

HINTON PERRY & DAVENHILL LIMITED
TERMS & CONDITIONS FOR THE SUPPLY OF PRODUCTS
INCLUDING DREADNOUGHT TILES

Version date 08.04.2022

PART A - PLEASE READ IMPORTANT

- (A) Please read these terms and conditions carefully before you submit your order to us.**
- (B) These are the terms and conditions of contract that apply to our supply of products to both our **business customers** and **consumer customers**. However, depending upon whether you are a business customer or a consumer customer, you will have different rights and obligations under these terms and conditions.**
- (C) When we refer to a **business customer** then, in relation to our supply of products, we are referring to a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.**
- (D) When we refer to a **consumer customer** then, in relation to our supply of products, we are referring to an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.**
- (E) If you are a business customer then all the provisions of Part B (clauses 1 to clause 15) shall apply to the sale contract (but not the provisions of Part C).**
- (F) If you are a consumer customer, purchasing directly from us, then all the provisions of Part C (clauses 16 to clause 32) shall apply to the sale contract between us (but not the provisions of Part B).**

PART B TERMS APPLYING TO BUSINESS CUSTOMERS ONLY

1. TERMS APPLYING TO BUSINESS CUSTOMERS ONLY

The Customer's attention is drawn in particular to the provisions of Clause 12 (Limitation of Liability)

1.1 The following definitions shall apply in these Conditions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Company: Hinton Perry & Davenhill Limited registered in England and Wales with company number 00610931 and whose registered office address is at Dreadnought Works, Pensnett, Brierley Hill, West Midlands, DY5 4TH.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 14.4.

Contract: the contract between the Company and the Customer for the sale and purchase of the Products in accordance with these Conditions.

Defects: defects / faults in a unit of Product such that that it does not meet the Product Standard.

Dreadnought Commercial Quality Tiles: shall have the meaning in clause 6.

Customer: the person or firm who purchases the Products from the Company.

Defective Products: products that do not comply with the Product Standard.

Delivery Location: has the meaning given in clause 4.1 and clause 4.3 (as the context requires).

Force Majeure Event: any events, circumstance or causes not within the Company's reasonable control including without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic;

(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts; (h) non-performance by a supplier to, or subcontractor of, the Company; and (i) interruption or failure of utility service.

Products: the Products to be supplied pursuant to the Contract.

Product Specification; the Company's product specification for the Product in question (including, as applicable any technical and environmental information) as provided by the Company to the Customer or otherwise made available to view on the Company's website.

Product Standard: shall have the meaning given in clause 5.

Order: the Customer's order for the supply of Products (whether placed via a purchase order form, an email, verbally or otherwise) or the Customer's written acceptance of the Company's quotation, as the case may be.

Warranty Period shall have the meaning given in clause 5.1.

- 1.2 The following rules of interpretation shall apply in these Conditions: (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (b) A reference to a party includes its personal representatives, successors and permitted assigns; (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision; and (d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate (including any conditions of purchase), or which are implied by law, trade custom, practice or course of dealing. All quotations are made and all orders are accepted by the Company subject to these Conditions.
- 2.2 The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Customer is responsible for ensuring that the content of the Order is complete and accurate.
- 2.3 If the Customer wishes to rely upon any statement or any representation made by the Company (other than any written statement or representation contained in documents enclosed with any quotation of the Company) then the Customer must set out such statement or representation in its Order. The Company reserves the right to clarify any such statement or representation and to submit a new quotation if appropriate.
- 2.4 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.5 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.6 Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.7 A quotation for the Products given by the Company shall not constitute an offer. A quotation may be withdrawn at any time by the Company and it shall only be valid for a period of 20 Business Days from its date of issue.

3. Samples and specifications

- 3.1 In the ordinary course of developing its Products the Company reserves the right to alter the Product Specification of any of its Products or to delete any Product from its range without notice. The Company reserves the right to amend the Product Specification if required by any applicable statutory or regulatory requirement.

- 3.2 Any sample supplied by the Company to a Customer is intended only to give a general indication of the quality, colour and/or type of the Product and shall not render any subsequent sale a sale by sample. The Customer agrees and acknowledges that there may well be variations in colour and texture between different batches of Product.
- 3.3 The Company shall not be under any obligation to check or to verify the accuracy or adequacy of any plans or specifications supplied by, or on behalf, the Customer in relation to the manufacture and/or supply of any Products; the Customer shall indemnify the Company against any loss, expense or liability incurred arising directly or indirectly from any inaccuracy, omission, error or fault in any such plans or specifications.
- 3.4 The Customer is solely responsible for ensuring that the Products are suitable for their intended purpose.
- 3.5 Only where the Company has undertaken in its quotation to supply Product in conformity with a particular British Standard shall the Company be obliged to supply goods complying with that British Standard.

4. Delivery of Products

- 4.1 Where it has been agreed that the Company shall deliver the Products then subject to clause 4.2 the Company shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Company notifies the Customer that the Products are ready. Delivery of the Products shall be completed on the unloading of the Products at the Delivery Location.
- 4.2 Where it has been agreed that the Company shall deliver the Products then delivery will be made at the nearest point via and on a hard road suitable for vehicles. If the delivery vehicle of the Company or its agent is required to deliver at any time off a hard road then the Customer will be responsible for and indemnify the Company against any loss, expense or damage suffered or incurred by the Company as regards any damage to any vehicles, roadway, pipes, manholes, cables and other property of any sort resulting therefrom.
- 4.3 Where it has been agreed that the Customer shall collect the Products then the Customer or its agent shall collect the Products from the Company's premises at Dreadnought Works, Pensnett, Brierley Hill, West Midlands, DY5 4TH or such other location as may be agreed with the Customer prior to delivery (**Delivery Location**) within three Business Days of the Company notifying the Customer that the Products are ready. Delivery of the Products shall be completed on the loading of the Products at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.5 If the Company fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products. The Company shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.6 If the Customer fails to accept delivery of the Products within 5 Business Days of the Company notifying the Customer that the Products are ready (or, as applicable, fails to collect the Products within 5 Business Days of the Company notifying the Customer that the Products are ready for collection) then, except where such failure or delay is caused by the Company's failure to comply with its obligations under the Contract:
- 4.6.1 delivery of the Products shall be deemed to have been completed at 9.00 am on the sixth Business Day following the day on which the Company notified the Customer that the Products were ready; and
- 4.6.2 the Company shall store the Products until delivery takes place and charge the Customer for all related costs and expenses.
- 4.7 If 10 Business Days pass after the day on which the Company notified the Customer that the Products were ready for delivery or collection (as the case maybe) and the Customer has not taken or accepted actual delivery of them, then the Company may resell or otherwise dispose of part or all of the Products and, after deducting storage, transport and selling costs, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.

- 4.8 The Company may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 If the Company delivers up to and including 5% more or less than the quantity of Products ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Company shall make a pro rata adjustment to the invoice for the Products.
- 4.10 Tiles are supplied on wooden pallets with a nominal quantity of 1000 tiles per pallet. This figure will vary across individual pallets.

5. Product Warranty

- 5.1 The warranty in this clause 5.1 does not apply to Dreadnought Commercial Quality Tiles. Subject always to the provisions of clauses 6 to 9 (inclusive) the Company warrants that on delivery and for the period of 10 years from the date of delivery (the "**Warranty Period**") each unit of Product delivered (but excluding Dreadnought Commercial Quality Tiles) shall: (a) conform in all material respects with the applicable Product Specification; and (b) be free from material defects in design, material and manufacture, together the "**Product Standard**".
- 5.2 In respect of Products covered by the warranty in clause 5.1 the terms implied by sections 13 to 15 of the Sale of Products Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.3 These Conditions shall apply to any replacement Products supplied by the Company pursuant to clause 7.2.2 or clause 8.2, save that the warranty period for any such replacement Product, shall be either: (a) equal to the period of time left under the original warranty (where applicable) for the Product replaced, as at the date of the warranty claim; or (b) the period of one month, whichever is the greater.

6. Dreadnought Commercial Quality Tiles

- 6.1 Dreadnought Commercial Quality Tiles are "seconds" that is they have imperfections such that they do not pass the Company's rigorous sorting process for best quality Products and this is reflected in their pricing. By way of example, tiles categorised as Commercial Quality Tiles may be irregular in shape or colour, have small chips and/or contain cracks above the water line. The use of Commercial Quality Tiles for a project will require more sorting of the tiles onsite to achieve the best result. The warranty in clause 5.1 does not apply to Dreadnought Commercial Quality Tiles.

7. Defects apparent on inspection

- 7.1 The Customer shall inspect the Products upon delivery and in any event within 20 Business Days after taking delivery of the Products. The Customer shall have no claim against the Company for shortages and/or for Defects apparent on inspection unless: (a) a written complaint is made to the Company within 25 Business Days after the Customer has taken delivery of the Products specifying the particular matter complained of; and (b) the Company is given an opportunity to inspect the Products and to fully investigate any complaint before any use is made of the Products.
- 7.2 If the Company, acting reasonably and subject to clause 9, upholds the Customers complaint then the Company shall (a) make good any shortages; and (b) in relation to any unit of Defective Product, at its option, replace it or refund the price of that Defective unit of Product in full.

8. Defects not apparent on inspection

- 8.1 The Customer shall have no claim against the Company in respect of Defects in the Products not apparent on inspection unless:
- 8.1.1 a written complaint is made to the Company as soon as is reasonably practicable after the Defect is first noticed and in any event with 20 Business Days;
- 8.1.2 the Company is given a reasonable opportunity of examining the applicable Product in situ; and
- 8.1.3 in respect of Products covered by the warranty in clause 5.1, the claim must be made within the Warranty Period of the Products in issue and that the claim is made within this Warranty Period must be proven to the Company's reasonable satisfaction.

8.2 If the Company, acting reasonably and subject to clause 9, upholds the Customers complaint then the Company shall in relation to any unit of Defective Product, at its option, replace it or refund the price of that Defective unit Product in full.

9. Upholding complaints

9.1 For the avoidance of doubt the Company will not uphold a complaint or claim under clause 7 or clause 8 nor be liable for any failure of a Product to meet the Product Standard where one or more of the following apply:

9.1.1 the defect arises because the Customer, its contractors or any other third party has failed to store, install, use and/or maintenance the Products properly including in accordance with good industry practice, any guidance of the company, and/or any applicable British Standards;

9.1.2 the defect arises because the Customer, its contractors or any other third party has failed to follow the fixing instructions including as regards the correct use of underlay and vents;

9.1.3 the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer; and

9.1.4 the defect arises as a result of fair wear and tear, misuse, wilful damage, negligence, abnormal storage or working conditions and/or incorrect exposure to weather / climate conditions.

10. Title and risk

10.1 Risk in respect of loss or damage to the Products shall pass to the Customer when Products are unloaded in cases where the Company is responsible for delivery; and immediately upon loading when the Products are collected by or on behalf of the Customer from the premises of the Company.

10.2 Title to the Products shall not pass to the Customer until the earlier of (a) the Company receives payment in full (in cash or cleared funds) for the Products and any other Products that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums; and (b) the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 10.4.

10.3 Until title to the Products has passed to the Customer, the Customer shall:

10.3.1 store the Products separately from all other Products held by the Customer so that they remain readily identifiable as the Company's property;

10.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;

10.3.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

10.3.4 notify the Company immediately if it becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4 (inclusive); and

10.3.5 give the Company such information as the Company may reasonably require from time to time relating to the Products; and the ongoing financial position of the Customer.

10.4 Subject to clause 10.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Company receives payment for the Products. However, if the Customer resells the Products before that time (a) it does so as principal and not as the Company's agent; and (b) title to the Products shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.

10.5 At any time before title to the Products passes to the Customer, the Company may: (a) by notice in writing, terminate the Customer's right under clause 10.4 to resell the Products or use them in the ordinary course of its business; and (b) require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

11. Price and payment

- 11.1 Subject always to the provision of this clause 11 the price of the Products shall be the price set out in the Company's acknowledgement of Order or as otherwise set out in writing by the Company and agreed by the Customer.
- 11.2 The price stated in any quotation or in any Contract is fixed only where the Company has expressly so stated and given a period during which the price is fixed. In all other cases the Company reserves the right at any time to alter any of its prices without any notice whatsoever. In respect of Products delivered after any such change of price the price charged shall be the price current at the date of despatch of the goods by the Company. In particular the Company may, by giving notice to the Customer at any time before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to any one or more of the following:
- 11.2.1 any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, increases in the cost of labour, materials, utilities and energy (including electricity, oil and/or gas as the case maybe) and increases in other manufacturing costs);
- 11.2.2 any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Product Specification; and
- 11.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- 11.3 The price of the Products (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice; and (b) excludes, unless otherwise agreed by the Company in writing, the costs of pallets, crates and packing cases, insurance and the transport of the Products, which shall be invoiced to and payable by the Customer in addition.
- 11.4 Unless otherwise agreed in writing by the Company, the Customer shall pay for all Products before the date of despatch of the Products or the date on which they are to be made available for collection (as the case may be).
- 11.5 Where Product have been supplied on credit, then the Company may invoice the Customer for the Products on or at any time after the completion of delivery and the Customer shall pay each invoice submitted by the Company in full and in cleared funds to a bank account nominated in writing by the Company within 30 days following the end of the month in which the invoice was rendered. Time for payment by the Customer shall be of the essence as regards the Contract.
- 11.6 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 13, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 11.7 All amounts due under the Contract by the Customer shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 11.8 If the Customer fails to pay in full for any Products delivered by the due date, the Company shall be entitled to bring an action against the Customer for the Contract price notwithstanding that title in the Products may not have passed to the Customer pursuant to clause 10.
- 11.9 The Customer shall promptly inform the Company in writing of any changes to the email and postal address of the Customer's accounts payable team.

12. Limitation of liability

- 12.1 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract and whether any claims are in contract, tort (including negligence), misrepresentation, restitution or otherwise. This clause 12 shall survive termination of the Contract.
- 12.2 Nothing in these Conditions seek to limit or exclude any liability which cannot legally be excluded or limited, including liability for (a) death or personal injury caused by negligence and (b) fraud or fraudulent misrepresentation.

- 12.3 Subject to clause 12.2 the Company shall not be liable to the Customer for any one or more of the following, whether direct or indirect loss, that is: (a) loss of profit, (b) loss of sales or business, (c) loss of production, (d) loss of savings, discount or rebate (whether actual or anticipated); (e) harm to reputation or loss of goodwill, and (f) where the Product supplied is roof tiles, any claims concerning the labour costs of removing existing tiles and fitting replacement roof tiles.
- 12.4 Subject to clause 12.2 the Company shall not be liable to the Customer for any indirect or consequential loss arising under or in connection with the Contract.
- 12.5 Subject to clauses 12.2, 12.3 and 12.4 the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract shall not exceed a sum equal to 100% of the Contract price of the Products; and for these purposes the Contract price for the Products does not include for the avoidance of doubt any value added tax, taxes, carriage, packaging and insurance costs.

13. Termination

- 13.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 13.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of the Customer being notified in writing to do so;
 - 13.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 13.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 13.1.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 13.2 Without limiting its other rights or remedies, the Company may suspend supply of the Products under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.4, or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 13.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 13.4 On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 13.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 13.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

14. General

- 14.1 **Force majeure:** If the Company is prevented, hindered or delayed in or from performing any of its obligations under the Contract by as a result of a Force Majeure Event, then the Company shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

- 14.2 **Assignment and other dealings.** The Company may at any time assign, transfer, subcontract, delegate or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, subcontract, delegate, or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.
- 14.3 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 14.4 **Variation.** No variation to the Contract shall be effective unless it is in writing and authorised representatives of the parties.
- 14.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.
- 14.7 **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the proper address; and (b) if sent by pre-paid first-class post or by a next working day delivery service at 9.00 am on the second Business Day after posting. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 14.8 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to the Contract.
- 15. Export Terms**
- 15.1 Where the Products are to be supplied by way of export from the United Kingdom (UK) then the following provisions of this clause 15 shall apply:
- 15.1.1 the latest version of the 'Incoterms' of the International Chamber of Commerce in force at the time when the Contract is made shall apply so far as they are not inconsistent with these terms and, unless otherwise agreed in writing, the Products are supplied ex-works the Company's UK business premises;
- 15.1.2 where the products are sent by a route including sea transport the Company shall be under no obligation to give a notice under Section 32(3) of the Sale of Goods Act 1979;
- 15.1.3 the Customer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any customs or duties thereon;
- 15.1.4 unless otherwise specifically agreed in writing by the Company payment of all amounts due to Company under a Contract shall be made against a proforma Invoice; that is fully paid to the Company by the Customer before the Company is obliged to dispatch the Products from its premises; and

- 15.1.5 the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

PART C TERMS APPLYING TO CONSUMER CUSTOMERS ONLY

Please read these terms and conditions carefully

16. TERMS APPLYING TO CONSUMER CUSTOMERS ONLY

16.1 **Part C** sets out the terms and conditions on which we supply our products to you as a consumer customer. Please read these terms carefully before you contract with us.

16.2 We are Hinton Perry & Davenhill Limited a company registered in England and Wales with company number 00610931 and whose registered office address is at Dreadnought Works, Pensnett, Brierley Hill, West Midlands, DY5 4TH. Our registered VAT number is 276958983. You can contact us by telephoning our customer service team on 01384 77405 or faxing us on 01384 74553 or by emailing us at sales@dreadnought-tiles.co.uk or by writing to us at our postal address (as set out above).

17. Contracting with you

17.1 A contract will only come into force between us when we notify you that we have accepted your order. Simply placing an order does not bind us. All orders placed are accepted at our entire discretion. If we are unable to accept your order we will inform you of this as soon as reasonably practical.

18. Variations, specification and changes

18.1 The images of the products on our website in our brochure are for illustrative purposes only. Given the nature of our products there may be variations in the colour or texture due to the nature of the source / raw material which can vary between batches.

18.2 If we are making the product to the measurements and/or specification that you (or your contractors, have given us) then you are responsible for ensuring that the measurements and the specification are correct.

18.3 If you wish to make a change to your order then please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the product, the timing of supply or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change.

18.4 We may change the product following our acceptance of your order: (a) to reflect changes in relevant laws and regulatory requirements; or (b) to implement minor technical adjustments and improvements. These changes will not affect your use of the product.

19. Delivering the products to you

19.1 During the order process we will inform you: (a) of the costs of delivering the products to you; and (b) when we will provide the products to you (this will depend on our prevailing lead time for the product in question).

19.2 You are encouraged to check to the best of your ability for any defects or discrepancies following delivery at the earliest opportunity, and to take prompt action as soon as you become aware of any problem. If you have any concerns following delivery of the product (such as damaged or defective product or a short fall of the ordered product) then you should notify us of your complaint within a reasonable time after discovery of the problem.

19.3 If our supply of the products is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any products you have paid for but not received.

19.4 If you have asked to collect the products from our premises (including via your carrier), then you can collect them from us at any time during our working hours of on weekdays (excluding public holidays) and Saturdays. Please contact us to arrange a time.

- 19.5 If no one is available at the agreed delivery address to take delivery then we will leave you a note informing you of how to rearrange delivery or collect the products from us. If you do not collect the products from us as arranged or if, after a failed delivery to you, you do not re-arrange delivery or collect them from us we will contact you for further instructions and we reserve the right to charge you for storage costs and any further delivery costs. If, despite our reasonable efforts, we are unable to contact you or re-arrange delivery or collection we may end the contract and clause 27.
- 19.6 A product will be your responsibility (i.e. at your risk such that you are responsible for any loss or damages to the Product) from the time we deliver the product to the agreed delivery address or you, or a carrier organised by you, collect it from us. You will only own the product ordered once we have received payment in full.
- 19.7 We may need certain information from you so that we can supply the products to you, for example, delivery related information. If you do not give us this information within a reasonable time of us asking for it, or if you give us incomplete or incorrect information, we may either end the contract (and clause 27 will apply) or make an additional charge of a reasonable sum to compensate us for any extra work or activity that is required as a result. We will not be responsible for supplying the products late or not supplying any part of them if this is caused by you not giving us the information we need within a reasonable time of us asking for it.
- 19.8 If you do not pay us for the products when you are obliged to (see clause 28) then we may suspend supply of the products until you have paid us the outstanding amount. We will contact you to tell you we are suspending supply of the products.

20. Product warranty

20.1 The warranty in this clause 20.1 does not apply to Dreadnought Commercial Quality Tiles as defined in clause 21 below. We warrant that on delivery and for the period of 10 years from the date of delivery (the “**Warranty Period**”) each unit of product delivered (excluding Dreadnought Commercial Quality Tiles) shall:

20.1.1 conform in all material respects with our product specification for the product in issue; and

20.1.2 be free from material defects in design, material and manufacture.

the “**Product Standard**”.

20.2 Subject to clause 20.3, if:

20.2.1 a written claim is sent to us as soon as is reasonably practicable after you first become aware of a potential warranty claim;

20.2.2 your claim is made within the applicable Warranty Period (which must be proven to our reasonable satisfaction.);

20.2.3 we are given a reasonable opportunity of examining the products in issue in situ; and

20.2.4 we consider your claim to be valid (our acting reasonably)

then we will, at our discretion, repair or replace the defective products, or refund the price of the defective products in full.

20.3 We shall not be liable for any products failure to comply with the warranty in clause 20.1 if one or more of the following apply:

20.3.1 the non-compliance arises because you, or your contractors or any other third party has failed to store, install, use and/or maintenance the products properly including in accordance with good industry practice and any applicable British Standards;

20.3.2 the non-compliance arises because you, your contractors or any other third party has failed to follow the fixing instructions including as regards the correct use of underlay and vents;

20.3.3 the non-compliance arises as a result of our following any drawing, design or specification supplied by you; and

20.3.4 the non-compliance arises as a result of fair wear and tear, misuse, wilful damage, negligence, abnormal storage or working conditions and/or incorrect exposure to weather / climate conditions.

20.4 These conditions shall apply to any replacement products supplied by us pursuant to clause 20.2 save that the warranty period for any such replacement product, shall be either: (a) equal to the period of time left under the original warranty for the product replaced, as at the date of the warranty claim; or (b) the period of one month, whichever is the greater.

20.5 The provisions of this clause 20 do not affect your statutory rights as a consumer.

21. Dreadnought Commercial Quality Tiles

21.1 Dreadnought Commercial Quality Tiles are "seconds" that is they have imperfections such that they do not pass our rigorous sorting process for best quality Products and this is reflected in their pricing. By way of example, tiles categorised as Commercial Quality Tiles may be irregular in shape or colour, have small chips and/or contain cracks above the water line. The use of Commercial Quality Tiles for a project will require more sorting of the tiles onsite to achieve the best result. The warranty in clause 20.1 does not apply to Dreadnought Commercial Quality Tiles.

22. Questions and complaints

22.1 If you have any questions or complaints about the product, please contact us.

23. Terminating the Contract for our breach and your legal rights

23.1 We are under a legal duty to supply products to you that are in conformity with the contract. As a consumer customer you may be entitled to terminate (end) the contract in circumstances when we have breached the contract (that is done something wrong in a contractual sense). Please note that consumers have legal rights under the Consumer Rights Act 2015 and under other legislation. Please visit the Citizens Advice website www.adviceguide.org.uk for more detailed information as to your rights and remedies.

24. Your right to cancel within the cancellation period

24.1 As a consumer client you may have the right to cancel (end) the contract simply because you have changed your mind under the Consumer Contract Regulations 2013. **Please read the rest of this clause 24 carefully for when this right applies.** Please note that the right to cancel must be exercised within the cancellation period (please see clause 24.3) and you must notify us (please see clause 25).

24.2 Please note under the Consumer Contract Regulations 2013, you do not have a right to cancel the contract on changing your mind in respect of any of the following circumstances:

24.2.1 the supply of products to you that are bespoke; that is made to your specifications or which are clearly personalised. This is because where we create bespoke products for you, including where we adapt or tailor products to the specification of a consumer customer, cancellation rights do not apply as otherwise we would be left with a product specific to a particular consumer's preferences or requirements with no ready and commercial market for the same and as such we would be left unfairly out of pocket;

24.2.2 any products which become mixed inseparably with other items after their delivery.

24.3 **What is the cancellation period within which to exercise a right to cancel?** Where the Contract relates to the supply of products (goods) then you have 14 days after the day that you (or someone you nominate) receives the products to exercise your cancellation right unless:

(a) your Products are split into several deliveries over different days. In this case you have until 14 days after the day you (or someone you nominate) receives the last delivery to change your mind about the products; or

(b) your products are for regular delivery over a set period. In this case you have until 14 days after the day you (or someone you nominate) receives the first delivery of the products.

25. Notice to end the contract

25.1 Where you are entitled to end (terminate) the contract under clause 23 (termination for our breach) or cancel it under clause 24 (right to cancel) and wish to do so, you must let us know by either telephoning, emailing or writing to us stating your intention and including details of the applicable products and your name and address. However, we would suggest that it is best that you either email or write to us for evidential purposes. If you are exercising

your right to cancel the contract under clause 24 then you may use (but do not have to) the cancellation template set out below and then complete it and either email or post it to us.

Template cancellation form

To Customer Services, Hinton Perry & Davenhill Limited, Dreadnought Works, Pensnett, Brierley Hill, West Midlands, DY5 4TH.

[or] to Customer Services by email using the following e-mail address: sales@dreadnought-tiles.co.uk

I hereby give notice that I cancel my contract for the sale of the following products [xxx] ordered on [xxx] [or] received on [xxx].

Name of consumer(s), [xxx]

Address of consumer(s), [xxx]

Order Number [xxx]

Signature of consumer(s) (or print name if sent by email),

Date [xxx]

26. Returning products

- 26.1 If you cancel the contract in accordance with clause 24 after products have been dispatched or delivered to you, then you must return them to us. Where the Products are not suitable for posting, you must allow us to collect them from you. Please call customer services or email us to arrange collection.
- 26.2 We will pay the costs of return if: (a) the products are faulty or misdescribed; or (b) you are ending the contract because we have told you of an error in pricing or a delay in delivery due to events outside our control or because you have a legal right to do so as a result of our breaching our contract (that is acting contrary to the terms and conditions of our contract). In all other circumstances (including where you are validly exercising your right to cancel and change your mind) you must pay the full costs of return. If you are responsible for the costs of return and we are collecting the product from you, we will charge you the direct cost to us of collection.
- 26.3 Where you have previously paid us, we will refund you the price you paid for the products including delivery costs, by the method you used for payment. However, we may make deductions from the price, as described below. We will make any refunds due to you as soon as reasonably practical and typically your refund will be made within 14 days of your telling us you have changed your mind.
- 26.4 If you are validly exercising your right to cancel (change your mind) under clause 24 above then we may reduce your refund of the price to reflect any reduction in the value of the products, if this has been caused by your handling them in a way beyond what is necessary to establish the nature, characteristics and functioning of the products (such as handling the products over and above how you might in a shop situation). If we refund you the price paid before we can inspect the products and later discover you have handled them in an unacceptable way, you must pay us an appropriate amount.

27. Our rights to end the contract

- 27.1 We may terminate (end) the contract if you do (or fail to do) something serious and contrary to its terms; for example we may terminate (end) the contract by giving notice in writing to you if:
- 27.1.1 you do not make any payment to us when it is due and you still do not make payment within 10 days of us reminding you that payment is due;
- 27.1.2 you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the products, for example, delivery information; or
- 27.1.3 you do not, within a reasonable time, allow us to deliver the products to you or collect them from us.
- 27.2 If we terminate (end) the contract because you have done something wrong (that is you are in breach of contract) then we reserve the right to claim compensation (damages) from you in respect of any losses and/or costs we suffer or incur as a result.

28. Price and payment

- 28.1 **Price for the product.** The price of the product plus Value Added Tax (VAT) will be the price (a) set out in our quotation or (b) otherwise agreed as part of the order process. If the rate of VAT changes between your order date and the date we supply the product, we will adjust the rate of VAT that you pay, unless you have already

paid for the product in full before the change in the rate of VAT takes effect. You must pay for the products in full and in cleared funds before we will dispatch them.

29. Liability - our responsibility for loss or damage suffered by you

- 29.1 If we fail to comply with the terms of the contract then we are responsible for the loss or damage you suffer that is a foreseeable result of our breaking the contract but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.
- 29.2 We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence.
- 29.3 If you are a consumer customer then we only supply the products to you for domestic and private use. If you use the products for any commercial, business or re-sale purposes then our liability to you will be limited as set out in clause 12 above.

30. Transfer of warranty

- 30.1 You may only transfer your rights or your obligations under the contract to another person if we agree to this in writing. However, you may transfer our product warranty (as set out in clause 20) to a person who has acquired the property where the product that we supplied to you has been installed / used. We may require the person to whom the warranty is transferred to provide reasonable evidence to us of the original owner's proof of purchase and that they are now the owner of the relevant property.

31. Waiver

- 31.1 If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

32. Applicable law

- 32.1 These terms are governed by English law and you can bring legal proceedings in respect of the products in the English courts. If you live in Scotland you can bring legal proceedings in respect of the products in either the Scottish or the English courts. If you live in Northern Ireland you can bring legal proceedings in respect of the products in either the Northern Irish or the English courts.
-