



EMPIRE

Ceramics Pty. Ltd.

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CONDITIONS OF SALE

AGREEMENT

These terms and conditions replace all previous agreements and represent the entire agreement between Empire Ceramics Pty.Ltd. ("EMPIRE") and the buyer and any alterations or additions must be in writing signed by EMPIRE and the buyer. All transactions are deemed to take place in QLD, Australia and to be subject to QLD law.

ADVICE

Any advice, recommendation, information, assistance or service provided by EMPIRE in relation to the performance, application or appropriateness of the use of the goods is given in good faith but is given without liability or responsibility on EMPIRE's part unless the provisions of the Trade Practices Act 1974 ("The Act") provide otherwise.

PRICE

All goods are sold at the price current at the time of delivery.
All quotations are valid for 14 days only.

PAYMENT

Payment of the full invoice price must be made before delivery. Where an Irrevocable Letter of Credit is established, the Letter of Credit must be in the hands of our bankers prior to delivery of goods to the wharf. Failure on behalf of the buyer or the buyers bank to comply with this condition will delay the shipment and EMPIRE will be released of any obligation to meet shipping times. It is the buyers responsibility to ensure this condition is met.

COLOUR

Brick colour is determined by naturally occurring raw materials and various firing processes. These factors are imprecise therefore brick colour can vary from batch to batch and within a batch. EMPIRE are supplied bricks subject to various brick companies conditions of sale and cannot control this aspect beyond reasonable limitations. EMPIRE gives no warranty in respect to colour other than the bricks supplied will substantially comply (subject to variation found in fired clay products) with the range of colours of a sample wall of those products on exhibition at

the originating brick suppliers display centres (but no smaller sample of the goods). EMPIRE specifically accepts no responsibility for variations between goods supplied under different orders or the failure of the buyer or his contractors to blend the goods before construction.

DELIVERY

EMPIRE's delivery records shall be prima facie evidence of delivery of the goods of the quantity and description stated therein in good order to the buyer notwithstanding the absence of any representative of the buyer being at the delivery point upon delivery. Any advice given as to the date of intended delivery is given subject to the goods ordered being available and EMPIRE's capacity to effect delivery on that date.

DISPUTE

If the buyer forms the view that the goods delivered do not accord with the order placed:

- * it shall notify EMPIRE of this view as soon as practicable.
- * the notification is to be in writing, and
- * the notification shall detail the way in which the goods delivered do not accord with the order placed.

Failure to give such notification within seven days of the date of delivery shall raise the inference against the buyer that the goods delivered are in accordance with the order placed. The buyer shall be deemed to have accepted the goods delivered if it fails to keep the goods delivered in the condition they were in when delivered or declines a reasonable request of EMPIRE to have the goods inspected.

WARRANTIES

EMPIRE warrants that:

- * the goods delivered will be those specified in the invoice, and
- * the goods delivered are free from defects in material and workmanship except such defects as are normally regarded as being commercially acceptable or a substantial feature of the products supplied by EMPIRE. All other warranties which would be imported into these terms by statute are negated unless such negation is specifically forbidden by statute.

LIMITATION OF LIABILITY FOR BREACH OF A CONDITION OR WARRANTY

Pursuant to section 68A of the Act the following clause applies in respect of any of the goods or services supplied under this contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause will not apply if the customer establishes that reliance on it would not be fair and reasonable. EMPIRE's liability in respect of breaches of express or implied conditions or warranties is limited to any one of the following as determined by EMPIRE.

- * the replacement of the goods or the supply of equivalent goods: or
- * the repair of the goods: or
- * the payment of the cost of replacing the goods or of acquiring equivalent goods: or
- * the payment of having the goods repaired.

EMPIRE shall not be liable for any damage or compensation arising out of or in connection with, special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred as a result of such a breach unless such liability is imposed on EMPIRE by the Act

RISK

The responsibility for loss or damage to the goods shall pass to the buyer upon delivery of goods to the buyer or its agent or to a destination nominated by the buyer or to a carrier nominated by the buyer or to a carrier for a shipping company nominated by EMPIRE to arrange shipment. It is the buyers responsibility to insure the goods for carriage.

INSURANCE

EMPIRE is able and willing to arrange, on behalf of an overseas buyer, sea freight insurance and will do so at the request of the buyer. The cost of such insurance will be borne by the buyer. Such insurance ceases to have effect once the goods have arrived at the destination sea port and it is the buyers responsibility to arrange insurance for the goods once landed.

FORCE MAJEURE

EMPIRE shall not be liable for any failure to perform or delay in performance of the contract due to strikes, fires, explosions, flood, riot, lock-outs, injunction, interruption of transportation, accidents, inability to obtain supplies, war, governmental action or other circumstances beyond EMPIRE's control.

TERMINATION

EMPIRE's agreement to continue to deliver or sell shall always be conditional upon it being satisfied of the buyers ability to pay and comply with these conditions. If EMPIRE ceases to be so satisfied it may suspend and/or terminate deliveries and shall not be liable in any way for a claim damage expense or cost arising therefrom and all monies then outstanding by the buyer shall immediately become due and payable and recoverable.

INDEMNITY

The buyer indemnifies EMPIRE against any claim for damage arising from the entry of its delivery vehicles onto the property nominated for the delivery of the goods.

SEVERENCE

In the event that it is held that one or more of these items are not enforceable, the remaining terms shall apply between the buyer and EMPIRE.

RETURNS & CLAIMS

EMPIRE will accept for return or redirection and credit only goods which it considers are in merchantable condition and any credit will be after a deduction of any cartage costs borne or handling fee charged by EMPIRE. Any claims the buyer may wish to make will be considered only as follows:

- a) for alleged defects in the goods - if made in writing before the products are incorporated in any construction; or
- b) for alleged deficiency in quantity or breakages - if made at time of delivery.