

TERMS AND CONDITIONS OF SALE

(Effective from 16 August 2019)

1. Terms:
 - 1.1. Each sale of Goods is made upon and subject to these Terms and Conditions of Sale.
2. Definitions
 - 2.1. "Customer" means the person, trust, partnership or company to whom the invoice is submitted, and if more than one, jointly and severally.
 - 2.2. "Goods" means goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services or hereinafter defined).
 - 2.3. "PPS Regulations" means the *Personal Property Securities Regulations 2010* (Cth).
 - 2.4. "PPSA" means the *Personal Property Securities Act 2009* (Cth).
 - 2.5. "PPS Law" means:
 - a) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations (each as amended from time to time); and
 - b) any amendment made at any time to any other legislation as a consequence of a law or regulation.
 - 2.6. "Price" means the cost of the Goods as agreed between the Seller and the Customer subject to clause 5 of this contract.
 - 2.7. "Seller" means The Pool Tile Company Pty Ltd ACN 009 824 499 ABN 40 009 824 499 and its successors and assigns.
 - 2.8. "Services" means all services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined).
 - 2.9. "Terms and Conditions" means these terms and conditions of sale.
3. Acceptance
 - 3.1. Acceptance of these Terms and Conditions is deemed to occur when the Customer orders Goods and Services from the Seller.
 - 3.2. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
 - 3.3. Upon acceptance of these Terms and Conditions by the Customer the Terms and Conditions are irrevocable and can be rescinded only in accordance with these Terms and Conditions or with the written consent of the manager of the Seller.
 - 3.4. None of the Seller's agents or representatives are authorized to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorized statements.
4. Goods
 - 4.1. The Goods are as described on the invoices and quotation as provided by the Seller to the Customer.
5. Price and Payment:
 - 5.1. The prices charged are based on the price list published by the Seller.
 - 5.2. The Price shall be as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied.
 - 5.3. Prices are subject to change without notice. Wherever possible, one month's notice will be given for any price changes.
 - 5.4. Any prices do not include delivery costs unless otherwise specifically stated. The charge for delivery of Goods shall be at the Seller's ruling rate of cartage at the date of delivery. Urgent deliveries will attract a further surcharge.
 - 5.5. At the Seller's sole discretion a deposit may be required for non-stock items. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and / or Services and shall become immediately due and payable.
 - 5.6. Payment is required prior to delivery of the Goods and / or Services unless credit arrangements have been made strictly in accordance with the Seller's credit policy.
 - 5.7. Payment will be made by:
 - (a) Direct Deposit. ANZ Bank, Newstead BSB Code: 014-245, Account No.: 49648-2807. Goods released upon receipt of payment advice. Please fax bank deposit slip or e-mail advice.
 - (b) Cheque. Made payable to: The Pool Tile Company Pty Ltd, 3/75 Longland St, Newstead QLD 4006. Goods released upon clearance of cheque.
 - (c) Credit Card. The Seller accepts MasterCard, Visa and American Express.
 - (d) Cash.
6. Ordering:
 - 6.1. It is the responsibility of the Customer to ensure that sufficient Goods are purchased to complete the Customer's job. The Seller cannot guarantee future supply of any product.
 - 6.2. Where the Seller provides an estimate, the Customer must satisfy itself of its accuracy.
7. Colour:
 - 7.1. The Customer acknowledges that variations in the colour of the Goods will occur from batch to batch and are beyond the control of the Seller. All Goods must be inspected and approved prior to laying as claims cannot be accepted or liability admitted once tiles are laid.
 - 7.2. The Seller accepts no responsibility for variations in colour between Goods supplied under different orders or where Goods are delivered separately at the request of the Customer.
8. Delivery of Goods and / or Services:
 - 8.1. Delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at the Seller's address.
 - 8.2. Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
 - 8.3. The costs of delivery which the Customer reasonably directs the Seller to incur shall be reimbursed by the Customer and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Customer's agent.
 - 8.4. The Seller may deliver the Goods by separate installments (in accordance with the agreed delivery schedule).
 - 8.5. Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
 - 8.6. The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
9. Risk, Property and PPSA
 - 9.1. Risk in the Goods passes to the Customer on delivery. If the Customer collects the Goods or arranges for their collection from the Seller then delivery will be deemed to occur on collection of the Goods from the Seller. Notwithstanding the passing of risk:

- (a) all Goods delivered by the Seller to the Customer remain the property of the Seller until all money owing to the Seller by the Customer has been paid in full. Until that time the Customer may sell the Goods in the ordinary course of business and the proceeds will be deemed to be held in trust for and as the property of the Seller. The Customer must not assign any property held in trust on behalf of the Seller to any third party. The Customer must separately store or otherwise distinguish Goods delivered by the Seller until title in them passes to the Customer.
 - (b) the Seller will be entitled to enter the premises of the Customer at any time to inspect the Goods and all records in relation to all Goods supplied by the Seller and all records in respect of the sale of those Goods by the Customer. The Customer must keep accurate records of all Goods purchased from the Seller.
 - (c) the Seller will be entitled to enter the premises of the Customer at any time to recover possession of those Goods for which payment in full has not been made by the due date and the Customer provides the Seller with an irrevocable licence to enter all property / premises it owns or controls at any time for this purpose. If the Seller enters the premises of the Customer to take possession of the Goods and it is not possible to otherwise identify the ownership of the Goods in the possession of the Customer, the Goods will be treated as though they were sold by the Customer in the same sequence as the Customer took delivery of the Goods. If the quantity of Goods exceeds the amount owing, the Seller will be entitled to determine which of the Goods it claims ownership in.
 - (d) the Customer acknowledges that the Seller can only transfer title or rights in respect of Goods that it has, and if Goods are purchased by the Seller from a third party, the Seller can only transfer such title or rights as that third party had and has transferred to the Seller.
 - (e) the Customer acknowledges that a Purchase Money Security Interest (PMSI) is granted by the Customer in favour of the Seller, in all Goods that are supplied from time to time by the Seller to the Customer and which are not paid for in full by the Customer at or prior to delivery.
- 9.2. The Customer agrees to notify the Seller of any change in its ownership, name or address. Notwithstanding any such change in the Customer's ownership, trading structure or name or any advice by it to the Seller of such change, the Customer will remain personally liable for payment of the price of any Goods supplied pursuant to these Terms and Conditions and for compliance with these Terms and Conditions until it has received written confirmation from the Seller that its account has been closed and full payment received.
- 9.3. The Customer agrees to do all such things, provide all such information, pay all fees and sign all documents as are necessary and required by the Seller to enable the Seller to acquire a perfected security interest in all Goods supplied by the Seller to the Customer.
- 9.4. Without limiting any other provision of these Terms and Conditions, the Customer waives its right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or financing change statement relating to any PMSI or other security interest created under these Terms and Conditions.
- 9.5. The Customer and the Seller agree that, to the extent permitted by law and in respect of any PMSI created under these Terms and Conditions:
- (a) the Customer and the Seller agree that sections 96, 115 and 125 of the PPSA do not apply to these Terms and Conditions;
 - (b) the Customer and the Seller contract out of:
 - i. the Seller's obligation to:
 - A. dispose of or retain any Goods under section 125 of the PPSA; and
 - B. include details of amounts paid to other secured parties in a statement of account under section 132(3)(d) of the PPSA;
 - ii. section 142 of the PPSA; and
 - iii. section 143 of the PPSA;
 - iv. section 157 of the PPSA;
 - (c) the Customer and the Seller contract out of the Customer's right to (and the Customer waives its right to):
 - i. receive notice of the removal of an accession under section 95 of the PPSA;
 - ii. receive notice under sections 118, 121(4), 130, and 132(3)(d) of the PPSA;
 - iii. receive notice of any action of the Seller to enforce any security interest in liquid assets under section 121(4) of the PPSA;
 - iv. receive notice of the seller proposal to dispose of any Goods under section 130 of the PPSA;
 - v. receive a statement of account under section 132(4) of the PPSA; and
 - vi. any other provision of the PPSA notified to the Customer by the Seller after the date of acceptance of the Application; and
 - (d) the Customer and the Seller contract out of the application of Part 4.3 of the PPSA (other than sections 126, 128, 129(1), 133 and 134(1)) if that Part would apply by virtue of section 116(2) of the PPSA.
- 9.6. The Customer agrees to enter into further security documentation as required by the Seller as a condition of granting a credit facility, further credit or continuing to provide credit to the Customer. If there is an inconsistency between the provisions of those security documents and these Terms and Conditions then the provisions of those security documents will prevail.
10. Return of Goods / Defects / Competition and Consumer Act 2010
- 10.1. It is the responsibility of the buyer to check all Goods on receipt, in all respects – no claims will be investigated by the Seller for shortages, batch variations, product quality or performance 48 hours after delivery or if the tiles have been fixed.
- 10.2. Any Goods delivered to the Customer which are damaged or defective, or which are not otherwise in accordance with the Customer's order, may be returned to the Seller within seven (7) days of delivery, at no cost to the Customer. The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the Terms and Conditions and free from any defect or damage.
- 10.3. For defective Goods, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Customer has complied with the provisions of Clause 10.2;
 - a. the Seller will not be liable for Goods which have not been stored or used in a proper manner;
 - b. the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as it is reasonably possible in the circumstances.
- 10.4. No tiles will be accepted for credit unless they are provided in unopened cartons of current shades and colours with the Customer's copy of the original invoice. The Seller will deduct up to a 10% restocking fee in addition to a \$50 administration fee for returned Goods in resaleable condition within 30 days of invoice date. The cost of return freight will be borne by the Customer.
- 10.5. Goods made to special order or Customer specifications are under no circumstances acceptable for credit or return. Cancellation of orders for special items will not be accepted once these orders are in production.
- 10.6. Whilst every effort will be taken by the Seller to match colour of product, the Seller will take no responsibility for any variation between sale samples and the final product.
- 10.7. The Seller reserves the right to refuse to accept any tiles for credit.
11. Default and Consequences of Default
- 11.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the rate of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgment.
- 11.2. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs and in addition all of the Seller's nominees cost of collection.
- 11.3. Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the Terms and Conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.

- 11.4. In the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; then without prejudice to the Seller's other remedies at law
 - (d) the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (e) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.
12. Privacy Act 1988
- 12.1. The Customer agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Seller.
- 12.2. The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit under Section 18K (1)(h) of the Privacy Act 1988.
- 12.3. The Customer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time:
- (a) provision of Goods and Services;
 - (b) marketing of Goods and Services by the Seller,
 - (c) analyzing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods and / or Services;
 - (d) processing of any payment instructions and/or credit facilities requested by the Customer; and
 - (e) enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods and Services.
- 12.4. The Seller may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and or
 - (b) allow the credit reporting agency to maintain a credit information file containing information about the Customer.
- 12.5. The Customer further authorises and consents to The Seller disclosing information about its credit worthiness to credit reporting agencies and credit providers (including identity particulars and details of overdue payments), who have or are to intend to enter into some commercial or business dealings with it and/or grant credit to it. For the purposes of this paragraph 'report' and 'information' include any credit report originating from a credit reporting agency or any other record or information that has any bearing on the Applicant's credit worthiness, credit standing, credit history, credit capacity and personal information.
13. Liability / Warranty
- 13.1. Nothing herein contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any Goods pursuant to the contract of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act (hereunder collectively referred to as "the Acts") which by law cannot be excluded, restricted or modified. Provided that to the extent that any of the Acts permits the Seller to limit its liability for the breach of any condition or warranty applying in the case of Goods, such one or more of the following as the Seller in its discretion determines:
- (a) the replacement of the Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of replacing the Goods or acquiring equivalent Goods;
 - (d) the payment of the cost of having the Goods repaired.
- 13.2. The Seller is not responsible for any expenses or injury arising from the use of any product supplied thereby.
- 13.3. For Goods not manufactured or imported by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever, except for the express conditions as details and stipulated in the manufacturer's warranty.
14. Law
- 14.1. The parties agree that these Terms and Conditions shall be governed and construed in accordance with the laws of the State of Queensland and the parties agree to submit to the jurisdiction to the Courts of Queensland.
15. Force Majeure
- 15.1. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm, government restrictions, theft, vandalism, delay in shipment or any other event beyond the reasonable control of either party.