



## **TERMS & CONDITIONS OF TRADE**

### **1. ORDERS AND QUOTATIONS**

- 1.1. Where Johnson Tiles accepts an order from a Purchaser, the following Terms and Conditions of Trade apply and constitute an agreement by the Purchaser to purchase the Products subject to these Terms and Conditions.
- 1.2. No order may be cancelled or varied by the Purchaser except with the agreement of Johnson Tiles.
- 1.3. Orders are accepted and estimates for delivery given, conditionally upon Johnson Tiles being able to secure the necessary labour and materials, and without responsibility for delays arising through risks and uncertainties of manufacture, strikes, accidents or other causes beyond the control of Johnson Tiles.
- 1.4. Offers of delivery from stock are made subject to Products remaining unsold on receipt of stock.

### **2. PRICE**

- 2.1. The price of Products are set out in the Johnson Tiles Price List as amended from time to time and are exclusive of GST.
- 2.2. Quotations are given and orders accepted subject to being invoiced at prices set out in the Johnson Tiles Price List as at the date of dispatch from Johnson Tiles warehouse.
- 2.3. Packing items including cartons and cases are not returnable.

### **3. INVOICING AND PAYMENT**

- 3.1. Johnson Tiles will provide the Purchaser with a Tax Invoice in respect of the purchase price for the Product, via email, once the goods have been collected and or despatched.
- 3.2. Unless otherwise agreed, the Products must be paid for in full by the Purchaser thirty (30) days End of Month from the invoice date.
- 3.3. The time specified for payment is of the essence. Johnson Tiles reserves the right to stop the supply of Products on an account if these Terms and Conditions are not strictly adhered to.
- 3.4. Purchasers will be required to complete a Credit Application Form before a credit account will be offered. Completion of a Credit Application Form does not necessarily mean a credit account will be granted. The Purchaser's completion of the Credit Application Form will be deemed an authority for Johnson Tiles to check trade and credit references and other relevant information necessary for Johnson Tiles to determine whether to grant the Purchaser a credit account.
- 3.5. Johnson Tiles retains the right to vary or withdraw a credit account at any time and reserves the right to stop the supply of Products on an account. The Purchaser must immediately pay the account if the credit limit is exceeded.
- 3.6. If the Purchaser fails to make any payment on the due date specified on the Tax Invoice, then without prejudice to any other right or remedy available to Johnson Tiles, Johnson Tiles may:
  - 3.6.1. charge the Purchaser interest on the amount unpaid, at the current rate of interest as set out in the *Penalty Interest Rates Act 1983* (Vic) (calculated on a daily basis);
  - 3.6.2. charge the Purchaser for all costs, fees and expenses incurred by Johnson Tiles in obtaining payment for the Product and in taking possession of the Products pursuant to sub-Clause 3.4(c); and
  - 3.6.3. take possession of the Products to facilitate which the Purchaser agrees to promptly return the Products, at

its cost, to Johnson Tiles on demand or allow any authorised representative of Johnson Tiles access to the Purchaser's premises to remove the Products from those premises.

- 3.7. The Purchaser fails to make payment to Johnson Tiles of any moneys when due and payable, all money then owed by the Purchaser to Johnson Tiles will immediately become due and payable.

### **4. DELIVERY**

- 4.1. Any dates specified for delivery by Johnson Tiles are estimates only and any failure on the part of Johnson Tiles to deliver within the time stated will not entitle the Purchaser to repudiate the Agreement in whole or in part.
- 4.2. Johnson Tiles is not liable for any late delivery of the Products or for any loss or damage (including consequential loss or damage) suffered by the Purchaser arising from any delay in delivery and the Purchaser shall accept and pay for the Products notwithstanding late delivery.

### **5. RISK AND TITLE**

- 5.1. Risk in the Products passes to the Purchaser on the earlier of:
  - 5.1.1. delivery of the Products to the Purchaser's premises or nominated freight depot; or
  - 5.1.2. collection of the Products from Johnson Tiles' warehouse by the Purchaser, its agent or courier.
- 5.2. Until the Purchaser has made payment in full of the price of the Products property and title in the Products will not pass to the Purchaser, and the Products will remain chattels. The Purchaser is a bailee of the Products until the property in the Products passes to the Purchaser and this bailment continues in relation to each of the Products until the price of the Products has been paid in full.
- 5.3. Upon the happening of any one or more of the following events:
  - 5.3.1. a receiver or a receiver and manager is appointed in relation to any part of the business, property or assets of the Purchaser; or
  - 5.3.2. an order is made for the winding up or dissolution without winding up of the Purchaser or an effective resolution is passed for the winding up of the Purchaser; or
  - 5.3.3. the Purchaser is placed under official management; or
  - 5.3.4. the Purchaser being an individual, becomes insolvent or bankrupt or commits an act of bankruptcy;
- 5.4. Johnson Tiles will have the immediate right to retake and resume possession of the Products for which payment of the full amount of the purchase price has not been made and may exercise such right notwithstanding that the due date for payment of the purchase price of such Products has not occurred.
  - 5.4.1. If the Purchaser sells or supplies the Products to any person prior to making payment in full, then:
  - 5.4.2. the Purchaser will be deemed to hold the proceeds of that sale or re-supply (or such part as is sufficient to discharge the debt owed to Johnson Tiles for the Products) on trust for Johnson Tiles and such proceeds must be kept in a separate account;
  - 5.4.3. the Purchaser must pay the amount of the proceeds of the sale and re-supply immediately to Johnson Tiles when they are received.



5.5. Johnson Tiles is entitled to attribute a payment received from the Purchaser to particular Products, including Products no longer in the possession or under the control of the Purchaser, unless the Purchaser has previously expressly attributed payment to particular Products and has communicated that attribution to Johnson Tiles in writing.

## **6. PERSONAL PROPERTY SECURITIES ACT (2009) (CTH)**

The purchaser agrees with Johnson Tiles that it will sign such documents and do such things as are necessary to perfect the security to be held by Johnson Tiles under these terms over Products pursuant to the *Personal Property Security Act 2009* (Cth).

## **7. RETURNS**

7.1. Subject to clause 7 of this Document, any returns of Products are subject to the following conditions:

- 7.1.1. Product(s) must be returned within thirty (30) days of purchase, together with proof of purchase.
- 7.1.2. A restocking fee of 30% of the value of the Product(s) will apply and be payable by you.
- 7.1.3. Returns must be expressly authorised by Johnson Tiles prior to returning stock.
- 7.1.4. Only unopened cartons will be accepted.

## **8. WARRANTY**

8.1. Johnson Tiles warrants to the Purchaser that:

- 8.1.1. Johnson Tiles has the right to sell and transfer full and unencumbered title to and property in the Products to the Purchaser;
- 8.1.2. The Product:
  - 8.1.2.1. (Except as otherwise provided in any specifications) are new;
  - 8.1.2.2. Subject to the limitations of clause 9 of this Document, are fit for the purpose that the Product would ordinarily be used; and
  - 8.1.2.3. Are of merchantable quality and comply with all applicable Laws and standards.

### **8.2. Additional 10 Year Product Guarantee**

Subject to the following terms and conditions, Johnson Tiles guarantees to its consumers that the supply of specifically marked products will remain free from defects arising from the manufacture of the product for a period of 10 years from the date of collection of goods:

- 8.2.1. The benefits conferred by this 10 Year Product Guarantee (the Guarantee) are in addition to, and not in substitution for, any other rights and remedies given to consumers in relation to goods under the *Competition and Consumer Act 2010 (Cth)*.
- 8.2.2. This Guarantee only applies in relation to products marked "first quality" by Johnson Tiles and purchased on or after 1 April 2009.
- 8.2.3. No claims will be accepted without presentation of proof of purchase.
- 8.2.4. The Guarantee offered by Johnson Tiles covers the product for a period of no more than 10 years commencing from the date of collection of goods.
- 8.2.5. No claims will be accepted where a product unfit for purpose has been laid. It is the responsibility of the consumer to confirm the suitability of the product for purpose prior to acceptance of fixation of goods.
- 8.2.6. No claims will be accepted for products which have supplied correctly as per the details of the purchase

receipt regardless of fault of specifying party. It is the responsibility of the consumer to confirm the correct product has been purchased prior to installation.

- 8.2.7. No claim will be accepted for obvious manufacturing, shading or visual defects where the product has been laid. It is the responsibility of the consumer to inspect the product for obvious faults prior to or during installation. If a fault has been identified, the installation of said products should stop immediately.
- 8.2.8. No claim will be accepted once the material is laid. Fixing of the product constitutes acceptance of the product. The act of laying the material means the material is accepted for décor, shade, quality, type and size.
- 8.2.9. No claims will be accepted for products which have not been fixed in accordance with the relevant fixative manufacturer's instructions and/or AS3958.1-2007 Guide to the installation of Ceramic Tiles. Certain defects which may become apparent after installation can be related to how the tiles were installed or to the supporting structure and materials. This Guarantee will not cover situations where it cannot be satisfactorily demonstrated that substrate materials and fixatives are fit for purpose and have been correctly used.
- 8.2.10. Johnson Tiles does not guarantee the availability of replacement tiles of the same colour, pattern or shade after the time of purchase. We advise customers to purchase 5% - 15% additional quantity so as to allow for tiles which are damaged during or after installation.
- 8.2.11. All tiles can be slippery when wet. Liability will not be accepted for accidents due to inappropriate tile selection, maintenance or carelessness.
- 8.2.12. If a consumer makes a claim under this Guarantee, Johnson Tiles may, at its sole discretion, choose to either
  - 8.2.12.1. replace the goods; or
  - 8.2.12.2. supply equivalent goods.
- 8.2.13. This Guarantee supersedes all guarantees and warranties issued by Johnson Tiles prior to 1 April 2009.
- 8.2.14. All claims must be submitted to Johnson Tiles in writing within twenty eight (28) days after the occurrence of an event which gives rise to a claim pursuant to this Guarantee, and must be accompanied by supporting evidence (e.g. photographs evidencing defects). Please address all warranty claims to [headoffice@johnsontiles.com.au](mailto:headoffice@johnsontiles.com.au).

## **9. LIABILITY**

- 9.1. Subject to Clause 7, the Purchaser does not have, under any circumstances, any cause of action against Johnson Tiles for or in respect of any loss or damage of any kind caused directly or indirectly by:
  - 9.1.1. any defect in material, workmanship of or any other defect in or unsuitability for any purpose of the Products or any part of the Products;
  - 9.1.2. failure or omission on the part of Johnson Tiles to comply with its obligations under these Terms and Conditions; or
  - 9.1.3. any accidents due to inappropriate Product selection, maintenance or carelessness. Purchasers are put on notice that all ceramic tiles can be slippery when wet.
- 9.2. The Purchaser must indemnify Johnson Tiles and each of its officers, employees and agents (**Indemnified Party**) against



any loss, damage, claim, action or expense (including legal expense) which any Indemnified Party suffers as a direct or indirect result of any of the following:

- 9.2.1. A breach of this Document by the Purchaser;
- 9.2.2. Any warranty given by the Purchaser under this Document being incorrect or misleading in any way; or
- 9.2.3. Wrongful or any negligent act or failure to act by the Purchaser or any of the Purchaser's employees, agents, officers or sub-contractors,

except to the extent that any such loss, damage, claim, action or expense is caused by the negligence or other wrongful act or omission of Johnson Tiles, its officers or employees.

- 9.3. If any indemnity payment is made by the Purchaser under this clause 8, the Purchaser must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.

## 10. FITNESS FOR PURPOSE

- 10.1. Notwithstanding anything else in this Document, the Purchaser agrees that it has not relied on the skill or judgement of Johnson Tiles in relation to the suitability of any of the Products for a particular purpose unless it has indicated that purpose in writing to Johnson Tiles; and
- 10.2. Johnson Tiles has acknowledged in writing that the Products will be fit for that particular purpose.

## 11. PRODUCT ACCEPTANCE

The act of laying the material means the material is accepted for décor, shade, quality, type and size. No claim will be accepted once the material is laid. **LAYING OR AFFIXING OF THE PRODUCT CONSTITUTES ACCEPTANCE OF THE PRODUCT.**

## 12. INDEMNITY

- 12.1. The Purchaser must at all times indemnify and hold harmless Johnson Tiles and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:
  - 12.1.1. a breach by the Purchaser of its obligations under these Terms and Conditions; or
  - 12.1.2. any wilful, unlawful or negligent act or omission of the Purchaser.

## 13. DISPUTES

### 13.1. Parties to meet

If any dispute arises under or in connection with this Document (**Dispute**) which dispute is not able to be resolved by the parties' representatives within fourteen (14) days of the Dispute arising, the nominated representative of each party will promptly meet and discuss in good faith with a view to resolving such Dispute.

### 13.2. Mediation

If any Dispute is unable to be resolved in accordance with clause 13.1 within fourteen (14) days, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation will be conducted in accordance with the mediation guidelines of ACDC (Guidelines) which set out the procedures to be adopted, the process of selection of the mediator and

the costs involved and the terms of those Guidelines are incorporated in this document.

### 13.3. Arbitration or Litigation

If the parties fail to settle any Dispute in accordance with clause 13.2, the parties may agree to submit the Dispute for resolution to final and binding arbitration under the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules. If the parties do not agree to refer the dispute to arbitration in accordance with clause 13.3, either party may submit the dispute for resolution to the non-exclusive jurisdiction of the Courts of Victoria, Australia.

### 13.4. Performance during dispute resolution

The parties to a Dispute will continue to perform their respective obligations under this Agreement pending the resolution of the Dispute under this clause 13.

### 13.5. Interlocutory relief

Nothing in this clause 13 is to be taken as preventing any party to a Dispute

## 14. FORCE MAJEURE

Johnson Tiles will not be liable to the Purchaser or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of Johnson Tiles' obligations in relation to the Products, if the delay or failure was due to any cause beyond Johnson Tiles' reasonable control.

## 15. GST

- 15.1. Except where these Terms and Conditions states otherwise an amount payable by a party for a taxable supply made by another party under these Terms and Conditions is expressed as a GST exclusive amount.
- 15.2. If a party makes a taxable supply under these Terms and Conditions, then the party liable to pay for the taxable supply must also pay to the supplier the GST payable in respect of the taxable supply at the time payment for the taxable supply is due.
- 15.3. "GST" in this Clause means GST within the meaning of the *A New Tax System (Goods & Services Tax) Act, 1999*.

## 16. CODE OF CONDUCT AND ETHICS

Johnson Tiles adopts a zero-tolerance approach to bribery, corruption, or unethical transactions by any of our Team Members, Customers, Suppliers, agents, or their representatives. It is a condition of this agreement that customers do not engage, or attempt to engage in any form of bribery, facilitation payment or similarly unethical conduct.

## 17. JURISDICTION

The Terms and Conditions are governed by the laws of the state of Victoria.

## 18. DEFINITIONS

In this Document:

- 18.1. "**Agreement**" means the agreement entered into pursuant to Sub-Clause 1.1;
- 18.2. "**Johnson Tiles**" means Johnson Tiles Pty Ltd ACN 004 576 103;
- 18.3. "**Products**" means the Johnson Tiles products referred to in the order; and
- 18.4. "**Purchaser**" means the person or entity whose name and address appears on the order as the purchaser of the Products.

"**Tax Invoice**" has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*