



## TERMS AND CONDITIONS OF SALE

Unless Cerbis Ceramics and the Customer otherwise agree in writing, these Terms are incorporated into and form part of any contract ('the Contract') between Cerbis Ceramics and the Customer for the supply of Goods by Cerbis Ceramics.

### 1. Definitions

In these Terms unless the contrary intention appears:

1.1. 'Australian Consumer Law' means the Australian Consumer Law contained in schedule 2 to the *Competition and Consumer Act 2010* (Cth);

1.2. 'Cerbis Ceramics' means Cerbis Ceramics (SA) Pty Ltd ACN 093 097 717 and any and all of its "Related Bodies Corporate" and/or "Associated Entities" as such terms are defined in the *Corporations Act 2001* (Cth);

1.3. 'Credit Account Customer' means a Customer who has had a 30-day account facility approved in writing by Cerbis Ceramics;

1.4. 'Customer' means the party or parties entering into the Contract with Cerbis Ceramics;

1.5. 'Goods' means any goods supplied by Cerbis Ceramics to the Customer including but not limited to tiles, tools, adhesives and grouts; and

1.6 'Terms' means these terms and conditions of sale.

### 2. Contract

2.1. The Contract and these Terms constitute the entire agreement between Cerbis Ceramics and the Customer. All prior negotiations, representations, understandings, arrangements and agreements (whether oral and/or in writing) are superseded by the Contract and these Terms.

2.2. The Contract and these Terms will in all circumstances prevail over the Customer's terms and conditions (if any), unless Cerbis Ceramics agrees in writing to be bound by the Customer's terms and conditions or any of them.

2.3. To the extent that there is any inconsistency between the Contract and these Terms, these Terms prevail unless and to the extent only that Cerbis Ceramics otherwise agrees in writing provided always if Goods are supplied by Cerbis Ceramics to a Credit Account Customer, then any terms and conditions of sale incorporated into the Customer's written approval for the 30-day account facility shall prevail to the extent of any inconsistency with these Terms.

### 3. Prices

3.1. The price for the supply of Goods will be specified in the invoice issued by Cerbis Ceramics to the Customer.

3.2. Cerbis Ceramics may increase the price of Goods if the price increase results from the introduction of any legislation, regulation or government policy.

3.3. Unless otherwise stated:

3.3.1. the price for the Goods agreed in the Contract and any other amount payable under the Contract or these Terms shall be inclusive of any tax payable pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ('GST'); and

3.3.2. the Customer will be required to pay to Cerbis Ceramics an amount equal to the GST (which will be included in the invoice issued) in addition to the price or any relevant other amount.

### 4. Delivery

4.1. The Customer will, unless Cerbis Ceramics and the Customer otherwise agree, bear the cost of delivery of the Goods.

4.2. If Goods are to be delivered, the Customer must nominate one delivery location that is accessible by a truck and forklift. Any unloading of Goods required by hand that has not been arranged prior to delivery will incur an additional fee of \$1.50 per carton.

4.3. Cerbis Ceramics will make all reasonable efforts to have Goods delivered to the Customer by the date agreed between the parties, but Cerbis Ceramics will not be liable for:

4.3.1. any failure to deliver, or delay in delivery, of Goods;

4.3.2. any damage or loss due to unloading or packaging of Goods; and

4.3.3. any damage to property caused upon entering premises to deliver the Goods.

4.4. Upon delivery or collection and prior to laying, installation, or use of any Goods, the Customer will inspect the Goods as appropriate to the type, quantity, quality, aesthetics, appearance, shade, colours, layout patterns, suitability of purpose and any other characteristics of the Goods.

4.5. If any Goods are damaged, wrongly supplied or not in accordance with the Contract, the Customer may return those Goods in accordance with clause 6.

4.6. The Customer will be deemed to have accepted delivery of the Goods in the following events:

4.6.1. failure by the Customer to return the Goods in accordance with clause 6; or

4.6.2. laying, installation or use of the Goods in any way by the Customer.

4.7. The Customer will indemnify Cerbis Ceramics against any losses, costs or expenses incurred by Cerbis Ceramics due to any failure by the Customer to accept the Goods at the time of delivery or collection.

### 5. Characteristics of Goods

5.1. The Customer acknowledges that Goods, which are tiles, supplied by Cerbis Ceramics may contain, display or be subject to one or more of the following characteristics:

5.1.1. crazing, spots, specks and blemishes;

5.1.2. variations in colour, shade, size, pattern, veining, marking, texture, durability, density, size, weight, dimension, surface and finish and may fade or change colour over time; and

5.1.3. optical effects such as hazing or smudging at varying light sources and at differing angles.

5.2. The Customer acknowledges that Goods which contain, display or are subject to any one or more of the characteristics referred to in clause 5.1 are not defective or of unacceptable quality by reason of those characteristics.

### 6. Return of Goods

6.1. The Customer may only reject and return Goods to Cerbis Ceramics if:

6.1.1. the Goods are damaged, wrongly supplied, defective or not in accordance with the Contract; and

6.1.2. the Goods are returned within 30 days of the date of the invoice issued by Cerbis Ceramics in respect of those Goods; and

6.1.3. the Customer notifies Cerbis Ceramics of the invoice number in respect of the Goods to be returned; and

6.1.4. the Goods are returned in the original state or condition in which they were supplied, and remain in original boxes together with all packaging and instruction material; and

6.1.5. the Goods are in as new condition as is reasonably possible, and are from current stock held in store by Cerbis Ceramics and, if applicable, matching current stock shade.

6.2. All Goods returned by the Customer are subject to assessment by Cerbis Ceramics, and Cerbis Ceramics may, if permitted by the Australian Consumer Law or any other law, refuse to accept the return of the Goods at its sole discretion.

6.3. Unless Cerbis Ceramics and the Customer otherwise agree in writing, the Customer will bear the costs of delivery when returning any Goods.

6.4. Subject to the Customer's rights under the Australian Consumer Law, the following Goods cannot be returned by the Customer to Cerbis Ceramics under any circumstances:

6.4.1. those that were specially made, sourced, ordered or purchased for the Customer;

6.4.2. those that were used, installed, laid, damaged or altered in any way by the Customer;

6.4.3. those that were sold to the Customer at discounted prices, or as second grade quality; or

6.4.4. those that are no longer in stock in store by Cerbis Ceramics or have been discontinued.

6.5. Goods returned in accordance with this clause will be subject to a restocking fee. The restocking fee will be 15% of the price (plus GST) agreed in the Contract for the relevant Goods.

## **7. Payment**

7.1. Unless the Customer is a Credit Account Customer, the Customer will pay for the Goods upon placing an order for those Goods.

7.2. The Customer must pay for the Goods in cash, by cheque, EFT, by credit card (excluding American Express and Diners Club) or by any other method of payment specified by Cerbis Ceramics.

7.3. Payment is only received by Cerbis Ceramics when it receives cash or when the proceeds of other methods of payment are credited and cleared to Cerbis Ceramics' bank account.

7.4. The Customer may not assert or exercise any right of set-off against monies payable by it to Cerbis Ceramics.

7.5. Cerbis Ceramics may charge interest on amounts which remain unpaid for more than 14 calendar days. The interest rate will be seven percentage points above the cash rate target announced by the Reserve Bank of Australia from time to time.

## **8. Title and risk**

8.1. The legal and equitable title to the Goods will only be transferred from Cerbis Ceramics to the Customer when the Customer has met and paid all that is owed to Cerbis Ceramics on any account whatsoever.

8.2. The Customer acknowledges that until the Customer has met and paid all that is owed to Cerbis Ceramics on any account whatsoever, the Customer holds the Goods as bailee for Cerbis Ceramics.

8.3. Risk in the Goods passes to the Customer upon delivery or handover (including all risks associated with unloading) or upon title in the Goods passing to the Customer, whichever is the earlier.

## **9. Limitation of liability**

9.1. If under the Australian Consumer Law or any other law any terms which apply to the sale of Goods under the Contract cannot be legally excluded, restricted or modified then those terms apply only to the extent required by law.

9.2. All terms, which would otherwise be implied by law or otherwise, are excluded except as stated in these Terms.

9.3. To the extent permitted by law, Cerbis Ceramics' liability for any breach of the terms of the Contract, and any condition or warranty implied by the provisions of the Australian Consumer Law, is limited to and will be completely discharged by any one of the following as determined by Cerbis Ceramics in its absolute discretion:

9.3.1. the replacement of the Goods or the supply of equivalent Goods;

9.3.2. the repair of the Goods;

9.3.3. the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

9.3.4. the payment of the cost of having the Goods repaired.

9.4. Except as expressly provided in this clause and to the extent permitted by law, Cerbis Ceramics is not liable to the Customer (and any party claiming through the Customer) for:

9.4.1. any claim made after laying, installation or use of the Goods;

9.4.2. any claim made with respect to or in connection with any of the matters referred to in clause 5;

9.4.3. any claim made under, or in connection with, the Contract, in tort, under statute, in equity or otherwise for the loss or damage to the person or property caused from any defects whatsoever in Goods; and

9.4.4. any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods where indirect, special or consequential loss or damage includes:

(a) any loss of income, profit or business; or

(b) any loss of goodwill or reputation.

## **10. Indemnity**

10.1. The Customer will indemnify and keep indemnified and hold Cerbis Ceramics harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by Cerbis Ceramics, and from and against all actions, proceedings, claims or demands made against Cerbis Ceramics, arising from one or more of the following:

10.1.1. the Customer's failure to comply with any laws, rules, standards, regulations or instructions applicable in relation to the Goods or the use of the Goods; and

10.1.2. any negligence or breach of duty by the Customer and its employees, agents or contractors in relation to the Goods or the use of the Goods.

## **11. Storage fees**

11.1. The Customer must collect or accept delivery of the Goods by the later of:

11.1.1. the date specified as the collection or delivery date in the relevant tax invoice or sales order issued by Cerbis Ceramics; and

11.1.2. 30 days from the date of the relevant tax invoice or sales order issued by Cerbis Ceramics.

11.2. If the Customer fails to collect or accept delivery of the Goods in accordance with clause 11.1, then the Customer must pay to Cerbis Ceramics, a daily storage fee of \$3 per pallet per day.

## **12. General**

12.1. The Contract and these Terms are governed by the laws of South Australia and the parties submit to the jurisdiction of the courts of the South Australia.

12.2. The rights and obligations of the parties will not merge on completion of any transaction under the Contract and these Terms or upon the execution of any other document in connection with the subject matter of the Contract and the Terms.

12.3. All rights under the Contract and these Terms are in addition to and do not abrogate, limit or reduce any other rights that Cerbis Ceramics may have.

12.4. Any provision of the Contract and these Terms that is invalid, unenforceable or illegal must be read down to the extent necessary to avoid that effect. If that is not possible, that provision must be excluded from the Contract and these Terms but only to the extent necessary to avoid that effect. All other provisions of the Terms continue to be valid and enforceable.

12.5. Unless otherwise specified, time is of the essence in the Contract.

12.6. Cerbis Ceramics may vary the Terms with reasonable notice to the Customer.

12.7. A right or obligation under the Contract and these Terms cannot be waived except by a document executed by the party waiving that right or obligation and specifying the waiver.