

Please make cheques payable to 'Tile Centre'
And post to 573 Grand Junction Road Gepps Cross SA 5094
Or forward EFT remittance made to
Account Name: Tile Centre
BSB No. 015 208;
Account No. 462158581-
And include your invoice number as the reference

Terms & Conditions Summary:

This payment Claim / Invoice is made under the *Building and Construction Industry Security of Payment Act 2009 (SA)* and is required to be paid in accordance with this Act. Goods will not be held or any order deemed confirmed unless and until a deposit of 30% of the total order value of Goods has been received by the Company. Unless otherwise stated, full payment is required prior to the dispatch of Goods or 30 days after the placement of an order, whichever comes first. All Goods remain the property of the Company until paid for in full. The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection recovery) and legal costs incurred by the Company for the enforcement of obligations and recovery of monies due from the Customer to the Company. All Goods supplied must be checked prior to installation to be as ordered and of expected quality. No credit or refund will be given on non-stock or discontinued lines. Returns will only be accepted within seven (7) days of invoice, subject to approval by the Company. All returns must be in full unopened box lots and no single pieces or sheets will be accepted. No credits or refunds will be given without an official receipt. All refunds will be made by cheque or credited against the credit card used when placing an order. A handling charge of 25% will be deducted on all returns and cancellations. Quantities are estimated as a service to our clients. We recommend a final on-site check by your tiler, as some goods are non-returnable. The Company accepts no responsibility for any delays in shipping, including but not limited to inclement weather and customs clearance. On confirmation of the order the Customer acknowledges receipt of and agrees to the Terms and Conditions of Trade attached.

1. Definitions

- 1.1 "Company" means Tile Centre Pty Ltd (ABN 93 611 622 694) and its successors and assigns.
- 1.2 "Customer" means the person/s or entity buying the Goods as specified in any invoice, document or order. If there is more than one, Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Company to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between the Company and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted a contract for the Goods and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, pays a deposit for Goods, accepts delivery of Goods, or installs the Goods.
- 2.2 These terms and conditions may only be amended with the Company's consent which shall be given in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Company and the Customer
- 2.3 The Customer accepts that some Goods may need a lead-time of approximately six to eight (6-8) weeks from the date of the order being confirmed. The Customer shall indemnify the Company against any delay in the supply or availability of the Goods including, but not limited to, any delay due to logistics, shipping and/or Australian Customs' clearance.
- 2.4 Once the Customer has entered into this agreement, the Customer shall be jointly and severally liable for all payments of the Price. For the avoidance of doubt, once a Customer has accepted a contract for the supply of Goods under clause 2.1, the Customer is liable for all payments of the Price.
- 2.5 None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements.

3. Electronic Transactions

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the *Electronic Transactions Act 2000 (SA)* or any other applicable provisions of that Act or any Regulations referred to therein.

4. Price and Payment

- 4.1 At the Company's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Company to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to the Company's current price list; or
- (c) the Company's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Company reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) in the event of increases to the Company in the cost of labour or Goods (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Company's control,then any such variation will be detailed in writing and charged for on the basis of the Company's quotation and will be shown as a variations on the invoice.

- 4.3 At the Company's sole discretion a non-refundable deposit of thirty percent (30%) of the total order value of the Goods shall be required and shall become due and payable upon placement of an order.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:
 - (a) before delivery of the Goods;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date shall be thirty (30) days following the placement of an order.
- 4.5 The Company may withhold delivery of the Goods until the Customer has paid the Price in full as well as any storage costs.
- 4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card excluding AMEX (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Company and the Customer.
- 4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Company an amount equal to any GST that the Company must pay for any supply by it under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
5. **Delivery of Goods**
 - 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
 - (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Company's address; or
 - (b) the Company (or the Company's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
 - 5.2 At the Company's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
 - 5.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.
 - 5.4 Any time or date given by the Company to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late, and the Company will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
 - 5.5 The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.
6. **Risk**
 - 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
 - 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled, without any prejudice to any of its rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
 - 6.3 If the Customer requests the Company to leave Goods outside the Company's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
 - 6.4 The Customer acknowledges that variations of colour, shade and grain are inherent in all kiln fired products and natural stone. While every effort will be made by the Company to match colour, shade or grain of product, the Company shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied.
 - 6.5 The Company gives no guarantee (expressed or implied) against crazing, cracking, chipping or scratching that may occur that is beyond the Company's reasonable control due to the nature of the product at the time of installation, therefore it is recommended that the Customer allows for extra product for such breakages.
 - 6.6 The Customer acknowledges and accepts that the Goods supplied by the Company may be subject to optical hazing, shadowing and sealer marking, which is a common manufacturing occurrence for these types of Goods and is strictly aesthetic. It is recommended that the Customer inspect the Goods (individually) prior to fixing, as the Company will not be liable for any loss or damage in this event.
 - 6.7 The Customer acknowledges that it is the Customer's responsibility to check quantities, with an on-site measurement before commencing fixing. Measurements taken off plans or the Customer's figures by the Company are approximate only and no responsibility is to be taken for their accuracy.
 - 6.8 If the Customer orders an insufficient number of tiles, then the Company will take no responsibility for any variation of colour in further batches supplied to the Customer or the inability to supply Goods at all.
 - 6.9 The Company will accept no responsibility for tiles that have already been affixed.
7. **Access**
 - 7.1 The Customer shall ensure that the Company and/or the Company's nominated carrier has clear and free access to the work site at all times to enable them to deliver the Goods. The Company shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) except to the extent that any such damage is due to the negligence of the Company.
8. **Title**
 - 9.1 The Company and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid the Company all amounts owing to the Company; and

- (b) the Customer has met all of its other obligations to the Company.
- 9.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to the Company on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) 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 the Company and must pay or deliver the proceeds to the Company on demand.
 - (d) 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 the Company and must sell, dispose of, or return the resulting product to the Company as it so directs.
 - (e) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Goods are being kept and recover possession of the Goods.
 - (f) the Company may recover possession of any Goods in transit whether or not Delivery has occurred.
 - (g) the Customer shall 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 the Company.
 - (h) the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
9. **Personal Property Securities Act 2009 (Cth) ("PPSA")**
 - 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
 - 9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Company for the Services – which have previously been supplied and which will be supplied in the future by the Company to the Customer.
 - 9.3 The Customer must:
 - (a) promptly sign any further documents and provide all further information (such information to be complete, accurate and up to-date in all respects) which the Company 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) correct a defect in a statement referred to in clauses 9.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Company;
 - (e) immediately advise the Company 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.
 - 9.4 The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
 - 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
 - 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - 9.7 Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
 - 9.8 The Customer must unconditionally ratify any actions taken by the Company under clauses 9.3 to 9.5.
 - 9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
10. **Security and Charge**
 - 10.1 In consideration of the Company 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 and conditions (including, but not limited to, the payment of any money).
 - 10.2 The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
 - 10.3 The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.
11. **Defects, Warranties and Returns and Competition and Consumer Act 2010 (Cth) (CCA)**
 - 11.1 The Customer must inspect the Goods on delivery and must within seven (7) days of invoice notify the Company in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. 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 the Company to inspect the Goods.

11.2 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 and conditions (**Non-Excluded Guarantees**).

11.3 The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.

11.5 If the Customer is a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.

11.6 If the Company is required to replace the Goods under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Goods.

11.7 Subject to the CCA in respect of any expressed warranties and guarantees, the Company's liability for any defect or damage in the Goods is:

- (a) limited to the value of any express warranty as specified in the "Warranty against Defects" documentation provided to the Customer by the Company, at the Company's sole discretion which may be:
 - (i) an expressed warranty that will cease in respect of the Goods supplied from the date of installation in accordance with clause 5 of these terms and conditions of trade for a period of seven (7) years for any breakage or contamination caused by any manufacturing defect subject to:
 - (a) the Goods provided have been used with the correct fixing compound/materials and method;
 - (b) the application or installation of the Goods being carried out by a skilled and experienced applicator in accordance with all data sheets, guidelines, recommendations and other relevant standards including, but not limited to, the composition of the coating system, substrate type, substrate preparation, application rates, application methods, prevailing weather conditions, protection of finished work, maintenance and the Building Code of Australia;
 - (c) the Customer being able to supply the batch number, quantities and purchase receipts for the Goods; and
 - (d) providing access to any site for the Company and/or the Company's representatives to carry out all investigatory or testing of the Goods that at the Company's sole discretion is deemed necessary.
 - (ii) in respect of all claims the Company shall not be liable to compensate the Customer for any delay in either replacing the Goods or in properly assessing the Customer's claim.
- (b) limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods;
- (c) otherwise negated absolutely.

11.8 Subject to this clause 11, returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 11.1; and
- (b) the Customer has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

11.9 Notwithstanding clauses 11.1 to 11.7 but subject to the CCA, the Company shall 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 continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by the Company, the manufacturer of the Goods, any Australian Standards, or the Australia Building Code;
- (e) fair wear and tear, any accident, or act of God.

11.10 The Company may in its absolute discretion accept non-defective Goods for return in which case the Company 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. Any Goods being returned under this clause must:

- (a) be in the unmarked and unbroken packaging in which they were sold;
- (b) be accompanied by the original invoice provided at the time of sale;
- (c) of the same colour, shade and size as current stock held by the Company with current stock excluding Goods:
 - (i) sold by way of a special sale or other than as first grade stock; or
 - (ii) sold at a discounted price; or
 - (iii) which are now a discontinued line; or
 - (iv) on indent orders, or
 - (v) imported orders not taken from stock; or
 - (vi) specifically ordered on behalf of the Customer; or
 - (vii) purchased from another merchant or wholesaler at the request of the Customer.
- (d) be returned within twenty-one (21) days from the date on which the Goods were delivered or picked up as shown on the Company's delivery docket or invoice (whichever may be applicable).

11.11 The Customer accepts that natural stone products cannot be returned for credit.

12. Intellectual Property

12.1 Where the Company has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Company.

12.3 The Customer agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Company has created for the Customer.

13. Default and Consequences of Default

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's contract default fee, and bank dishonour fees).

13.3 Further to any other rights or remedies the Company may have under these terms and conditions, if a Customer has made payment to the Company, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Company under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

13.4 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Goods to the Purchaser. The Company will not be liable to the Customer for any loss or damage the Customer suffers because TC has exercised its rights under this clause.

13.5 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Company becomes overdue, or in the Company'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.

14. Cancellation

14.1 The Company may cancel any contract to which these terms and conditions 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 the Company shall repay to the Customer any money paid by the Customer for the Goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).

14.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

15. Privacy Act 1988 (Cth)

15.1 The Customer agrees for the Company to obtain from a credit reporting body (**CRB**) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to any credit provided by the Company.

15.2 The Customer agrees that the Company may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) 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; and/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.

15.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit.

15.4 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other agreed purposes or required by):

- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Company's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.

15.5 The Company may give information about the Customer to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.

15.6 The information given to the CRB may include:

- (a) personal information as outlined in 16.1 above;
- (b) name of the credit provider and that the Company is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;

- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Company has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Company, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

15.7 The Customer shall have the right to request (by e-mail) from the Company:

- (a) a copy of the information about the Customer retained by the Company and the right to request that the Company correct any incorrect information; and
- (b) that the Company does not disclose any personal information about the Customer for the purpose of direct marketing.

15.8 The Company will destroy any personal information held by the Company upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

15.9 The Buyer can make a privacy complaint by contacting TC via email. TC will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Buyer is not satisfied with the resolution provided, the Buyer can make a complaint to the Information Commissioner at www.oaic.gov.au.

16. Building and Construction Industry Security of Payment Act 2009 (SA)

16.1 At the Company's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the *Building and Construction Industry Security of Payment Act 2009* (SA) may apply.

16.2 Nothing in these terms and conditions is intended to have the effect of contracting out of any applicable provisions of the *Building and Construction Industry Security of Payment Act 2009* (SA) except to the extent permitted by that Act where applicable.

17. General

17.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia in which the Company has its principal place of business, and are subject to the jurisdiction of the courts of Adelaide, South Australia.

17.3 Subject to clause 11 the Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

17.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.

17.5 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

17.6 The Customer agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Company to provide Goods to the Customer.

17.7 Neither party shall 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.

17.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it. Please note that a larger print version of these terms and conditions is available from the Company on request.

18. Transportation

18.1 Loaded Materials are within the Mass & Dimension specifications for the vehicle.

18.2 Loaded materials are restrained in accordance with the guidelines and performance standards of the "National Transport Commission Load Restraint Guide"