



BONEDA PTY LTD TRADING AS GROOVE TILES & STONE

A.B.N 252 484 506 27

TERMS AND CONDITIONS OF TRADE

1. INTERPRETATION

- 1.1 Unless otherwise inconsistent with the context the word "person" shall include a corporation; "goods" shall include services.
- 1.2 Words importing the singular number shall be deemed to include the plural and vice versa.
- 1.3 Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
- 1.4 "Groove Tiles & Stone" shall mean its successors and assigns.
- 1.5 "Customer" shall mean the person named as "the Applicant" on the credit application annexed hereto.
- 1.6 "GST" means any goods and service tax.

2. OFFER AND ACCEPTANCE

- 2.1 Any quotation made by Groove Tiles & Stone is not an offer to sell or to provide goods. Groove Tiles & Stone shall not be bound by any order given in pursuance of any quotation until it is accepted in writing. All orders are subject to acceptance by Groove Tiles & Stone within thirty (30) days of receipt by Groove Tiles & Stone of the order. These terms and conditions shall be deemed to be incorporated into any agreement between Groove Tiles & Stone and the customer. Any terms and conditions contained in any order, offer, acceptance or other document of the customer and all representation, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- 2.2 Insofar as goods or services supplied by Groove Tiles & Stone are not of a kind ordinarily acquired for personal, domestic or household consumption, the liability for breach of a condition or warranty, implied into this contract by the Sale of Goods Act or the Trade Practices Act (other than a condition implied by Section 69) is limited.
 - a) In the case of goods to any one of the following as determined by Groove Tiles & Stone;
 - (i) The refund of the price paid by the customer for the goods or the issue of a note for such amount; or
 - (ii) The replacement of the goods or the supply of equivalent goods; or
 - (iii) The repair of the goods; or
 - (iv) The payment of the cost of replacing the goods or at acquiring equivalent goods; or
 - (v) The payment of the costs of having the goods repaired;
 - b) In the case of services to any one of the following as determined by Groove Tiles & Stone;
 - (i) The supplying of the services again; or
 - (ii) The payment of the cost of having the services supplied again.

3. DELIVERY

- 3.1 Any date quoted for delivery ("the quoted date") is an estimate only and unless a guarantee shall be given by Groove Tiles & Stone in writing providing for liquidated damages for failure to deliver by the quoted date Groove Tiles & Stone shall not be liable to the customer for any loss or damage howsoever arising even if arising out of the negligence of Groove Tiles & Stone for failure to deliver on or before the quoted date. The customer shall accept and pay for goods and any GST if and when tendered notwithstanding any failure by Groove Tiles & Stone to deliver by the quoted date. Written advice to the customer that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- 3.2 Groove Tiles & Stone shall not be liable to any customer or any other party for direct or indirect or consequential injury, loss or damage whatsoever by reason or any delay in delivery whether the same is due to the negligence of Groove Tiles & Stone or any other party, strike or any other industrial action be it of Groove Tiles & Stone or any party or any other cause whatsoever.
- 3.3 Groove Tiles & Stone reserves the right to deliver by instalments. If delivery is made by instalments the customer shall not be entitled:
- a) to terminate or cancel the contract; or to any claim, loss or damage
 - b) howsoever arising failure by Groove Tiles & Stone to deliver any instalments on or before the quoted date.
- 3.4 It is agreed that Groove Tiles & Stone shall not be responsible for the delay in delivery caused by, or in any way incidental to an act of God, war, fire, breakages of machinery, strikes or arising out of any other unexpected exceptional cause, or any cause beyond reasonable control of Groove Tiles & Stone.
- 3.5 Any quotation containing a provision to supply goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the customers order.

4. PAYMENT

- 4.1 Unless otherwise agreed in writing, payment terms for cash customers are prior to delivery or on a COD basis. Account customer terms are net cash thirty (30) days from the end of the month in which the goods are invoiced to the customer.
- 4.2 This term as the payment shall be of the essence of the contract.
- 4.3 The customer shall pay the price of any goods supplied by Groove Tiles & Stone and any GST in addition to the price.

5. TITLE

- 5.1 Notwithstanding the delivery of the goods or part thereof, the goods remain the sole and absolute property of Groove Tiles & Stone as full legal and equitable owner until such time as the customer shall have paid Groove Tiles & Stone.
- 5.2 The customer acknowledges that he receives possession of and holds goods delivered by Groove Tiles & Stone solely as bailee for Groove Tiles & Stone until such time as the full price including any GST hereof is paid to Groove Tiles & Stone together with the full price including any GST of any goods then the subject of any other contract with Groove Tiles & Stone.
- 5.3 Until such time as the customer becomes the owner of the goods, he will;
- a) store them on the premises separately;
 - b) ensure that the goods are kept in good and serviceable condition;
 - c) secure the goods from risk, damage and theft, and
 - d) keep the goods fully insured against such risks that are usual or common to insure against in a business of similar nature to that of the customer.

- 5.4 Until the goods are paid for in full including any GST, Groove Tiles & Stone authorises the customer to sell the goods as its agent.
- a) However, the customer shall not represent to any third parties that it is acting in any way for Groove Tiles & Stone. Groove Tiles & Stone will not be bound by any contracts with third parties to whom the customer is a party.
 - b) The proceeds of any sale of the goods shall be paid into a separate account and held in trust for Groove Tiles & Stone. The customer shall account to Groove Tiles & Stone from this fund for the full price of the goods including any GST.
 - c) The customer is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale are received by the customer then the customer shall account to Groove Tiles & Stone for the price of the goods including GST.
 - d) Should the customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws, or being a company, appoints an administrator or calls a meeting for the purpose of or to go into liquidation or has a winding up application presented against it or has a receiver appointed, Groove Tiles & Stone may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this contract, suspend or cancel this contract or require payment in cash before or on delivery or tender of goods notwithstanding the terms of payment previously specified or may reposes and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such a sale.
- 5.5 If the customer does not pay for any goods on the due date then Groove Tiles & Stone is hereby irrevocably authorised by the customer to enter the customer's premises under the control of the customer or as agent of the customer in which the goods are stored and use reasonable force to take possession of the goods without liability for trespass, negligence, assault and battery or payment of any compensation to the customer whatsoever.
- 5.6 On retaking possession of the goods Groove Tiles & Stone may elect to refund to the customer any party payment that may have been made and credit the customer's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.

6. RISK

- 6.1 Unless otherwise agreed in writing, risk in the goods shall pass to the customer at the time when the goods have been placed on the vehicle which is to effect delivery from Groove Tiles & Stone store or warehouse. The goods shall remain at the customer's risk at all times unless and until Groove Tiles & Stone retakes possession of the goods pursuant to these terms and conditions.

7. CLAIMS AND RETURNS

- 7.1 Subject to clause 2.2 herein, Groove Tiles & Stone shall not be liable for any loss or damage whatsoever and however arising whether direct or indirect or consequential or in respect of any claim whenever and however made for any loss or damage, deterioration, deficiency or other fault or harm in the goods provided by or on behalf of or in any arrangement with Groove Tiles & Stone or occasioned to the customer or any third party or to his or their property or interest and whether or not due to the negligence of Groove Tiles & Stone, its employees or agents.
- 7.2 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the customer, the customer shall within fourteen (14) days notify Groove Tiles & Stone in writing of the same.

- 7.3 Groove Tiles & Stone shall not be liable in any circumstances for any;
- a) Defects or damages caused in whole or in part by misuse, abuse, neglect, improper application, repair or alteration (other than by Groove Tiles & Stone) or accident;
 - b) Any transport installation removal, labour or other costs;
 - c) Details in goods not manufactured by it but Groove Tiles & Stone will endeavour to pass on to the customer the benefit of any claim made by Groove Tiles & Stone and accepted by the customer and the benefit of any claim made by Groove Tiles & Stone and accepted by the manufacturer of such goods under warranty given by the manufacturer of such goods provided and nothing contained in this subparagraph shall limit the rights of the customer to proceed against Groove Tiles & Stone pursuant to the Trade Practices Act; and
 - d) Technical advice or assistance given or rendered by it to the customer or not in connection with the manufacture, construction or supply of goods for or to the customer.

8. FORCE MAJEURE

- 8.1 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Groove Tiles & Stone, Groove Tiles & Stone is unable to perform in whole or in part any obligation under this contract, Groove Tiles & Stone shall be relieved of that obligation under this contract to the extent and for the period that it is so unable to perform and shall not be liable to the customer in respect of such liability.

9. DEFAULT

- 9.1 Groove Tiles & Stone may at its discretion withhold further supplies of goods or cancel the contract, or vary the terms of this contract without prejudice to its rights hereunder PROVIDED HOWEVER that Groove Tiles & Stone may at any time and from time upon such terms as it may determine waive any of its rights under this clause, but without prejudice to its rights thereafter of any of the events herein before referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.
- 9.2 The customer shall pay to Groove Tiles & Stone interest at the rate of 1.5% per month on daily balances in respect of any amounts as may from time to time be overdue until paid and such money together with all interest shall be recoverable forthwith from the customer as a liquidated debt.
- 9.3 Without prejudice to any other right or remedy the customer shall indemnify Groove Tiles & Stone against any costs, fees charges and disbursements (inclusive of any GST) charged by any mercantile or collection agent or solicitor engaged for the purpose of the collection or recovery of monies due and payable by the customer to Groove Tiles & Stone on an indemnity basis and all such costs shall be recoverable as a liquidated debt and , at the option of Groove Tiles & Stone, may be recovered in the Minor Debts Court.
- 9.4 The customer shall pay to Groove Tiles & Stone an administration fee of \$50.00 on the occurrence of every event of default as a liquidated debt being a genuine pre-estimate of loss of Groove Tiles & Stone in respect of such act of default, however such fee shall not preclude Groove Tiles & Stone from claiming any higher amount from the customer for any loss occasioned by such act of default.

10. CHANGE OF OWNERSHIP

- 10.1 The customer agrees to notify Groove Tiles & Stone in writing of any change of ownership of the customer or its business, or of directorship in the case of a corporation customer, or of any other change whatsoever affecting this agreement with seven (7) days from the date of such change and indemnifies Groove Tiles & Stone against any loss or damage incurred by it as a result of the customer's failure to notify Groove Tiles & Stone of any change.

11. LIEN CHARGE

- 11.1 The customer hereby acknowledges and agrees that Groove Tiles & Stone has a lien over all goods in its possession belonging to the customer to secure payment of any or all amounts outstanding from time to time.
- 11.2 The customer hereby charges all property, both equitable and legal, of the customer in respect of any monies that may hereinafter be owing to Groove Tile & Stone under this contract by the customer or otherwise and hereby authorise Groove Tiles & Stone or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the customer at any item, or to register this charge over assets of the customer with the Australian Securities Commission.

12. JURISDICTION

- 12.1 This contract for the supply of the goods is deemed to have been entered into in the State of Queensland. Any legal action arising out of or in respect of the contract and or the interpretation thereof shall be brought only in the Courts of Brisbane in the State of Queensland and the customer irrevocably submits itself to the jurisdiction of the Courts of Brisbane in the State of Queensland.
- 12.2 If the subject matter of any dispute arising hereunder is within the jurisdiction of the Queensland Building Tribunal then the customer elects not to have such dispute determined in the Queensland Building Tribunal but instead to have such dispute heard and determined either in the Magistrates, District or Supreme Court according to the jurisdiction of each such court.