

RETAIL & COMMERCIAL TERMS & CONDITIONS OF SALE

Unless Groove Tiles & Stone and the Customer otherwise agree in writing, these Terms are incorporated into and form part of any agreement between Groove Tiles & Stone and the Customer for or in connection with the supply of Goods by Groove Tiles & Stone including but not limited to, a commercial credit account application or sales order (**'Sale Agreement'**).

1. Definitions and interpretation

1.1 Definitions

In this document unless contrary to or inconsistent with the context:

'Australian Consumer Law' means Schedule 2 to the *Competition and Consumer Act 2010* (Cth);

'Commercial Customer' means a Customer who has entered into a Commercial Credit Account Agreement;

'Commercial Credit Account Agreement' means an agreement between the Customer and Groove Tiles & Stone comprising an application for a commercial credit account, a guarantee and indemnity (if required) and these Terms;

'Customer' means the party or parties entering into the Sale Agreement with Groove Tiles & Stone and includes each as well as both of a Retail Customer and a Commercial Customer;

'Deliver' or **'Delivery'** means each as well as both of:

- (a) the delivery of the Goods to the Customer, its employees or agents at the nominated address; or
- (b) the collection of the Goods by the Customer, its employees or agents from Groove Tiles & Stone's address;

'GST' means any goods and services tax;

'Goods' means any tiles, natural stone and related products including tools, adhesives, grout and all other ancillary or associated products or services supplied by Groove Tiles & Stone to the Customer;

'Groove Tiles & Stone' means Boneda Pty Ltd atf The Barbera Trust trading as Groove Tiles & Stone ABN 25 248 450 627 and any of its related "Related Bodies Corporate" and "Associated Entities" as such terms are defined in the *Corporations Act 2001* (Cth);

'PPSA' means the *Personal Property Securities Act 2009* (Cth);

'Price' means the price of the Goods as specified by Groove Tiles & Stone;

'Retail Customer' means a Customer who has not entered into a Commercial Credit Account Agreement;

'Terms' means the terms and conditions of sale set out in this document.

1.2 Interpretation

In this document:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of these Terms;
- (b) Words, including, but not limited to, defined terms, importing the singular number include the plural number and vice versa and any gender includes all genders;

- (c) A reference to a party or person includes a reference to that party or person and its successors, substitutes, executors, administrators and assigns;
- (d) An expression importing a person includes any company, partnership, joint venture, association or corporation or other body corporate and any government agency as well as an individual;
- (e) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (f) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (g) Words including, for example, such as or other similar expressions (in any form) are not words of limitation; and
- (h) A promise on the part of 2 or more persons binds them jointly and severally.

2. Entire agreement

2.1 The Sale Agreement and these Terms constitute the entire agreement between Groove Tiles & Stone and the Customer. All prior negotiations, representations, understandings, arrangements and agreements (whether oral or in writing) are superseded by the Sale Agreement and these Terms.

2.2 These Terms prevail to the extent of any inconsistency with any other document or agreement between the Customer and Groove Tiles & Stone.

2.3 Any contractual terms and conditions sought to be imposed by the Customer by incorporation on the Customer's purchase order, supply agreement or its email correspondence, will be void and of no effect.

2.4 The Sale Agreement and these Terms may not be varied by the Customer except with the written consent of a Director or the Financial and Operations Manager of Groove Tiles & Stone.

2.5 Any provision of the Sale Agreement and these Terms that is invalid, unenforceable or illegal under the Australian Consumer Law or any other law must be read down to the extent necessary to avoid that effect. If that is not possible, that provision must be excluded from the Sale Agreement and these Terms but only to the extent necessary to avoid that effect. All other provisions of the Sale Agreement and these Terms will continue to be valid and enforceable.

3. Sales quote

Any sales quote provided by Groove Tiles & Stone is not an offer to supply the Goods referred to in the quotation. All sales quotes lapse 30 days after issue and may be withdrawn or changed by Groove Tiles & Stone at any time.

4. Offers to supply Goods

- 4.1 Any offer by Groove Tiles & Stone to supply Goods to the Customer is subject to these Terms.
- 4.2 The Customer expressly accepts Groove Tiles & Stone's offer to supply the Goods on these Terms and is immediately bound, jointly and severally, by the Terms:
- (a) if the Customer is a Retail Customer, when the Customer pays a Deposit in accordance with clause 5.1 or the Price of the Goods in full (whichever occurs first);
 - (b) if the Customer is a Commercial Customer, when the Customer:
 - (i) provides a purchase order for Goods;
 - (ii) otherwise places an order for Goods; or
 - (iii) accepts Delivery of the Goods; or
 - (iv) an employee, agent or contractor of the Customer places an order for additional quantities of Goods for a job, and the Customer, or its employee, agent or contractor accepts Delivery of those Goods.

For the avoidance of any doubt, acceptance is deemed to have occurred if any one or more of the actions provided for in clause 4.2 occurs notwithstanding any defect in the authority of the person who placed the order for the Goods.

- 4.3 The Customer acknowledges that it has read and understood these Terms and understands that by doing any one or more of the actions set out in clause 4.2, it accepts that it is immediately bound by these Terms.

5. Deposit

- 5.1 If a Retail Customer does not pay the Price of the Goods in full on acceptance of Groove Tiles & Stone's offer, the Retail Customer must pay a deposit of up to 50% of the Price on acceptance and the balance of the Price prior to the date of Delivery specified by or agreed by Groove Tiles & Stone.
- 5.2 A Commercial Customer must:
- (a) if required by Groove Tiles & Stone, pay a deposit of up to 50% of the Price on acceptance of Groove Tiles & Stone's offer; and
 - (b) pay that part of the Price invoiced to the Commercial Customer by Groove Tiles & Stone within 30 days from the end of the month in which the Goods are invoiced.
- 5.3 If the order is Delivered by instalments Groove Tiles & Stone will hold any Deposit paid by the Commercial Customer as security until the amount of the deposit approximates the value of the final instalment to be Delivered, at which time the Deposit will be applied to the outstanding invoices.

6. Indent orders

- 6.1 At the request of the Customer, Groove Tiles & Stone may order specific Goods from an overseas supplier or have Goods made to the Customer's specification ('**Indent Order**').
- 6.2 As a guide, the Customer should allow a minimum of 6 to 12 weeks from the date of placement for an Indent Order to be Delivered.
- 6.3 Groove Tiles & Stone accepts no liability for any claim, loss or damage arising by any failure to Deliver, or any delay in

Delivery, of the Goods for any reason whatsoever.

- 6.4 An Indent Order cannot be cancelled once the order has been placed with the overseas supplier or production of the Goods has commenced and any Deposit paid in respect of that Indent Order is not refundable on cancellation by the Customer.

7. Quantities

- 7.1 The Customer acknowledges and agrees that quantities calculated by Groove Tiles & Stone:
- (a) from the measurement of plans or designs by Groove Tiles & Stone;
 - (b) from specifications, designs or other information provided by the Customer; or
 - (c) from specifications, designs or other information provided by another party on behalf of the Customer (including but not limited to the Customer's employee, builder or tiler),
- are approximate only and Groove Tiles & Stone accepts no responsibility for their accuracy.

- 7.2 The Customer acknowledges and agrees that:

- (a) it is the Customer's responsibility to check quantities, including any quantities calculated by Groove Tiles & Stone, by completing an on-site measurement before commencing the laying, installing or use of the Goods;
- (b) if an insufficient quantity of Goods has been ordered for any reason, including but not limited to:
 - (i) the incorrect measurement of plans by any party;
 - (ii) the incorrect calculation of quantities by any party;
 - (iii) changes to the plan or design; or
 - (iv) excess tile cutting wastage,then:
 - (v) Groove Tiles & Stone accepts no responsibility or liability for any variation of colour, shading or pattern in further batches of tiles supplied to the Customer or the inability to supply Goods at all; and
 - (vi) the Customer must pay the Price for the supply of any additional Goods required to complete the work.

8. Price

- 8.1 The Price for the supply of Goods will be specified in the sales quote, sales order, invoice or account statement issued by Groove Tiles & Stone to the Customer.
- 8.2 Unless otherwise stated the Price for the Goods agreed in the Sale Agreement and any other amount payable under the Sale Agreement or these Terms is inclusive of any GST payable.
- 8.3 Groove Tiles & Stone reserves the right to change the Price if:
- (a) the Customer requests a variation to the Goods, including but not limited to the quantity of Goods which are to be supplied; or
 - (b) the Price increases as a result of the introduction of any legislation, regulation or government policy.

9. Payment

- 9.1 A Retail Customer must pay for the Goods before the date specified or agreed by or Groove Tiles & Stone for Delivery of the Goods.
- 9.2 The payment terms for a Commercial Customer are net cash thirty (30) days from the end of the month in which the Goods are invoiced to that Commercial Customer (by email, post or fax) unless otherwise agreed in writing by Groove Tiles & Stone. For example, Goods invoiced in March are payable on or before 30 April.
- 9.3 The Commercial Customer agrees and acknowledges that:
- (a) the supply of Goods on credit will not take effect until the Customer has completed a commercial credit account application with Groove Tiles & Stone and guarantee and indemnity (if required) and the application has been approved with a credit limit established for the account;
 - (b) if an order for Goods exceeds the Customer's credit limit and/or the account exceeds the payment terms, Groove Tiles & Stone reserves the right to refuse Delivery of Goods.
- 9.4 The Customer must pay for the Goods in cash, by direct deposit, credit card (excluding American Express and Diners Club) or by any other method of payment agreed by Groove Tiles & Stone.
- 9.5 The Customer must pay Groove Tiles & Stone the Price (including the GST stated on the sales quote, sales order, invoice or account statement) and any other amount payable under the Sale Agreement or these Terms.
- 9.6 Receipt by Groove Tiles & Stone of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

10. Delivery and inspection

- 10.1 The cost of Delivery of the Goods is payable by the Customer.
- 10.2 Groove Tiles & Stone will make all reasonable efforts to have the Goods Delivered or available for Delivery on the date agreed between the parties, but Groove Tiles & Stone will not be liable for any claim, loss or damage arising by any failure to Deliver, or any delay in Delivery, of the Goods on the agreed date.
- 10.3 Groove Tiles & Stone reserves the right to Deliver in instalments. If Delivery is made by instalments, the Customer agrees that it is not entitled:
- (a) to terminate or cancel the Sale Agreement; or
 - (b) to any claim, loss or damage howsoever arising by any failure to Deliver, or any delay in Delivery of an instalment on the date specified by Groove Tiles & Stone.
- 10.4 If the Customer or its agent collects the Goods from Groove Tiles & Stone:
- (a) the Customer or its agent (as applicable) is responsible for ensuring that the Goods are loaded in accordance with Queensland load restraint laws (or any other relevant laws) for vehicles or the carriage of goods;
 - (b) Groove Tiles & Stone will not accept any responsibility for determining the safe load capacity of the vehicle or ensuring that the load is safely secured; and

- (c) Groove Tiles & Stone will not be liable for:

- (i) any claim, loss or damage arising from the Customer or agent's failure to comply with Queensland (or any other relevant) load restraint laws for vehicles or the carriage of goods or to ensure that the load is safely and securely loaded;
- (ii) any claim, loss or damage due to unloading or unpacking of the Goods; and
- (iii) any claim, loss or damage to property caused upon entering any premises to deliver the Goods.

- 10.5 The Customer or its agent must conduct a thorough visual inspection of the Goods (individually) on Delivery and prior to the laying, installing or use of the Goods to ensure that the Goods are appropriate as to type, size, quantity, appearance, colour, pattern, compliance with description or sales quote, suitability of purpose and any other characteristic of the Goods. If upon such inspection, any Goods are damaged, wrongly supplied or not in accordance with the Sale Agreement, the Customer may return those Goods in accordance with clause 18.

- 10.6 The Customer will be deemed to have accepted Delivery of the Goods in the following events:

- (a) the failure by the Customer to return the Goods in accordance with clause 18; or
- (b) the laying, installing or use of the Goods in any way by the Customer.

- 10.7 The Customer will indemnify Groove Tiles & Stone against any losses, costs and expenses incurred by Groove Tiles & Stone due to any failure by the Customer to accept the Goods at the time of Delivery for any reason whatsoever, including but not limited to, an inability to access the work site at the address nominated for Delivery of the Goods.

11. Storage for Customer

- 11.1 Groove Tiles & Stone may, at its absolute discretion and upon written request by the customer:
- (a) store the Goods ('**Stored Goods**') for the Customer for a maximum period of 3 months from the date the Goods are invoiced ('**Invoice Date**') at no charge; and
 - (b) store the Stored Goods for a further maximum period of 9 months for a fee notified in writing by Groove Tiles & Stone to the Customer. For the avoidance of any doubt, the maximum storage period available is 12 months from the Invoice Date.
- 11.2 If the Customer fails to collect the Stored Goods on or before the expiry of the agreed storage period, Groove Tiles & Stone may, after fourteen (14) days' written notice to the Customer, resell the Stored Goods and recover:
- (a) any loss Groove Tiles & Stone has suffered as a result of the Customer's failure in accordance with clause 22.2; and
 - (b) the storage fee notified to the Customer or a reasonable fee for the care and custody of the Stored Goods (whichever is the greater).

Such written notice will be given to the Customer using the Customer's last known email or postal address.

12. Characteristics of goods and associated risks

- 12.1 The nature and size of tiles and natural stone will vary from batch to batch which is part of the characteristics of the manufacturing process of tiles and of natural stone. Samples of tiles and natural stone provided to the Customer by Groove Tiles & Stone are indicative only and Groove Tiles & Stone accepts no liability for variations, of any type whatsoever, between the samples provided and the Goods supplied.
- 12.2 **(Natural stone)** The customer acknowledges that Goods which are natural stone (such as marble, travertine and granite) may contain, display or be subject to one or more of the following characteristics:
- (a) microchipping on its edges;
 - (b) shelling;
 - (c) variations in colour, size, pattern, veining, markings, grain structure, texture, porosity, weight, surface and finish and fading or changing of colour over time.
- 12.3 **(Engineered tiles)** The Customer acknowledges that Goods which are engineered tiles (such as porcelain, ceramic and vitrified tiles) may contain, display or be subject to one or more of the following characteristics:
- (a) slight variations in colour, shade, pattern, marking, texture and finish and may fade or change colour over time;
 - (b) variations in calibration; and
 - (c) optical effects such as hazing or smudging at varying light sources and at differing angles.
- 12.4 The Customer acknowledges that Goods which contain, display or are subject to one or more of the characteristics referred to in clause 12.2 and 12.3 are not defective or of unacceptable quality by reason of those characteristics.
- 12.5 Groove Tile & Stone strongly recommends that:
- (a) any natural stone tiles are laid only by a qualified and experienced stonemason. Inexperience with these materials can result in damages to the stone and incorrect installation; and
 - (b) tiles with any inherent variations by design and natural stone tiles must always be blended (many boxes opened and mixed) prior to the laying, installing or use of the tiles to ensure best results.
- 12.6 Specialist advice should be obtained by the Customer in relation to sealing and cleaning products as many commercially available products are not recommended for use on natural stone. Groove Tiles & Stone offers no guarantee (express or implied) against cracking, chipping or scratching that may occur during cutting and installation of tile or natural stone tiles and the Customer should allow for extra product for such breakages.
- 12.7 The actual size of a tile may vary from its description in accordance with allowable tolerances under Australian standards. If the Customer requires Goods to be manufactured within specific size calibration, the Customer must advise Groove Tiles & Stone at the tile selection stage prior to requesting a sales quote or accepting an offer to supply Goods.
- 12.8 If the Customer requires Goods with a specific slip rating, the Customer must advise Groove Tiles & Stone of the slip rating required at the tile selection stage prior to requesting a sales quote or accepting an offer to supply Goods. Groove Tiles & Stone will provide a slip report which has been completed by an independent tester or will arrange for an independent tester to undertake a slip test of a

sample of the selected tile to report the slip rating. Groove Tiles & Stone accepts no liability in respect of:

- (a) the suitability of a slip rating in particular circumstances; or
- (b) the results of a slip rating test and its correspondence with any subsequent slip rating test after the tile has been laid onsite.

- 12.9 The Customer agrees that the act of laying, installing or use of the Goods constitutes the Customer's full and unconditional acceptance and approval of all characteristics of the Goods in all regards.

13. Title

- 13.1 Groove Tiles & Stone and the Customer agree that title and ownership of the Goods does not pass until:

- (a) the Customer has paid Groove Tiles & Stone all amounts owing to Groove Tiles & Stone on any account whatsoever; and
- (b) the Customer has met all of its other obligations to Groove Tiles & Stone under any agreement between the Customer and Groove Tiles & Stone.

- 13.2 The Customer agrees that until title and ownership of the Goods passes to the Customer in accordance with clause 13.1:

- (a) the Customer is only a bailee of the Goods and a fiduciary relationship exists between the Customer and Groove Tiles & Stone;
- (b) subject to clause 13.2(e), until payment is made for the Goods, the Customer must store the Goods separately and in such a manner that they are clearly identified as the property of Groove Tiles & Stone;
- (c) Groove Tiles & Stone may give notice to the Customer to return the Goods to Groove Tiles & Stone. Upon such notice, the Customer's rights to obtain ownership or any other interest in the Goods will cease;
- (d) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Groove Tiles & Stone;
- (e) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Groove Tiles & Stone and must pay or deliver the proceeds to Groove Tiles & Stone on demand;
- (f) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Groove Tiles & Stone and must sell, dispose of or return the resulting product to Groove Tiles & Stone as it so directs;
- (g) the Customer irrevocably authorises Groove Tiles & Stone or its agent to enter the land and any premises owned, used or occupied by the Customer, or any premises as the invitee of the Customer, where Groove Tiles & Stone believes the Goods are situated and recover possession of the Goods. The Customer consents to such actions and agrees that Groove Tiles & Stone will not be liable for any claim, loss or damage suffered by the Customer as a result of Groove Tiles & Stone taking such actions; and

- (h) Groove Tiles & Stone may recover possession of any Goods in transit whether or not Delivery has occurred.
- 13.3 It is further agreed that:
- (a) the Customer must not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Groove Tiles & Stone; and
- (b) Groove Tiles & Stone may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 14. Risk generally**
- 14.1 All risk for the Goods passes to the Customer on Delivery (including all risks associated with unloading) and the Customer must insure the Goods on or before Delivery.
- 14.2 If any of the Goods are damaged or destroyed during or after Delivery but prior to title and ownership passing to the Customer, Groove Tiles & Stone is entitled to receive all insurance proceeds payable for the Goods. The production of the Sale Agreement and these Terms by Groove Tiles & Stone is sufficient evidence of Groove Tiles & Stone's rights to receive the insurance proceeds without the need for any person dealing with Groove Tiles & Stone to make further enquiries.
- 14.3 If the Customer requests Groove Tiles & Stone to leave Goods outside Groove Tiles & Stone's premises for collection or to Deliver the Goods to an unattended location, then such Goods are left at the Customer's sole risk.
- 15. Change in control or circumstances**
- 15.1 The Customer agrees and acknowledges that:
- (a) it must give Groove Tiles & Stone not less than fourteen (14) days prior written notice of:
- (i) any proposed change of ownership of the Customer including, but not limited to, changes to the Customer's controlling management, directorship or major shareholding; and
- (ii) any other change in the Customer's details including, but not limited to, changes in the Customer's name, address, email address, contact phone or fax number(s) or business practice;
- (b) must promptly advise Groove Tiles & Stone of any other change in the Customer's circumstances which may affect its ability to comply with its obligations under these Terms, including, but not limited to, its ability to pay for Goods on the due date;
- (c) the Customer is liable for any loss incurred by Groove Tiles & Stone as a result of the Customer's failure to comply with this clause.
- 16. PPSA**
- 16.1 In this clause 'financing statement', 'financing change statement', 'security agreement', and 'security interest' has the meaning given to it by the PPSA.
- 16.2 Upon assenting to these Terms in accordance with clause 4.2, the Customer acknowledges and agrees that:
- (a) the Sale Agreement incorporating these Terms constitutes a security agreement for the purposes of the PPSA.
- (b) the Customer grants Groove Tiles & Stone a security interest, including without limitation a retention of title, in respect of all Goods that have previously been supplied and that will be supplied in the future by Groove Tiles & Stone to the Customer.
- 16.3 The Customer acknowledges that Groove Tiles & Stone may perfect its security interest by lodging a financing statement on the Personal Property Securities Register established by the PPSA.
- 16.4 The Customer undertakes to:
- (a) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to-date in all respects) which Groove Tiles & Stone may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) protect or correct a defect in a statement referred to in clause 16.4(a)(i) or 16.4(a)(ii);
- (b) indemnify and upon demand reimburse Groove Tiles & Stone for all registration and enforcement costs and expenses it may incur in:
- (i) preparing, lodging or registering a financing statement or financing change statement on the Personal Property Securities Register in relation to any security interest granted to Groove Tiles & Stone;
- (ii) maintaining those registrations; or
- (iii) enforcing or releasing any security interest granted to Groove Tiles & Stone;
- (c) not register, or permit to be registered a financing statement or financing change statement or grant a security interest in relation to the Goods in favour of a third party without the prior written consent of Groove Tiles & Stone;
- (d) immediately advise Groove Tiles & Stone of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 16.5 Groove Tiles & Stone and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created pursuant to clause 16.2.
- 16.6 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA.
- 16.7 Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose information of the kind referred to in section 275(1) of the PPSA to any third party.
- 16.8 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.9 The Customer waives their right to receive any other statement or notice required by the PPSA (to the extent permitted by law) including a verification statement under section 157 of the PPSA.
- 16.10 The Customer must unconditionally ratify any actions taken by Groove Tiles & Stone under clauses 16.4 to 16.6.

16.11 Subject to any express provisions to the contrary nothing in these Terms is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and charge

17.1 In consideration of Groove Tiles & Stone agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these Terms (including, but not limited to, the payment of any money).

17.2 The Customer indemnifies Groove Tiles & Stone from and against all Groove Tiles & Stone's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Groove Tiles & Stone's rights under this clause.

17.3 The Customer irrevocably appoints Groove Tiles & Stone and each director of Groove Tiles & Stone as the Customer's true and lawful attorney(s) to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Customer's behalf.

18. Defects, warranties and return of goods, Competition and Consumer Act 2010 ('CCA')

18.1 The Customer or its contractor or agent must inspect the Goods upon Delivery and prior to the laying, installing or use of the Goods in accordance with clause 10.5.

18.2 The Customer must within two (2) days of Delivery notify Groove Tiles & Stone in writing of any evident defect or damage, excess or shortage in quantity, or failure to comply with the description, sales quote or sample. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Groove Tiles & Stone to inspect the Goods within a reasonable time.

18.3 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Terms.

18.4 Groove Tiles & Stone acknowledges that nothing in these Terms purports to modify or exclude such implied guarantees and warranties.

18.5 Except as expressly set out in these Terms or in respect of the implied guarantees and warranties referred to in clause 18.3, Groove Tiles & Stone makes no warranties or other representations under these Terms including, but not limited to, the quality or suitability of the Goods. Groove Tiles & Stone's liability in respect of these guarantees and warranties is limited to the fullest extent permitted by law.

18.6 Any liability of Groove Tiles & Stone to the Customer arising under the implied guarantees and warranties referred to in clause 18.3 is limited to and will be completely discharged by any one of the following as determined by Groove Tiles & Stone's in its absolute discretion:

- (a) the refund of the Price paid by the Customer for the Goods or the issue of a note for such amount; or
- (b) the replacement of the Goods or the supply of equivalent goods; or
- (c) the repair of the Goods; or

- (d) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- (e) the payment of the costs of having the Goods repaired.

No installation, re-installation, materials removal or labour charges, or further damages of any kind are payable.

18.7 If the Customer is not a consumer within the meaning of the CCA, Groove Tiles & Stone's liability for any defect or damage in the Goods is:

- (a) limited to the value and subject to the terms and conditions of any express warranty or warranty card provided to the Customer by Groove Tiles & Stone in Groove Tiles & Stone's sole discretion;
- (b) limited to any warranty to which Groove Tiles & Stone is entitled, if Groove Tiles & Stone did not manufacture the Goods;
- (c) otherwise negated absolutely.

18.8 Subject to this clause 18, returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 18.1; and
- (b) Groove Tiles & Stone has agreed that the Goods are defective; and
- (c) if Groove Tiles & Stone has not agreed to collect the Goods, the Goods are returned within a reasonable time by the Customer; and
- (d) the Goods are in as close a condition to that in which they were Delivered as is possible.

18.9 Notwithstanding clauses 18.1 to 18.8 but subject to the CCA, Groove Tiles & Stone will not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer or its installer continuing the laying, installing or use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent user or installer;
- (d) the Customer failing to follow any instructions or guidelines provided by Groove Tiles & Stone in respect of or in connection with the Goods;
- (e) fair wear and tear, any accident, or act of God.

18.10 Notwithstanding anything contained in this clause 18, if Groove Tiles & Stone is required by a law to accept a return then Groove Tiles & Stone will only accept a return on the conditions imposed by that law.

19. Discretionary return of goods

19.1 If the Goods are not returnable under clause 18, Groove Tiles & Stone may otherwise, in its absolute discretion, accept Goods for return provided:

- (a) the Goods are not damaged;
- (b) the Goods, if tiles, are returned in unopened and undamaged boxes; and
- (c) the Goods are returned within three months of the purchase date,

in which case Groove Tiles & Stone may require the

- Customer to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 19.2 Groove Tiles & Stone will not accept for return under any circumstances:
- (a) Goods purchased by Indent Order;
 - (b) speciality or mosaic tiles; and
 - (c) clearance or end of line Goods.
- 20. Exclusions**
- 20.1 To the extent permitted by law and except as set out in these Terms:
- (a) all express and implied warranties, guarantees and conditions however arising are excluded;
 - (b) the customer releases Groove Tiles & Stone (and its officers and employees) from, indemnifies and will keep indemnified and hold harmless Groove Tiles & Stone (and its officers and employees) in respect of all claims arising in connection with the Goods, including, but not limited to:
 - (i) any claims made after the laying, installing or use of the Goods;
 - (ii) any claims made with respect to or in connection with any of the matters referred to in clause 12;
 - (iii) any claims arising in connection with the Customer's (or its employees', agents' or contractors') failure to comply with any laws, rules standards, regulations or instructions applicable in relation to the Goods or use of the Goods; or
 - (iv) any claims arising in connection with any negligence or breach of duty by the Customer (or its employees, agents or contractors) in relation to the Goods or use of the Goods.
 - (c) the Customer acknowledges that:
 - (i) the Customer has not relied upon any representation made by Groove Tiles & Stone, which has not been expressly stated in the Sale Agreement;
 - (ii) Groove Tiles & Stone is not liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever arising directly or indirectly from Goods or any defect; and
 - (iii) any claims for other loss or damage of any kind including, without limitation, loss from failure of the Goods to be Delivered or a delay in the Delivery of the Goods, economic, moral, direct, immediate, special, indirect or consequential loss or damage are expressly excluded.
- 20.2 Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21. Default and consequences of default**
- 21.1 Interest on overdue invoices accrues daily from the date when payment becomes due, until the date of payment, at a rate of one and a half percent (1.5%) per calendar month (and at Groove Tiles & Stone's sole discretion such interest will compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Customer owes Groove Tiles & Stone any money the Customer must indemnify Groove Tiles & Stone from and against all costs and disbursements incurred by Groove Tiles & Stone in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Groove Tiles & Stone's collection agency costs, and bank dishonour fees).
- 21.3 Without prejudice to any other remedies Groove Tiles & Stone may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these Terms Groove Tiles & Stone may suspend or terminate the supply of Goods to the Customer. Groove Tiles & Stone will not be liable to the Customer for any loss or damage the Customer suffers because Groove Tiles & Stone has exercised its rights under this clause.
- 21.4 Without prejudice to Groove Tiles & Stone's other remedies at law Groove Tiles & Stone is entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Groove Tiles & Stone, whether or not due for payment, become immediately payable if:
- (a) any money payable to Groove Tiles & Stone becomes overdue, or in Groove Tiles & Stone's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 22. Cancellation**
- 22.1 Groove Tiles & Stone may cancel any agreement to which these Terms apply or cancel Delivery of Goods at any time before the Goods are Delivered by giving written notice to the Customer. On giving such notice Groove Tiles & Stone will repay to the Customer any money paid by the Customer for the Goods. Groove Tiles & Stone will not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.2 If the Customer cancels the order of Goods or fails to collect Stored Goods prior to the expiry of the agreed storage period in accordance with clause 11, the Customer will be liable for any and all loss incurred (whether direct or indirect) by Groove Tiles & Stone as a direct result of the Customer's cancellation or failure (including, but not limited to, any loss of profits).
- 22.3 At its absolute discretion, Groove Tiles & Stone may immediately cancel any commercial credit account and terminate any Commercial Credit Account Agreement if Groove Tiles & Stone's insurer withdraws cover for that account.
- 23. Privacy Act 1988 – Personal information and personal credit information**
- 23.1 Groove Tiles & Stone respects your right to privacy and is committed to safeguarding the privacy of its customers and website visitors. Groove Tiles & Stone adheres to the Australian Privacy Principles contained in the *Privacy Act 1988* (Cth). Groove Tiles & Stone's Privacy Policy sets out how it collects and treats your personal information. A copy of Groove Tiles & Stone's Privacy Policy is available by emailing admin@groovetiles.com.au or can be

- downloaded from Groove Tiles & Stone's website www.groovetiles.com.au.
- 23.2 The Customer agrees for Groove Tiles & Stone to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to any credit provided by Groove Tiles & Stone.
- 23.3 The Customer agrees that Groove Tiles & Stone may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for one or more of the following purposes:
- to assess an application by the Customer;
 - to notify other credit providers of a default by the Customer;
 - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers;
 - to assess the creditworthiness of the Customer.
- 23.4 The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988* (Cth).
- 23.5 The Customer consents to Groove Tiles & Stone being given a consumer credit report to collect overdue payment on commercial credit (section 18K(1)(h) *Privacy Act 1988* (Cth)).
- 23.6 The Customer agrees that personal credit information provided may be used and retained by Groove Tiles & Stone for one or more of the following purposes (and for other purposes agreed between the Customer and Company or required by law from time to time):
- the provision of Goods;
 - the marketing of Goods by Groove Tiles & Stone, its agents or distributors;
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods;
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer;
 - enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 23.7 Groove Tiles & Stone may give information about the Customer to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Customer;
 - to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 23.8 The information given to the credit reporting agency may include:
- personal particulars (such as the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - details concerning the Customer's application for credit or commercial credit and the amount requested;
- advice that Groove Tiles & Stone is a current credit provider to the Customer;
 - advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of Groove Tiles & Stone, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - that credit provided to the Customer by Groove Tiles & Stone has been paid or otherwise discharged.
- 24. General**
- 24.1 Unless otherwise specified, time is of the essence in the Sale Agreement and these Terms.
- 24.2 The failure by Groove Tiles & Stone to enforce any provision of the Sale Agreement or of these Terms will not be treated as a waiver of that provision, nor will it affect Groove Tiles & Stone's right to subsequently enforce that provision. If any provision of the Sale Agreement or of these Terms is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 24.3 These Terms and any Sale Agreement to which they apply are governed by the laws of Queensland and are subject to the jurisdiction of the courts in Queensland.
- 24.4 The Customer is not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Groove Tiles & Stone nor to withhold payment of any invoice because part of that invoice is in dispute.
- 24.5 Groove Tiles & Stone may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 24.6 The Customer agrees that Groove Tiles & Stone may amend these Terms at any time. If Groove Tiles & Stone makes a change to these Terms, then those changes will take effect from the date on which Groove Tiles & Stone notifies the Customer of such changes. The Customer will be taken to have accepted such changes if the Customer makes a further request for Groove Tiles & Stone to provide Goods to the Customer.
- 24.7 The Customer warrants that it has the power to enter into any Sale Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that any Sale Agreement and these Terms create binding and valid legal obligations on it.