



# STANDARD TERMS AND CONDITIONS OF SALE

NOTE: THESE CONDITIONS CONTAIN EXCLUSION CLAUSES

**DEFINITIONS** In these Conditions, unless the context requires otherwise, the following expressions shall have the following meanings:

- > **"the Agreement"** the agreements, warranties, conditions, representations and other terms set out in these Conditions and in the Order Acknowledgement;
- > **"these Conditions"** these Standard Conditions of Sale;
- > **"Customer"** the party, named as Customer in the Order Acknowledgement and/or invoice;
- > **"Strata Tiles Ltd"** Strata Tiles Ltd - supplying the Goods.
- > **"Goods"** the goods which are the subject of the Order Acknowledgement including all instruction leaflets, manuals, drawings, illustrations and specifications provided by Strata Tiles Ltd to the Customer;
- > **"Order Acknowledgement"** Strata Tiles Ltd's official written order acknowledgement of Customers order or Strata Tiles Ltd's invoice whichever of these documents is issued to Customer by Strata Tiles Ltd first;
- > **"Sale"** includes manufacture and supply.

## APPLICATION AND VARIATION OF THESE CONDITIONS

These Conditions together with any special conditions set out in the Order Acknowledgement shall be deemed to be incorporated in all agreements for the sale of any Goods and the provision of any Services by Strata Tiles Ltd to the Customer and shall apply in place of and prevail over any terms or conditions contained or referred to elsewhere or implied by trade custom, practice or course of dealing.

## FORMATION OF CONTRACT AND CANCELLATION

- a) Strata Tiles Ltd's catalogues, price lists and quotations do not constitute offers made by Strata Tiles Ltd unless they are expressed to be fixed quotations remaining open for a specified period and Strata Tiles Ltd reserves the right to withdraw or revise the same at any time prior to the Order Acknowledgement.
- b) Customer shall not cancel any order without Strata Tiles Ltd's previous consent in writing. Such consent may be made conditional on payment by Customer of an appropriate charge. No other obligation or agreement relating to the sale of the Goods, Services or the supply of the Software is binding on Strata Tiles Ltd unless set out in the Agreement or in an amendment or addition thereto duly agreed in writing by Strata Tiles Ltd.

## DOCUMENTATION AND SPECIFICATION

- a) All drawings, designs, specifications and particulars of weights and dimensions submitted by Strata Tiles Ltd remain the property of Strata Tiles Ltd and are intended merely to describe the Goods generally. They are not to be regarded as a warranty, representation or contractual term unless it is expressly so stated in the Order Acknowledgement.
- b) Customer shall ensure timely supply of information and free issue material as appropriate to enable Strata Tiles Ltd to meet delivery dates.
- c) Strata Tiles Ltd has a policy of continuous improvement on its products, and reserves the right to alter the specification of standard accordingly.

## PRICE AND VARIATION OF PRICE

- a) The Prices for the Goods and Services shall be as set out in the Order Acknowledgement and shall remain valid for 30 days from date of Order Confirmation. All Customs and Excise duties, import or export duties and all other taxes, tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the sale, supply, delivery or use of the Goods or payments for them or upon freight or other charges shall be borne by Customer and except as stated in the Order Acknowledgement are additional to the prices therein stated.
- b) If between issue of Order Acknowledgement and date of delivery the price payable by Strata Tiles Ltd for significant material items included in the goods, shall have increased, Strata Tiles Ltd may increase the prices of such Goods and shall in writing so notify the Customer, who shall accept the Goods at the new price.

## INVOICING AND PAYMENT

- a) Subject to Strata Tiles Ltd's approval of Customer's current credit rating, full payment for all invoiced items shall be made in the invoice currency so that Strata Tiles Ltd receives payment within 30 days of invoice date unless otherwise specified in the Order Acknowledgement and / or invoice and / or quotation. Payment for specially fabricated items must be made with order unless otherwise stated in writing by Strata Tiles Ltd.
- b) Strata Tiles Ltd reserves the right at its discretion at any time to withdraw any credit terms and substitute "Cash With Order".
- c) Unless otherwise expressly approved in writing by Strata Tiles Ltd, payments shall be taken to discharge Customer's oldest debt. If Customer fails to make payments on the due date, Strata Tiles Ltd may, in addition to taking any other action provided by these Conditions – charge interest on all overdue payments at 4% above the base rate from time to time declared by Nat West Bank plc from the due date until the date of payment as well after as before any judgment; and suspend all further delivery of Goods to be made under the Agreement or further performance of any other contract with Customer, in which event Customer shall not be released in any respect from its obligations to Strata Tiles Ltd under the Agreement or any such other contract.
- d) The Customer hereby provides permission for Strata Tiles Ltd to obtain a bank reference if required



# STANDARD TERMS AND CONDITIONS OF SALE

## CONTINUED

- DELIVERY**
- a) Unless otherwise expressly provided in the Order Acknowledgement, all sales are Ex Strata depot.
- b) Customer shall inspect the Goods on receipt. Strata Tiles Ltd shall be under no liability in respect of damage to Goods or incomplete delivery unless Customer's written claim is received by Strata Tiles Ltd within 2 days of receipt of the Goods (or in the case of missing or undelivered Goods), including evidence of defect or shortage as Strata Tiles Ltd may reasonably request.
- c) Any period or date for delivery stated in the Agreement is intended as an estimate only and is not a contractual commitment.
- d) Strata Tiles Ltd may deliver the Goods in one or more instalments. Where delivery is effected by instalment each instalment shall be treated as a separate contract. Failure by Strata Tiles Ltd to make any delivery or part delivery in accordance with the Agreement or any claim by Customer in respect of such delivery or part delivery shall not entitle Customer to reject the balance of the Goods agreed to be purchased by Customer. At Customer's request, Strata Tiles Ltd may consent to postponement of delivery beyond the delivery date, subject to Customer assuming the risk in the Goods and paying storage charges; Strata Tiles Ltd reserves the right on the original delivery date/milestone to invoice the order value.
- e) At the request of Customer, Strata Tiles Ltd shall as agents for Customer arrange for carriage to the destination specified in Customer's order on such terms as to carriage as Strata Tiles Ltd considers appropriate, unless Customer specified otherwise, and Strata Tiles Ltd shall invoice Customer all carriage costs incurred. Section 32(2) of the Sale of Goods Act 1979 shall not apply to the Agreement. Customer shall meet the cost of any special packaging requested by Customer or any packaging rendered necessary by delivery by any means other than Strata Tiles Ltd's normal means of delivery.

- WARRANTY**
- a) Customer shall promptly provide written particulars to Strata Tiles Ltd on becoming aware of a defect in the Goods during the Warranty Period, and shall use its best endeavours to provide Strata Tiles Ltd with all necessary access, facilities and information to enable Strata Tiles Ltd to ascertain or verify the nature and cause of the defect and to carry out its warranty obligations.
- b) Strata Tiles Ltd accepts no liability for defects caused by Customer's design or installation of the Goods.
- i) or if the Goods have been modified or repaired otherwise than as authorised in writing by Strata Tiles Ltd;
- ii) or if the Goods have not been installed, stored or maintained as recommended by Strata Tiles Ltd;
- iii) or where Customer has failed to observe the terms of payment for the Goods or any other obligation imposed by the Agreement.

- LIMITATION AND EXCLUSION**
- a) Subject to the foregoing warranty condition, Strata Tiles Ltd shall be under no liability to Customer for any damages or losses, direct or indirect, resulting from defects in design, materials or workmanship.
- b) Strata Tiles Ltd shall have no liability for any indirect or consequential losses or expenses suffered by Customer, however caused.
- c) Nothing in these Conditions shall be interpreted as excluding or restricting any legal liability of Strata Tiles Ltd for death or personal injury resulting from the negligence of Strata Tiles Ltd, its employees, agents or sub-contractors or restricting any of Strata Tiles Ltd's legal obligations arising under Section 12 of the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994 or under the Consumer Protection Act 1987.

- PASSING OF PROPERTY**
- a) The Goods shall remain the property of Strata Tiles Ltd as legal and equitable owner and no property in or title to the Goods shall pass to Customer until their full price has been duly paid to Strata Tiles Ltd. Pending legal and beneficial ownership of the Goods unencumbered, passing to Customer, Customer:- shall keep the Goods in good condition; fully insured in their full replacement value against all risks prudently insured against; and shall not encumber in any way.
- b) Failure to pay the price for the Goods and that of such other goods referred to above when due shall, without prejudice to any other remedies Strata Tiles Ltd may have, entitle Strata Tiles Ltd to repossess the Goods or so much thereof as Strata Tiles Ltd may determine from any premises where they may be. For the purpose of repossessing the Goods or any part thereof Customer hereby grants an irrevocable license to Strata Tiles Ltd, its employees or agents, to enter upon such premises and Customer shall pay to Strata Tiles Ltd the cost of removal and transport of the Goods or any part thereof.
- c) Customer may in its ordinary course of its business sell and deliver the Goods in which the property remains with Strata Tiles Ltd to any third party as Strata Tiles Ltd's agent, in a fiduciary capacity and for the account of Strata Tiles Ltd. Customer shall upon request assign to Strata Tiles Ltd the legal title of any right against any third party arising out of such sale. Customer shall be entitled to receive from Strata Tiles Ltd by way of commission the excess of the proceeds of sale over the amounts due to Strata Tiles Ltd from Customer.
- d) Notwithstanding the provisions of this Condition, Strata Tiles Ltd shall be entitled to bring an action against Customer for the price of the Goods in the event of non-payment by Customer by the due date as if the property in the Goods had already passed to Customer and/or shall have the right by notice in writing to Customer at any time after the agreed delivery date to pass the property in the Goods to Customer as from the date of such notice.



# STANDARD TERMS AND CONDITIONS OF SALE

## CONTINUED

### INSOLVENCY & DEFAULT

- a) Strata Tiles Ltd may by notice in writing to Customer terminate this Agreement or in its absolute discretion any other contracts with Customer so far as unperformed by Strata Tiles Ltd forthwith if:-
- i) Customer shall commit any breach of any of the terms (including, without limitation, terms concerning the time for payment of the purchase price) of this Agreement or any other contract with Strata Tiles Ltd;
  - ii) Customer compounds with or negotiates for any composition with its creditors generally;
  - iii) or being an individual, Customer shall die or have a receiving order made against him;
  - iv) or being a body corporate or legal person a, Customer shall call any meeting of its creditors or have a receiver or administrator of all or any of its assets appointed or enter into any liquidation (other than solely for reconstruction or amalgamation while solvent) or commit any other act of insolvency.
- b) In the event of such termination:-
- i) Customer shall forthwith on demand deliver to Strata Tiles Ltd any Goods which are in the possession or control of Customer but in which the property remains with Strata Tiles Ltd; and, in default thereof, Strata Tiles Ltd shall be entitled to repossess the same and for such purpose to enter into and upon the premises of Customer without being liable for any damage caused thereby and Customer shall indemnify Strata Tiles Ltd from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses however arising;
  - ii) and Strata Tiles Ltd shall be entitled by notice in writing to Customer to declare immediately due and payable any amounts outstanding from Customer to Strata Tiles Ltd under this or any other contract (such sums thereby becoming forthwith due and payable);
  - iii) and Strata Tiles Ltd may claim damages from Customer for breach of the Agreement.
- The provisions of this Condition and the exercise by Strata Tiles Ltd of its rights thereunder are without prejudice to any other rights of Strata Tiles Ltd.

### FORCE MAJEURE

- a) Neither party shall be liable for breach of the Agreement other than payment if and to the extent that fulfilment of a term or condition hereof has been prevented, hindered or delayed by force majeure as defined in this Condition and in such event the time for fulfilment of such a term shall be extended for such period as is reasonable in all the circumstances.
- b) The expression "force majeure" shall mean any event of circumstances beyond the immediate control of either party, including without prejudice to the generality of the foregoing, strikes, lock-outs, trade disputes, accident to plant or machinery, shortage of any material, failure in whole or in part of any power or Apollo supply, delays in or cancellations of deliveries or provision of services by third parties, riots, civil commotion, war national or international, emergency, destruction or damage due to natural forces, fire, flood, explosion, and compliance with others or requests of any national or local authority.

### EXPORT

- In the case of Goods for delivery outside UK, the following conditions shall have effect and, in case of inconsistency with other Conditions herein, shall prevail:-
- a) Payment shall be made in cash or by credit transfer at the date of the Order Acknowledgement.
  - b) The risk of loss or damage to Goods shall pass to Customer immediately on appropriation to Customer's order.
  - c) Customer shall satisfy himself and be entirely responsible for ensuring compliance with all customs/import/export and/or trans-shipment regulations. Strata Tiles Ltd will assist Customer by supplying all nonconfidential or non-secret information reasonably required by Customer, but giving of such information shall not constitute a representation or be regarded as having contractual effect.
  - d) The application of the Uniform Laws on International Sales shall be excluded.

### ASSIGNMENT

Customer shall not assign or otherwise transfer all or any of its rights, interests or obligations under the Agreement without the prior written consent of Strata Tiles Ltd. Any or all of Strata Tiles Ltd's rights or obligations under this Agreement or other contract may be assigned by Strata Tiles Ltd and Customer shall not assert against an assignee any defence (other than actual payment), set-off or counterclaim which the Customer may have against Strata Tiles Ltd.

### SET OFF

Customer undertakes to make any payment due hereunder in full without any deduction, offset or counterclaim whatsoever

### NOTICES

Any notice hereunder shall be deemed to have been given if delivered by hand or sent by prepaid first class post or e-mail or telex or facsimile (confirmed by telephone and followed by notice by post) to the party concerned at its last know address, and deemed to have been received on the date of despatch, if delivered by hand or sent by telex or facsimile, and when received, if sent by post.



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## STANDARD TERMS AND CONDITIONS OF SALE CONTINUED

### INTERPRETATION & LAW

- a) Headings are included in these Conditions for convenience and identification only, and are not to be taken to limit the meaning of any part of these Conditions.
- b) If any provision or part of a provision of the Agreement should be held unenforceable or in conflict with the law of any relevant jurisdiction, any part so held unenforceable or invalid shall be severed from the remainder of the Agreement which shall not be affected by such severance.
- c) The Agreement represents the complete agreement between Strata Tiles Ltd and Customer with regard to the Goods and contains all agreements, warranties, conditions, representations and other terms agreed, made or relied upon by either party in connection with the Goods. The rights of Strata Tiles Ltd shall not be prejudiced or restricted by any indulgence or forbearance extended to Customer and no waiver of any breach shall operate as a waiver of any subsequent breach.
- d) These Conditions and every contract connected therewith shall be governed exclusively by English law, and any claim or dispute arising therefrom shall be submitted to the English courts, or in such other court which in Strata Tiles Ltd's view constitutes a forum convenient and of which Strata Tiles Ltd may notify Customer at any time.
- e) Any reference in these Conditions to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision as from time to time amended, modified, extended or re-enacted whether before or after the date of this agreement and to all statutory instruments, orders and regulations for the time being made pursuant to it or deriving validity from it.

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