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## **TRADE ACCOUNT CUSTOMER INFORMATION PACK**

### **Introduction**

Over the past 25 years Fired Earth has increasingly established itself as a premium retailer in the interiors market. We currently have 59 showrooms across the UK (both company owned and franchised) with a further 7 Licensees showrooms internationally.

We have a large number of trade accounts and carefully selected independent stockists, to ensure that consumers get targeted exposure to our distinctive products and the Fired Earth experience.

We aim to provide the best possible service to our trade customers, whatever the size and complexity of your order, so both you and your client have confidence in Fired Earth.

We are always on the look out for the right partner to promote Fired Earth in selected areas of the country. Our aim is to be accessible to the consumer, whilst still maintaining exclusivity.

In turn for promoting our extensive range of products to your customers, we support our trade customers in a variety of ways:

- Paperless Trade Account Service – This web-based service allows new Trade Account applications and account detail updating to happen on-line. We can also give you general information, without the need to resort to fax or letter.
- Monthly e-newsletters - updating you on the latest product launches, discontinuations and promotions. Targeted specifically for trade customers.
- Technical and Selling support - Our dedicated Trade Sales and Technical departments are on hand to provide you with information on our products.
- Promotional support – registered stockists are listed on our website and, when applicable, have support when running national promotions.
- Display Upgrades – Fired Earth stockists can purchase product for display at an enhanced discount rate (conditions apply). Please contact our Retail Account Coordinator on 01295 814315 for details.

In addition to the above, we also offer a nationwide installation service, through the Fired Earth Guild. The Guild members are all qualified and experienced installers of our tiles, should you have difficulties finding your own fitter or tiler.

If you require an estimate or tile samples, please either contact your local showroom, or contact our dedicated Trade Sales department on 01295 814315 or at [trade@firedearth.com](mailto:trade@firedearth.com)

I am sure that our distinctive products and excellent customer service will continue to inspire you to create the high level of finish to your projects that all customers demand.

**Richard Rees**

**Business Manager for Fired Earth**

## **TRADE ACCOUNT – General Terms & Conditions**

**A trade account is one given to trades people in allied professions to Fired Earth. They are unlikely to have retail premises.**

### **Standard discount rate**

We offer trade accounts to trades people based on the type of business they are in and their purchasing levels with us.

We do not offer Trade Accounts to professionals in businesses unrelated to our products.

For example: Builders, Decorators, Architects, Specifiers, Property Developers, Interior designers etc may qualify (upon successful application) for a discount rate, that will enable them to make a margin on selling Fired Earth products to their client.

Our discount structure is competitive, but if a single order is placed with a value in excess £10,000 we may apply some additional discretionary discount.

To maintain a Trade Account with Fired Earth your account must exceed £1500 in turnover within each calendar year (January-December). If an account becomes inactive or turnover falls below £1500 in a calendar year, then the standard discount rate will be removed. It will be re-instated once turnover exceeds £1500 again.

We undertake to review the turnover of our trade accounts every 2 months.

Once your account has a turnover in excess of £15,000 in the calendar year, we will review your discount rate and will offer enhanced terms to reflect this higher turnover. We will notify you of any changes to your discount rate.

Likewise, if the sales activity on the account subsequently falls short of £15,000, then the discount may be reviewed and reduced to the previous level.

The standard discount rate will be applied upon successful acceptance of the trade account by Fired Earth and will be communicated to you.

Payment on Trade Accounts can only be made by the Owner/Director or designated Buyer for the company named as the Trade Account.

We make the assumption that holders of trade accounts will deal with the consumer in line with Fired Earth's standard terms. Failure to adhere to those terms may result in closure of your account.

### **Sample rates**

Cut samples of tiles, whole sample tiles and sample pots up to the value of £10 per month can be requested free of charge\* by Trade Account holders.

These can be collected in person from your local showroom, or ordered directly from our dedicated Trade Sales department on 01295 814315.

If you require large floor tiles or multiple wall tile samples, these can be purchased on your Trade Account and returned within 28 days for a full refund.

If your Trade Account has not yet reached turnover of £1500 when the samples are requested, it will be at the discretion of the Trade Sales Manager, as to whether the items are given free of charge\* or loaned.

- Subject to possible postal/delivery charges

## **TRADE RETAIL ACCOUNTS (Stockists) – General Terms & Conditions**

**A Fired Earth Trade Retail Account holder is an independent Stockist with RETAIL premises that displays product, holds, sells and replenishes their stock of Fired Earth products on a continual basis.**

We currently have various Retail Account options available, examples of which are below.

If you have a situation not covered by the examples, please call the Retail Sales Co-ordinator on 01295 814315 for assistance.

### **Paint**

We have a variety of initial paint stock packages available, all of which can be tailored to suit your individual requirements.

However for example:

1. Sample pot display – 5 x each of the sample pots in the full 120 colour range (stand included)
2. Pack B – Sample pots as above plus; top 30 colours in 2.5l emulsion, top 16 colours in 5l emulsion, top 10 colours in 2.5l acrylic eggshell and top 28 colours in 750ml acrylic eggshell.
3. Pack C – Sample pots as above plus; top 75 colours in 2.5l emulsion, top 40 colours in 5l emulsion, top 25 colours in 2.5l acrylic eggshell and top 70 colours in 750ml acrylic eggshell.

For full details and prices please contact our Retail Accounts Coordinator on 01295 814315 or at [trade@firedearth.com](mailto:trade@firedearth.com)

### **Displays & Samples**

Enhanced terms may be available for Retail Accounts who wish to present a more significant display of Fired Earth products. Small quantities of sample tiles (for customer reference), can be purchased at increased discount rates – please ask our Retail Account Co-ordinator for details on 01295 814354.

We do not aim to have displays of every product category in every Fired Earth Trade Retail Account, so we will discuss your individual display requirements on a case-by-case basis. Please contact the Retail Account Co-ordinator for details.

### **Kitchens**

#### **Displays:**

Kitchen displays are available at increased discount level for your showroom, if you intend to retail Fired Earth kitchens and products. Enhanced terms are available for display items but there are some conditions attached. Please contact our Retail Account Coordinator for more details.

### **Tiles**

#### **Displays:**

Tile displays can be purchased at increased discount level if being used to promote Fired Earth tiles and products. Please contact our Retail Account Coordinator for details.

## **Trade Retail Accounts (Stockists)**

### **Standard discount rate**

We offer discount to our Trade Retail Accounts based on the opportunity they present to promote our products to a broader customer base.

There is also a requirement that they do not conflict with our own or existing retail outlets.

We will not offer Trade Retail Accounts to companies that do not have suitable premises, from which to sell our products or whose core business is unrelated to ours.

Once your application has been accepted you will qualify for the standard discount rate, dictated by the initial turnover forecast for your store.

The terms will enable you to buy Fired Earth products directly from ourselves and sell them to your customers, whilst earning margin for yourself.

We make the implicit assumption that you will operate the account and deal with your customers in line with Fired Earth's standard terms and conditions. If you do not, your Trade terms will be withdrawn with one months notice.

Our discount structure is competitive, however if a single order is placed with a greater value than £10,000 we may consider offering an enhanced discount rate, on a case by case basis.

In order to maintain an active Trade Retail Account with Fired Earth and to qualify for the standard discount rate, your account must exceed £3000 turnover within a calendar year (January-December). If an account remains inactive or turnover falls below £3000 in a calendar year, then the standard discount rate will be removed, until such time as the turnover exceeds £3000 again.

We undertake to review the turnover of you trade account every 2 months.

If your trade account achieves sales in excess of £18,000 in the calendar year, then we will review the discount rate offered and your account may benefit from greater discount or promotional support.

Likewise if your account achieves sales in excess of £36,000 in the calendar year, the discount level will be reviewed again and an enhanced rate may be offered.

We will notify you of any changes to your discount rate.

Conversely, if the turnover on the account subsequently falls short of the level needed to maintain the current discount level, then the discount will be reviewed and lowered to a previous level.

The standard discount rate will be applied upon acceptance of the trade account by Fired Earth.

Payment on Trade Retail Accounts can only be made by the Owner/Director or designated Buyer for the company named as the Trade Account.

## **Fired Earth Trade Account – Agreement**

Thank you for requesting a Fired Earth Trade Account information pack.

You now have the:

General Terms & Conditions of Trade Accounts & Trade Retail Accounts (Pages 1-4)  
The full list of Trade Account Terms & Conditions and Terms & Conditions of Sale (Pages 14-21)

These should be read along side the notification from us of your discount terms.

Please complete and sign the section at the bottom of this page; this will act as your acceptance of all our Terms and Conditions.

Please then return a copy (by post/fax or email) to:

Fired Earth, Trade Sales Dept. Twyford Mill, Oxford Road, Adderbury, OXON, OX17 3SX or  
01295 812189 or [trade@firedearth.com](mailto:trade@firedearth.com)

### **Trade Account Agreement:**

I agree to abide by the all the Fired Earth Terms & Conditions, in regard to my Trade Account/Trade Retail account and Conditions of Sale as detailed above.

My Fired Earth Trade Account reference is: .....

Enc

\_\_\_\_\_

### **Authorized Signature:**

**Name (please print):**

\_\_\_\_\_

**Position**

\_\_\_\_\_

**Date**

\_\_\_\_\_

## **TRADE CUSTOMER INFORMATION PACK**

### **Brochures and Paint Cards**

#### **INTRODUCTION**

Fired Earth produces various documents throughout the year, which will assist you in marketing our ranges. The principle documents are:

1. Fired Earth Retail Brochure
2. Fired Earth Paint Card

#### **The Fired Earth Retail Brochure**

The Retail Brochure is sold to all our retail customers at a price of £3.50 (which is printed on the cover). The brochure is very expensive to print, and we unfortunately cannot offer you an unlimited quantity of brochures free of charge for you to give to your customers. We can sell you brochures for £2.80 which will enable you to sell them on to your customers at £3.50

We will give you a free Retail Brochure on each new print run for your own use, and may provide you with additional brochures, in line with your sales through your Trade Account.

If you have any further queries about brochures, please speak to our Trade Sales department on 01295 814315

#### **Deposit Printed Paint Card**

Trade Accounts: can ask for limited amounts of free Fired Earth paint cards upon request.

Stockist Accounts: We will give each paint retailer that stocks the Fired Earth paint range, up to 400 paint cards per annum free of charge.

#### **Promotional booklets:**

We periodically produce some low cost booklets and flyers which give a broad introduction to Fired Earth product, which tend to centre on certain ranges.

It is useful in local mailshots and for contacting customers who know nothing about Fired Earth, to give them a flavour of the ranges.

If you think you have a use for promotional booklet please contact our Trade Sales Dept. on 01295 814315 to discuss the opportunity in more detail.

## TRADE CUSTOMER INFORMATION PACK

### Deliveries

As part of the service received from Fired Earth, we will deliver products direct to your customer and whilst delivery is paid as a separate charge, we absorb a proportion of the costs to ensure we remain competitive.

Where our Fired Earth paint stockists require a weekly replenishment order into your registered retail premises, as long as this order exceeds £75 at full retail price, we will deliver the order for free, by our normal delivery method. Where delivery is required direct to your customer the standard delivery charge will always apply.

As transportation costs continue to rise, we reserve the right to review the charges we currently offer to reflect these rising costs in the future. In the event of an increase we will give you a month's notice

Where the order is to be collected by the Trade Account holder from our warehouse in Adderbury, near Banbury, Oxfordshire, there will be no charge. Alternatively, we can prepare orders for collection by a stockists own carrier.

For all other deliveries, the delivery terms and charges are quoted in our Price List (and on our website) and the full charge is payable by trade customers as well as private customers. Delivery quotes are available as you place your order.

If there are restrictions on delivery – such as weight, height or width restrictions – we need to know at the time of ordering. We may deliver on vehicles of up to 18.5 tonnes gross weight, for which access is required. If in doubt, speak to our dedicated Trade Sales department on 01295 814315.

We undertake to deliver to the nearest access point. We will endeavour to deliver onto site wherever possible, but cannot guarantee to do so.

You should also note the following:

1. **Late Deliveries.** Whilst every effort is made to make a delivery at the time agreed, we will not accept any liability for late delivery. We would recommend that the product is scheduled to arrive 24 – 48 hours before it is required for use (or earlier, if relevant for acclimatisation).
2. **Damage or Shortages.** We will obviously replace any damaged items or short – deliveries, providing that we are notified within 7 working days of the delivery. Notification outside this period will not necessarily result in replacement. Damaged or short delivered items, notified within 7 working days, will be replaced within a three working days of the notification where possible.

Please check the order on delivery and ensure that it is complete and that there is no damage or shortage

If you have any specific queries about delivery of your order, please speak to our Trade Sales dept on 01295 814315.

## **Tradesmen on Site**

If our products are being delivered to be put straight into a house, there may be a temptation to have tilers, fitters etc waiting for the arrival of the order on the day of delivery. The delivery may be delayed for reasons outside our control so we would strongly advise against expecting to fit/lay etc any product on the day the order is scheduled to be delivered. If you have tradesmen on site on the day of delivery and the delivery is late, for whatever reason, we will not accept any responsibility for payment for lost time.

## **Payment**

If you have placed an order and do not have a credit account set up, you will need to pay for the order in full before we can arrange delivery.

If you would like to open a credit account with us, the relevant forms are enclosed at the back of this pack.

There are some very strict criteria for us to open a credit account for a trade customer. We will consult credit reference agencies and the account will only be accepted once those references are confirmed and meet our current criteria

For standard trade accounts: Payment should only be made by the person named on the Fired Earth Trade Account as either the Owner/Director or designated Buyer.

If payment is to be made by credit card, then the card holder's address needs to correspond with the invoice address and the name on the card should be either the Owner/Director or designated Buyer for that company. We do not accept payment direct from the end customer (i.e. your client) and whilst delivery can be made straight to them, the invoice will be sent direct to the Trade Account holder. The delivery acknowledgment slip does not disclose price or discount rate and these details are only shown on the invoice.

If the payment is to be made by cheque, then the cheque book must bear either the company name of the Trade Account or the name of Owner/Director or designated Buyer. We do not accept cheques from third parties, unless previously arranged. Goods will not be released for delivery until the funds are cleared in the Aga Rangemaster account.

If payment is to be made in cash, then the amount cannot exceed £10,000 against any single transaction or order. If the cash amount is £5000 or more, then the showroom must be informed in advance to make appropriate arrangements.

If payment is to be made by BACS transfer, then the goods will only be released once the money has been confirmed as arriving in the AgaRangemaster account. Transaction slips and receipts will not be accepted as proof of payment, so please allow at least 2-3 days for the transaction to be confirmed as received.

## **Trade Credit Account - Terms & Conditions**

We enclose our Trade Account Credit Account forms for your information, which consists of the following;

- Acceptance of Terms & Conditions of Credit Account
- Account Application Form Non Limited Company Form (Detached)
- Trade Reference Form
- Bank Reference Form
- Terms & Conditions of Trade Account with Fired Earth
- Terms & Conditions of Sale (For Your Records attached in Pack)

**Prior to your credit account being set up we will be able to process your orders, with your trade discount applied, on a Pro Forma basis.**

**Due to our Credit Assurance Policy, we can only extend credit terms to those applications that qualify for a credit rating in excess of £10,000.**

Due to the time that this checking process takes, it can take up to 14 working days to open your account. **Your application will be dealt with promptly and actioned as quickly as possible.**

**TRADE CREDIT ACCOUNT APPLICATION FORM**

**Please print the details in block capitals**

Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Post Code: \_\_\_\_\_

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Registration No: \_\_\_\_\_

VAT Registration No: \_\_\_\_\_

Accounts Payable Contact: \_\_\_\_\_

Partnership/Ltd/PLC etc: \_\_\_\_\_

How Long in Business? \_\_\_\_\_

Type of Business: \_\_\_\_\_

Credit Limit Requested: \_\_\_\_\_

Bank Name: \_\_\_\_\_

Sort Code: \_\_\_\_\_

**COULD YOU PLEASE ALSO COMPLETE THE ATTACHED FORMS AND INCLUDE A COMPANY LETTERHEAD**

YES

NO

Company Letterhead Enclosed

**NON-LIMITED COMPANIES ONLY**

***All trade credit applications for non-limited companies must complete this form. If there are more than two partners please enclose a separate sheet.***

Proprietors Name: \_\_\_\_\_

Proprietors Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Post Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Proprietors Name: \_\_\_\_\_

Proprietors Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Post Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

*Please note personal credit checks may be carried out as part of decision to offer credit facilities.*

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**TRADE CREDIT ACCOUNT APPLICATION REFERENCES**

1<sup>st</sup> Trade Reference: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Post Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

2nd Trade Reference: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Post Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

3rd Trade Reference: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Post Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**Please note that we do contact all trade references**

## **FIRE EARTH (“THE COMPANY”)**

### **Terms and conditions of Trade Account/Trade Retail Account**

In addition to the Terms & Conditions of Sale detailed further on, a Trade Account holder agrees to abide by Fired Earth (“The Company”) Trade Account Terms & Conditions:

Trade Account holder’s agree not to sell, promote or distribute Fired Earth products in manner that could cause bring disrepute or other negative effect to Fired Earth by association

Trade Account holders agree to sell Fired Earth product in line with the following guidelines:

- i)** Will not sell Fired Earth products purchased through their Fired Earth Trade Account to any other customers at the same price or less than the price paid on their Trade Account.
- ii)** Will only sell product purchased form Fired Earth, as Fired Earth products.
- iii)** Will not sell or portray other products to be from the Fired Earth product range that are not sourced and sold by Fired Earth as a company.

Trade Account holders’ agree to actively promote the Fired Earth range of products to their customers, in a manner that is conducive to Fired Earth’s general trading policy.

Trade Account holder’s will ensure that only authorised employees (Owner/Director or designated Buyer) from their named company, will place orders and pay for goods on their Fired Earth Trade Account.

Trade Accounts holder’s will not distribute or publish Fired Earth imagery, whether it is Intellectual Property or copyrighted material, through any media channel (press, publication, broadcast or internet based) without written request being given by the Fired Earth Marketing dept. in advance.

Where Trade Account holder’s intend to sell any product from the Fired Earth range, via owned or leased premises (retail or otherwise), they must have written permission from the Fired Earth Business Manager before commencing to sell Fired Earth products.

Where such permission has been granted to sell Fired Earth products through the agreed premises, Trade Account holder’s will not sell similar product that looks like or is a direct likeness to Fired Earth products, whether they be more than, similar or less than the Fired Earth price.

Where such permission has been granted to sell Fired Earth products through the agreed premises, Trade Account holder’s will endeavour to make sure that other products for sale within the premises are industry related (i.e. interior, or decorative) and appropriately marketed in line with Fired Earth guidelines on their own product range

## **FIRED EARTH ("THE COMPANY")**

### **TERMS AND CONDITIONS OF TRADE SALE**

ALL BUSINESS ACCEPTED BY THE COMPANY IS SUBJECT TO THE FOLLOWING TERMS, WHICH SHALL BE INCORPORATED IN, AND TOGETHER WITH ANY SPECIAL CONDITIONS OVERLEAF SHALL CONSTITUTE THE WHOLE OF THE AGREEMENT BETWEEN THE COMPANY AND EACH CUSTOMER AS AT THE DATE OF DESPATCH OF THE CONTRACT GOODS FROM THE COMPANY'S PREMISES TO THE EXCLUSION OF ALL OTHER AGREEMENTS (WHETHER ORAL OR WRITTEN) OR DOCUMENTS PASSING BETWEEN THE PARTIES PRIOR TO SUCH DATE. ANY EXECUTION BY THE COMPANY OF ANY ORDER SHALL BE DEEMED TO BE DONE ONLY ON SUCH TERMS.

#### **Quotations and Price**

1. Quotations are estimates only, based on current costs and are subject to adjustment in the event of any variation whatsoever in the cost to the Company of performing the Contract.
2. Quotations shall remain valid for thirty (30) days only. Thereafter the Company reserves the right to amend, withdraw or cancel the quotations at any time without liability. Once an order has been made, the quotations shall lapse, whether or not the order is based on the quotation.

#### **Drawings and Specifications**

3. All drawings, specifications and other data supplied to the Customer are approximate only, and shall not form any part of this Contract unless expressly stipulated by the Company. Descriptions and illustrations in company catalogues or other advertising material shall not form any part of this Contract.

No warranties are given by the Company expressly or by implication that the goods shall correspond with any such drawings, specifications, other data, descriptions and illustrations the use of which shall not constitute a sale by description.

Although sample of goods may be exhibited to and inspected by, or the results of standard tests thereupon furnished to the Customer, such samples and results are only exhibited or provided to enable the Customer to estimate itself the average quality of the bulk and not so as to constitute a sale by sample and the Company gives no warranty, express or implied, that the sample represents the average quality of the bulk.

#### **Delivery and Risk**

4. Every endeavour will be made to meet Customer's wishes as regards delivery, but no guarantee is given as to delivery dates which are forecast only, and no liability shall attach to the Company by reason of a delay or failure in making delivery, where the Company could not reasonably avoid such delay or failure, or for any contingent or consequential loss or damage arising from such delay or failure. Time shall not be of the essence of the Contract, except in case of payment due to the Company.
5. If carriage is arranged by the Company the risk in the goods shall pass to the Customer on arrival at the point of delivery. In all other cases the risk in the goods shall pass to the

customer on removal from the Company's premises. This clause shall constitute due notice to the Customer to insure for the purpose of Section 32(3) of the Sales of Goods Act 1979 where the goods are sent by route involving sea transit.

6. Whilst every effort will be made, Customers individual requirements amendments or cancellations of any order or schedule or any part thereof can only be accepted by written agreement. The Contract price shall be adjusted to take account of any loss incurred by the Company as a result of any permitted variation or from any suspension of work due to lack of instructions from the Customer or otherwise. Where specifications are to be supplied, the Customer shall supply them in reasonable time to enable the Company to complete delivery with the forecast given.

### **Payment**

7. (a) Charges for goods supplied shall be paid in cash before delivery, unless otherwise arranged in writing. The Company reserves the right to suspend the operation of any credit account in such manner and such time as it shall think fit. Where credit is permitted, invoices shall be payable on or before 28 days following the date of invoicing.

(b) Where payment is not made before delivery by virtue of an alternative arrangement as aforesaid, payment shall be due and made on the dates specified in the said written arrangement. Without prejudice to other of its rights hereunder, the Company shall be entitled to charge additional interest at the rate of 2% per month on any amount remaining due to the Company and outstanding after the specified date (or where credit is allowed, after the 28th day following the date of invoicing) until such outstanding amounts, together with interest accrued, are paid.

### **Title**

8. (a) Title to goods supplied hereunder shall not pass to Customer until payment for those goods has been made for the full contract price and, if payment is not made for those goods at the due date, or if before that date the Customer should be wound up or a Receiver be appointed over the whole of any part of the Customer's undertaking or an execution or distress be levied against the Customer, the Company shall be entitled with or without prior notice to the Customer or Liquidator or Receiver to retake possession of the goods (and of that purpose to go upon any premises occupied or owned by the Customer).

(b) Until the date of payment, Customers being bailees shall store and insure to their full value any goods supplied hereunder in such a way as they are clearly the property of the Company and should a Customer sell or otherwise dispose of any goods in respect of which payment is due to the Company, the Customer or any Liquidator or Receiver shall pay all proceeds of sale or disposition thereof or insurance cover thereon into a separate new account (and not into any overdrawn account) and the Company shall be entitled to trace and recover such monies. The goods shall be insured against all usual perils including loss deterioration and damage and the Company shall on request be entitled to a copy of such policies of insurance and to have its interest noted thereon.

## **Warranties and Limitations**

9. (a) Ceramic products are liable to tonal differences and crazing, and the Company gives no warranty in respect of such characteristics (whether before or after installation).

(b) Being a distributor of manufacturers goods, the Company gives no warranty as to the merchantable quality, fitness or suitability of those goods for any purpose (whether disclosed or not) or their durability, other than as set out below or separately in writing.

(c) In respect of any goods or parts manufactured or installed by the Company, the Company shall make good as its expense any defects therein arising directly from faulty design, materials or workmanship within a period of 12 months from the date of delivery provided that:-

(i) no liability shall attach to the Company for defects caused by fair wear and tear, abnormal working conditions, accident, misuse or neglect.

(ii) the Customer and the end user have stored, unpacked, installed, used and maintained the goods properly and having regard to any instructions and specifications given therewith.

(iii) in any event the Company's liability hereunder shall be limited to replacement or repair or a sum not exceeding the net invoice value of the defective goods, at the Company's option.

(iv) no liability shall attach to the Company unless title to the goods shall have passed to the Customer.

(v) notice must be given to the Company within 10 days of any defect arising.

(d) without prejudice to sub-clause (a) above where goods not manufactured by the Company are the subject of a manufacturer's warranty or guarantee, the Company shall extend such warranties and guarantees to the Customer for the duration thereof SUBJECT to the provisos set out in sub-clause (b) above and PROVIDED that:-

(i) the Customer does not in any way invalidate such warranties or guarantees.

(ii) any complaint relating to such goods is notified in writing to the Company and goods returned in sufficient time to allow a claim against the manufacturer.

(iii) Customers shall indemnify that Company against all costs incurred by the Company in connection with warranty claims rejected by manufacturers.

(e) The Company shall on request endeavour to give Customers the best assistance and guidance, but in view of the range of the Company's products and the uses to which they may be put, it is the Customer's responsibility to ascertain quality, fitness, suitability and durability. In the circumstances of this Clause the Company shall not be liable under this Agreement or in any other way (including negligence) for any loss of profit, consequential loss of damage whatsoever except where the Company is proved to be liable for death or personal injury resulting from the Company's negligence.

(f) Customers will indemnify the Company against all third party claims the liability for which is purported to be excluded by the above paragraphs of this Clause. As the

Company's pricing structure is "inter alia" bases upon such, Customers are advised to consider obtaining their own insurance to cover any liability arising from the operation of this Clause.

### **Outside Work**

10. (a) The Company reserves the right to employ sub-contractors if in its opinion it is advisable to do so.

(b) Where the Company undertakes work or provides labour at the Customer's or other premises the Customer shall indemnify the Company against all claims liabilities losses expenses and damage (including claims by any third parties) arising directly or indirectly from defects in or unsuitability of the premises or apparatus thereat (other than provided by the Company) or from the negligence or breach of statutory duty on the part of the Customer its employee or agents or other occupiers.

### **Alterations**

11. (a) The Company, pursuant to its policy of continuous improvements, reserves the right without notice and without affecting the validity of this Contract, to make such changes in materials, dimensions and design as it thinks reasonable or desirable in all circumstances, having regard to the Customer's wishes.

(b) Minor deviations in work done and goods supplied from the particulars of Customer's orders accepted by the Company shall not annul any Contract or give rise to any claim by the Customer for compensation or a reduction in price.

### **Claims**

12. (a) Claims for shortage must be in writing to the Company (and to the carrier if known to the Customer) within 3 working days of receipt of the goods by the Customer.

(b) Claims for defects or damage must be made in writing to the Company (and to the carrier if known to the Customer) within 10 days of receipt of the goods by the Customer or (for the claims arising in transit) such shorter period as the carrier may lawfully require. Unless otherwise stated, goods delivered will not be accepted for return without prior written consent of the Company; the Company reserves the right to charge a handling charge of a minimum of 20% of the net invoice value of goods accepted for return. All goods returned must be security packed and must be consigned carriage and insurance paid.

## **Suspension and Termination**

13. (a) Without prejudice to the Company's rights to accept repudiation of this Contract by the Customer.

- (i) if the customer is overdue with any payment or has a Receiver or Liquidator appointed, or,
- (ii) if the Customer wrongfully fails to take delivery of the goods or the consignment thereof, or,
- (iii) if the Customer exceeds its credit limit, or,
- (iv) if the Customer defaults in or breaks any of its other obligations hereunder.

Then in any such case the Company shall be entitled (without prejudice to its other rights hereunder) to suspend further performance by it of this Contract for such time not exceeding 12 months as the Company shall deem fit and for this purpose to stop any goods in transit to the Customer or in the course of installation.

(b) Without prejudice to any of its other rights the Company shall also be entitled to either suspend performance of its obligations hereunder or treat the Contract as frustrated or rescinded and cancel unfulfilled parts of the Contract in whole or in part in circumstances of 'force majeure' beyond the reasonable control of the Company and where such circumstances are likely to prevail for the foreseeable future. The Company's liability on suspension or cancellation shall be limited to repaying the Customer of any part of the Contract price received by the Company and attributed to the unfulfilled and cancelled part of the Contract less any expense incurred by the Company in part performance prior to cancellation.

(c) The Company will notify Customers of the exercise of its entitlement to suspend performance, within a reasonable time of becoming aware of the events giving rise to such entitlement and Customers shall (where the suspension was due to 'force majeure') be entitled by written notice to the Company to cancel the remaining parts of the Contract when the Company's liability shall be limited as in (b) above.

14. Without prejudice to its other rights the Company may by written notice terminate the obligation to supply a Customer if the Customer is in breach of any Contract with the Company (and such breach remains unremedied for 7 days after notice from the Company) or if the Customer goes into bankruptcy, receivership or liquidation proceedings in any jurisdiction. On such termination Customers shall only be entitled to receive credit equal to the lesser of the Contract Price for, and the proceeds (less costs) of the subsequent disposal of any goods not delivered or repossessed by the Company subject to the Company's rights of set-off in respect of the other liabilities of any account.

## **Industrial Property**

15. (a) Customer's shall indemnify the Company in full against all liability and costs arising from any infringement (proven or alleged) by Customers of any copyrights design rights or other intellectual or industrial property rights relating to ceramic tile goods documents or data supplied hereunder. Customer's shall not alter or deface or reproduce or use any of the Company's registered trademarks on the ceramic tiles or other goods.

(b) The Company shall give to the Customer prompt written notice of receipt by it of any such claims.

(c) Any drawings, specifications or documents supplied by the Company to Customers are to be used as guidelines only and the copyright and title therein shall at all times remain vested in the Company and shall not be used for any purpose than for which they were supplied but be returned on request. The Company shall retain full ownership of all inventions, designs and processes already made by it or evolved during the course of any work on any Contract.

(d) The Company shall not be liable for the infringement of any intellectual or industrial property rights of third parties arising from the use or combination of the ceramic tiles or other goods with any other article, apparatus or device.

## **General**

16. The parties hereto agree that limitations and exclusions incorporated here, are reasonable in all the circumstances under which this Contract is to be performed, but without prejudice thereto, it is hereby agreed that if any such limitation or exclusion would by the operation of law be adjudged to be void (whether in respect of a person dealing as a consumer or not) as going beyond what is reasonable for the protection of the Company's interests, but would be valid if part of the wording was deleted or the extent and scope thereof reduced, the said limitations and exclusions shall apply with such modifications as may be necessary to make them valid and effective.

17. All prices are quoted exclusive of VAT, unless otherwise stated.

18. This Agreement shall be governed by and adjudicated under English Law, and the provisions of the Sale of Goods Act 1979. Supply of Goods (Implied Terms) Act 1973. Supply of Goods and Services Act 1982, shall be incorporated herein save as the same may be excluded or modified hereby or inconsistent herewith.

***CONSUMER PROTECTION: Nothing contained in these terms and conditions of sales shall operate to excuse any warranty or condition implied by the UNFAIR CONTRACT TERMS ACT 1977 in event of the customer dealing as a "CONSUMER" as defined by section 12 of that act.***