/parking restrictions etc. must be highlighted at the time the order is placed. In the event of any failure of the Buyer to comply with these requirements the Seller reserves the right to increase the administration and/or carriage charge by an amount it considers appropriate.

(f) In clause 8e above a 'site' means an address other than the Buyer's own premises.

(g) The Seller may deliver the Goods by instalments each of which shall be deemed the subject of a separate contract and, unless otherwise agreed in writing, no failure by the Seller in any one or more instalments shall entitle the Buyer to repudiate any Contract for Goods previously delivered or to refuse to accept any undelivered goods.

(h) Unless otherwise agreed in writing all deliveries will be made between the hours of 08:00 and 18:00 Monday to Friday.

(i) The Seller reserves the right to apply an administration charge for providing proof of delivery up to a maximum of £25.00 per document.

9. Non-acceptance by the Buyer

(a) If by reason of the Buyer's default the Goods or any of them have not been taken up or delivered by any date specified for such taking up or delivery or the Buyer has failed to provide adequate delivery instructions then:

(i) The Buyer shall nevertheless pay the Seller in accordance with clause 5 of these conditions as if such taking up or delivery had occurred; and

(ii) The Seller reserves the right to store the Goods and to require the Buyer to pay the Seller a storage charge in respect of any of the Goods which have not been taken up or delivered together with the cost of any additional handling and transport or any

- other charges incurred by the Seller. In the event that such storage by the Seller shall continue for a period exceeding six weeks the Seller may (without prejudice to any other rights which may have accrued) treat the contract as repudiated.
- (b) During the period of any storage of the Goods or any of them by the Seller as contemplated by sub-clause 9a (ii) above such goods shall be at the risk of the Buyer.
- (c) No Goods will be supplied by the Seller to the Buyer on a sale or return basis.
- (d) Return of goods is only permitted with the agreement and at the sole discretion of the seller.

10. Loss or damage in transit and non-delivery of Goods

The Seller shall have no liability in respect of Goods which are missing, lost or damaged in transit unless:

- (a) In the case of any shortages of pallets or any loss or damage to Goods which is reasonably detectable on inspection at delivery, the Buyer:
- (i) Has noted the discrepancy on the delivery note and has brought the discrepancy to the attention of the delivery driver; and
 - (ii) Gives written notice to the Seller of the discrepancy within twenty four (24) hours of receipt of the consignment;
- (b) In the case of any loss, shortage, damage which could not reasonably be detected until the pallets have been unloaded and broken down the Buyer gives written notice to the Seller within forty eight (48) hours of receipt of the consignment;
- (c) In the case of loss of a whole consignment, the Buyer gives written notice to the Seller within seven (7) days from the date of invoice.

11. Cancellation and variation

(a) Without prejudice to clause 11(b) below no cancellation or variation of any order or of any Contract by the Buyer shall be effective unless made in writing and until accepted in writing by an authorised officer of the Seller at its registered office. The Seller reserves the right to refuse to accept such cancellation or variation or to accept cancellation or variation only subject to such conditions as the Seller may determine. Acceptance by the Seller shall be subject to payment by the Buyer of such cancellation or variation charges as the Seller shall deem reasonable. Such charges shall take into account expenses incurred and commitments made by the Seller and all other losses due to cancellation or variation.

(b) Notwithstanding clause 11 (a) above, for goods which are supplied "made to order" only, including any non- stocked Absolute ranges, the Buyer accepts that the Seller will not accept any cancellation for such orders and that the Buyer is responsible for all charges associated with such orders.

12. Order quantities

All orders are only accepted on the basis of clause 2(a) of these conditions and Goods will be supplied in the Seller's standard units of measure/packs. Where the standard pack content is either greater or less than a square metre then the number of packs supplied may exceed the actual square metres detailed on the Buyer's order to ensure that the specified coverage is achieved. The Seller will not supply part packs. In the case of fittings and decorative products which are supplied as pieces or in packs containing small quantities the order should state either number of pieces required, detail the area to be covered or state the number of linear metres required. The Seller will supply to the nearest measure above that ordered in those circumstances where the quantity ordered cannot be met exactly.

In all cases the Seller's invoice will be for the actual quantities of packs or number of pieces supplied and this invoice will be the amount payable in respect of the Buyer's order.

13. Force majeure

Should any event whatsoever occur whether at the Seller's premises or elsewhere which is beyond the control of the Seller existing at the date of the Contract or arising thereafter including but not limited to breakdown or failure of plant or machinery, lack or failure of transportation facilities, supply of labour, materials, power or supplies, strike, labour dispute or lock out (whether or not at the Seller's Works) act of God, war, civil commotion or restriction of any authority or governmental agency, fire, explosion, flood, drought, illness, epidemic, as a result of which the performance of this contract is prevented or delayed:

(a) Without prejudice to any other of its rights the Seller reserves the right to cancel delivery or other performance of the Seller's obligations under any Contract in whole or in part and in the event of the Seller exercising such right the Seller's liability shall be limited to the repayment to the Buyer (without interest) of any part of the purchase or Contract price or charge already received by the Seller and attributed to any unfulfilled and cancelled part of the Contract less any expenses incurred by the Seller to the date of cancellation in part performance of the contract.

(b) If such prevention or delay continues for 60 days or more the Buyer may elect either to cancel the Contract or to allow the order to remain on the books of the Seller and to be completed at some later date at an adjusted price to be determined by the Seller.

14. Guarantee and limitation of liability

(a) In general the Seller's wall tile products comply with Product Norm BS EN 14411 (as current at the date of printing of these conditions), with the exception that some glazes, particularly the heavier more reactive effects, used to achieve maximum depth of colour and character are subject to crazing. This feature is an inherent characteristic of these glazes, and the Buyer confirms knowledge of this and undertakes to bring this to the attention of his customers and to indemnify the Seller against all losses, costs, damages and expenses which the Seller may suffer as a result of his failure to do so. Dust pressed floor tile products comply with Product Norm BS EN 14411 (as current at date of printing of these conditions).

(b) The Seller shall have no liability for:

(i) Any Goods which have been installed, used, maintained, serviced or stored otherwise than by the Seller or in accordance with its recommendations (or the recommendations of any supplier of any item with which the Goods are used) or have suffered any excessive wear,

Misuse, neglect or accident;

(ii) Any accessories or proprietary parts or fittings and if any item which is not of the Seller's manufacture is alleged to be defective, the Seller's liability shall be limited to assigning to the Buyer (so far as it is able to do so) any warranty given by the manufacturer of that item;

(iii) Any Goods which have been modified or interfered with in any way or have undergone any further manufacturing or decorating processes or with regard to which any part not of the Seller's manufacture or supply has been used in each case

without the Seller's prior written approval or the Buyer has failed to carry out any modification or improvement recommended by the Seller;

(iv) Any Goods whose serial number or other identification mark or plate has been removed, defaced or tampered with;
(v) Any costs (including labour) of removing any Goods forming the subject of any claim which has been accepted by the Seller or the refitting of any repaired or replacement items or any taxes, duties or similar charges payable in connection with the transportation to the Buyer of any replacement parts;

(vi) Any discrepancy which results from any design, specification, advice, information, details or materials (including "free-issue" items) supplied by or on behalf of the Buyer;

(c) The Seller makes no representation or warranties in relation to the Goods other than those contained in this clause 14. All other conditions express or implied in respect of the Goods or their use are hereby excluded.

(d) Except to the extent stated in these conditions or otherwise agreed in writing by it:

(i) The Seller shall have no obligation, duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise however under or in connection with the Contract other than for death or personal injury resulting from its negligence or for fraud on the part of its officers or employees whilst acting in the course of their duties;

(ii) In particular the Seller shall have no liability for any consequential loss or damage suffered directly or indirectly by the Buyer under or in connection with the Contract, including but not limited to wasted time or expenditure, loss of profits, production, business revenue, expected savings or goodwill or any claim against the Buyer by any person and the Buyer shall be solely responsible for any such claim.

(e) The Seller shall be discharged of all liability to which these conditions apply unless proceedings are begun within twelve (12) months after the Buyer became aware (or should reasonably have become aware) of the facts giving rise to such liability.

(f) Without prejudice to the provisions of clauses 14(a), 14(b), 14.(c) and 14(d) the Seller wishes to draw the following additional matters to the Buyer's attention:

(i) No guarantee is given against variation in shades and patterns of different batches of wall tiles or against variation in size, shades and patterns of different batches of floor tiles manufactured by the Seller. To ensure that tiles purchased give an acceptable random blend of colour the Buyer is recommended to mix the contents of several packs of tiles in cases where more than one pack is purchased. No responsibility will be accepted by the Seller once tiles have been fixed.

(ii) Metallic glaze effect, while perfectly suitable for normal domestic uses, is subject, because of its metal content, to discolouration under certain conditions. It should not therefore be used for work surfaces, external applications, or in any circumstances where fumes or atmospheric conditions can affect the glaze.

(iii) Wall tiles are not suitable for use in any external application where freezing temperatures can be expected.

(iv) The Seller recommends that the wall tiles are fixed in accordance with the advice contained in British Standards BS5385.

(g) To minimise the risk of scratching the glazed surface of the tiles abrasive materials should be avoided when tiles are fixed or cleaned.

15. Intellectual property

All documents, drawings, designs or other data (whether or not patentable or patented) and all rights therein (including copyright and design rights) and all materials, tools, patterns or other items prepared or made available by the Seller for the Contract shall, unless otherwise agreed by the Seller, be and remain the Seller's property and the Buyer shall not copy or reproduce the same in whole or in part in any form or allow others to do so.

16. Termination

(a) If the Buyer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other agreement with the Seller, is unable to pay its debts in the ordinary course of its business, has a receiver, manager, administrator or administrative receiver or trustee in bankruptcy (as the case may be) appointed for all or any part of its undertaking, assets or income, has a resolution passed for its winding up (compulsorily or voluntarily), enters into any composition or arrangement with its creditors (whether formal or informal), has any distraint or execution levied on any of its assets, suffers any action similar to any of the foregoing in any jurisdiction or ceases to trade or the Seller bona fide believes that any of the foregoing matters that occur, then, in any such event, the Seller shall, without prejudice to any other remedy be entitled at its discretion, without liability to the Buyer, by giving the Buyer written notice at any time or times to suspend its performance of or (whether or not such performance has previously been suspended) terminate such Contract.

(b) The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver by the Seller in respect of any breach shall operate as a waiver in respect of the same or any subsequent or other breach.

17. Severability

Any provisions of these conditions which in any way now or subsequently contravene the law shall be deemed severable and shall not affect any other provisions herein.

18. Subcontracting

The Seller may at its discretion sub-contract all or any of its obligations under the Contract but the Contract shall not be assigned by the Buyer without the Seller's prior written consent.

19. Confidentiality

The Buyer shall treat the Contract and all information which it acquires thereunder as confidential.

20. Third party rights

No Contract shall create any rights enforceable by any third parties.

21. Data protection

The Buyer authorises the Seller to carry out checks (including enquiries relating to directors and other individuals) with credit reference agencies and to keep a record of that search and to make available to such agencies information relating to the conduct of the Buyer's account, and the Buyer acknowledges that the agencies concerned may keep and share the information supplied to them with other businesses in assessing applications for credit and/or fraud prevention.

22. Anti-Corruption and Bribery

The Supplier undertakes to observe the company's Anti-corruption, Ethics, Gifts, Donations and Hospitality policies which are issued to its own employees and suppliers from time to time in order that all parties comply with the requirements of The Bribery Act 2010. The company reserves the right to terminate orders and agreements in cases that are proven to have breached these policies. Copies of the full policy are provided on the company's website www.johnson-tiles.com.

23. Governing law

The Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

24. Notices

Any notices required to be served under the Contract shall be deemed to be properly served if sent by prepaid registered or recorded delivery post to the last known address of the party to be served and shall be deemed to be duly served the second day following the date of posting.

25. Clause headings

The clause headings of these conditions are for convenience of reference only and shall not affect the interpretation of these conditions.

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