



## Terms and Conditions

RUSSELL ROOF TILES a trading name of RUSSELL BUILDING PRODUCTS LIMITED

### STANDARD CONDITIONS OF SALE

All Quotations and proposals issued by the company are subject to these terms and conditions and Russell Roof Tiles Trading Criteria only.

#### 1. Definitions and Interpretation

1.1 In these Conditions the following words have the following meanings:

“Company” means Russell Building Products Limited (Registered No: 7685988) whose registered office is at Nicolson Way, off Wellington Road, Burton on Trent DE14 2AW “Contract” means any contract between the Company and the Customer for the sale of Goods, incorporating these Conditions and related Special Conditions

“Customer” means the person(s), firm or company who purchases the Goods from the Company;

“Goods” means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them and pallets where applicable); and

“Group Company” means any subsidiary or holding company of the Company and any subsidiary of such holding company (in each case from time to time) (and the terms “Subsidiary” and “Holding Company” shall have the meanings given to them by Sections 736 and 736A Companies Act 1985).

#### 2 Basis of Contract

2.1 Subject to any variation under Condition 2.3 the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).

2.2 Each order for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions. It is the Customer’s obligation to ensure that the terms of its order and any applicable specification are complete and accurate.

2.3 Any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and executed by a director of the Company.

2.4 No order placed by the Customer shall be deemed to be accepted by the Company until a written quote is issued by the Company or (if earlier) the Company commences manufacture or mixing of the Goods, their appropriation to the Customer's order or despatch of the Goods to the Customer. Any order shall be accepted entirely at the discretion of the Company.

2.5 Any quotation or estimate made by the Company is given subject to these Conditions. Without prejudice to the Company's right not to accept an order, quotations will be valid for 60 days from date of issue.

2.6 All Goods are sold by reference to the Company's specification for those Goods in force at the date of the Company's acknowledgement of order.

2.7 The Customer can only cancel an order (or any part of an order) which the Company has already accepted, with the Company's prior agreement in writing and provided that the Customer indemnifies the Company in full in accordance with Condition 8.1.

2.8 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the strengths or use of the Goods by the Company is followed or acted upon entirely at the Customer's own risk.

2.9 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

2.10 The description of the Goods shall be set out in the Company's acknowledgement of order or, in its absence, the Company's quotation.

2.11 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions, details or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and they will not form part of the Contract unless otherwise agreed in writing.

### 3 Delivery and Acceptance of Goods

3.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place in normal business hours. The Customer must ensure an authorised person signs the delivery docket.

3.2 Any dates or time of day specified by the Company for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. If no dates or times are so specified, delivery will be within a reasonable time.

3.3 If for any reason the Customer does not accept delivery of any of the Goods when they are ready for delivery or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then the Goods will be deemed to have been delivered, risk passing to the Customer (including for loss or damage caused by the Company's negligence) and the Company may in its absolute discretion:

(a) store the Goods until actual delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance); or

(b) sell the Goods at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge the Customer for any shortfall below the Contract price.

3.4 The Customer will provide at its expense at the place of delivery adequate and appropriate equipment and manual labour for loading the Goods.

3.5 If the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity ordered by the Customer, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for the Goods delivered at the pro rata Contract rate.

3.6 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

3.7 The Customer shall ensure that an authorised person shall sign a delivery docket on delivery. By signing the delivery docket the Customer acknowledges receipt of delivery.

3.8 The Company shall be entitled at its discretion to make delivery of the Goods by instalments and to invoice the Customer for each instalment individually. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated or to refuse to accept subsequent instalments.

3.9 The Customer will be deemed to have accepted the Goods as being in accordance with the Contract unless:

(a) within 2 days of the date of delivery of the Goods, the Customer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods within 2 days); or

(b) the Customer notifies the Company in writing of any defect or other failure of the Goods to conform with the Contract within a reasonable time where the defect or failure would not be so apparent within 2 days of the date of delivery, failing which the Customer shall not be entitled to reject the Goods and the Company shall have

no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

3.10 Goods, once delivered, may not be returned unless their return is agreed in advance in writing by the Company, and subject to the following conditions and current trading criteria:

- (a) Goods are returned in a new and unused condition;
- (b) Any packaging remains unbroken and in resaleable condition;
- (c) Returns are made within 7 days of delivery of those Goods, all transport and other re-delivery costs of whatever nature are paid by the Customer;
- (d) Payment by the Customer to the Company of a restocking charge of 20% of the net invoice value of the relevant Goods; and all associated distribution costs
- (e) Returned goods shall be accompanied by a written record of invoice number, date and a note of reasons for their return.

3.11 The Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract.

3.12 The Company shall only be liable for any non-delivery of Goods (even if caused by the Company's negligence) if the Customer gives written notice to the Company within 7 days of the date when the Goods would, in the ordinary course of events, have been delivered.

3.13 If the Customer gives notice to the Company in accordance with Condition 3.11, the liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

#### 4 Passing of Risk and Legal Title

4.1 The Goods shall be at the risk of the Customer from the time of delivery.

4.2 Full legal, beneficial and equitable title to and property in the Goods shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until:

- (a) payment in full, in cash or cleared funds, for all the Goods has been received by the Company; and
- (b) all other money payable by the Customer to the Company on any other account or under the Contract or any other contract has been received by the Company.

4.3 Until full legal, beneficial and equitable title to and property in the Goods passes to the Customer:

(a) the Customer shall hold the Goods on a fiduciary basis as the Company's bailee;

(b) the Customer shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods and shall insure them, without any charge to the Company, and not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods (whether or not supplied by the Company) and are clearly identifiable as belonging to the Company and the Company shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Customer reasonable notice of its intention to do so;

(c) the Company may at any time, on demand and without prior notice, require the Customer to deliver the Goods up to the Company and the Company may repossess and resell the Goods if any of the events specified in Condition 11 of the Standard Conditions of Sale occurs or if any sum due to the Company from the Customer under the Contract or on any other account or under any other contract is not paid when due;

(d) for the purposes of this Condition 4 the Company, its employees, agents and sub-contractors will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer and/or any other location where any of the Goods are situated at any time without prior notice;

(e) the Company shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Customer; and

(f) the Company hereby authorises the Customer to use and/or sell the Goods in the normal course of the Customer's business and to pass good title in the Goods to its customers, if they are purchasers in good faith without notice of the Company's rights. This right shall automatically cease on the occurrence of any event set out in Condition 11 of the Standard Conditions of Sale and/or if any sum owed to the Company by the Customer is not paid when due. If the Customer sells the Goods prior to paying the full price thereof the Customer shall hold the proceeds of sale on trust for the Company and shall immediately pay the proceeds of the sale into a separate bank account. At the Company's request, the Customer shall assign to the Company all claims that the Customer may have against purchasers of the Goods from the Customer.

4.4 The Company's rights and remedies set out in this Condition 4 are in addition to and shall not in any way prejudice, limit or restrict any of the Company's other rights or remedies under the Contract or in law or equity.

## 5 Price and Payment

5.1 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Company's quotation, delivery or invoice documentation.

5.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including, without limitation, any increase in the costs of labour, materials, or other costs of manufacture or supply), any change in the quantities of the Goods requested by the Customer or any change in the delivery dates or location for the Goods requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

5.3 Unless otherwise agreed in writing the price for the Goods shall be inclusive of all costs or charges in relation to loading, unloading, carriage and freight. For the avoidance of doubt, this does not affect the Company's right to charge for delivery related charges as set out herein

5.4 The price for the Goods shall be exclusive of value added tax and any other taxes, duties or levies and insurance all of which amounts the Customer will pay in addition when it is due to pay for the Goods.

5.5 The Company reserves the right to levy a "part load" charge, the amount to be determined by the Company, where the Customer orders less than a full load. Details of load capacities can be obtained from the Company.(see current trading criteria)

5.6 The Company reserves the right to make a charge for delivery of the Goods on the request of the Customer at a specific time or outside normal working hours.

5.7 Except where otherwise agreed by the Company or where the Customer is a credit account holder, payment of the price for the Goods is due prior to delivery of the Goods. Time for payment shall be of the essence.

5.8 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.

5.9 The Company shall be entitled to apply any amount due to the Customer under this or any other agreement in or towards payment of any sum owing by the Customer to the Company in relation to any matter whatsoever.

5.10 If any sum due from the Customer to the Company under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by the Customer to the Company shall become due and payable immediately and the Company shall be entitled to:

(a) cancel or suspend its performance of the Contract or any order including suspending deliveries of the Goods;

(b) require the Customer to pay for Goods prior to their despatch or collection from the Company's place of business; and

(c) charge the Customer

(i) interest calculated on a daily basis on all overdue amounts (both before and after judgement) until actual payment at the rate of eight per cent (8%) per annum above the base lending rate of National Westminster Bank plc prevailing from time to time until payment is made in full;

(ii) and the cost of obtaining judgement or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

Any credit facility given to the Customer by the Company may be altered or withdrawn by the Company at any time.

5.11 Rebate payments will not be paid where Russell Roof Tile fixtures and fittings are not used in association with Russell tiles on the same roof.

## 6 Warranty of Quality of Goods

6.1 If the Customer establishes to the Company's reasonable satisfaction that there is a defect in the materials or workmanship of the Goods manufactured or there is some other failure by the Company in relation to the conformity of the Goods with the Contract, then the Company shall at its option, at its sole discretion and within a reasonable time;

(a) repair or make good such product defect or failure in such Goods free of charge to the Customer (including all costs of transportation of any Goods or materials to and from the Customer for that purpose);

(b) replace such Goods (except for colour) with Goods which are in all respects in accordance with the Contract; or

(c) issue a credit note to the Customer in respect of the whole or part of the Contract price of such Goods as appropriate having taken back such Goods or materials relating to such Goods subject, in every case, to the remaining provisions of this Condition 6 provided that the liability of the Company under this Condition 6 shall in no event exceed the purchase price of such Goods and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty.

6.2 The Company shall be under no liability under the warranty at Condition 6.1 above:

(a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration of the Goods without the Company's approval;

(b) if the total price for the Goods has not been paid by the due date for payment;

(c) for any Goods manufactured or appropriated to the Contract in accordance with any specification, instruction or recommendation made to the Company by the Customer; or

(d) in respect of any type of defect, damage or wear (including efflorescence) specifically excluded by the Company by notice in writing.

(e) if the Customer makes any further use of the Goods after giving notice in accordance with Condition 6.4 below.

6.3 If the Customer believes that there is some defect or other non conformance of the Goods with the Contract then the Customer shall give:

(a) notifies the Company in writing of the alleged defect within 7 days of the time when the Customer discovers or ought to have discovered the defect and in any event within 12 months of the delivery of the Goods to the Customer or such other periods as agreed by the Company in writing; and

(b) the Company a reasonable opportunity to inspect the relevant Goods and, if so requested by the Company and, promptly return to the Company or such other person nominated by the Company a sample of the Goods within 7 days, carriage paid by the Customer, for inspection, examination and testing and/or otherwise permit the Company to have access to the Goods at the Customer's premises or other location where they may be for such purposes.

6.4 The warranties set out in this Contract are the only warranties which shall be given by the Company and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

## 7 Exclusion and Limitation of Liability

7.1 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence, or for fraudulent misrepresentation.

7.2 The Company shall not be liable for any economic loss of whatever nature (whether or not such loss or damage was foreseen, direct, foreseeable, known or otherwise), including loss of anticipated profits, loss of actual profits (direct or indirect), loss of anticipated savings, loss of business, or for any indirect, special or consequential loss or damage howsoever caused or any losses arising as a result of any third party bringing a claim in respect of any nature whatsoever.

7.3 Notwithstanding Conditions 7.1-7.2 above the total aggregate liability of the Company arising out of, or in connection with the performance or contemplated performance of this Contract whether for negligence or breach of contract or any case whatsoever shall in no event exceed the value or replacement cost of the price paid or payable by the Customer for the Goods which are the subject of the Contract.

The price of the Goods has been calculated on the basis that the Company will exclude or limit its liability as set out in these Conditions and the Customer by placing an order agrees and warrants that the Customer shall insure against or bear



itself any loss for which the Company has excluded or limited its liability in these Conditions and the Company shall have no further liability to the Customer

## 8 Customers Indemnity

8.1 The Customer irrevocably and unconditionally agrees to indemnify the Company, its employees, sub-contractors and agents (who shall have no duty to mitigate their loss) in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including without limitation legal and other professional advisers' fees and all consequential and economic loss (including without limitation loss of profit, future revenue, reputation or goodwill and anticipated savings)) whether direct or indirect made against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Contract:

(a) the manufacture and sale of the Goods by the Company in accordance with the Customer's specifications or other data or information furnished or instructions given by the Customer;

(b) the cancellation of any order by the Customer after its acceptance by the Company in accordance with Condition 2.8;

(c) any breach by the Customer of its obligations under the Contract; and

(d) any breach by the Company of its obligations under the Contract or any other act or omission (including, without limitation, negligence) of the Company, its employees and agents in excess of the liability of the Company under the Contract.

## 9 Subcontracting, Assignment and Third Party Rights

9.1 The Customer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Company.

9.2 The Company may assign, charge, subcontract or transfer the Contract or any part of it to any person or Group Company.

9.3 A Group Company may enforce any term of the Contract. Save for the Group Companies, no person who is not a party to the Contract (including any employee, officer, agent, representative or sub-contractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 (the "Act") or otherwise) to enforce any term of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Company and the Customer which agreement must refer to this Condition 12.3.

9.4 Even if a person who is not a party to the Contract has a right to enforce any term of the Contract by virtue of Section 1 of the Act, the parties may, notwithstanding Section 2(1) of the Act, vary or cancel the Contract by agreement between them without requiring the consent of such third party.

## 10 Force Majeure

The Company reserves the right to suspend or cancel the Contract in whole or in part (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business and its obligations under the Contract due to any circumstances beyond the reasonable control of the Company including, without limitation, acts of God, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock outs or other industrial action (whether of the Company's own employees or others), failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services provided that, if the event of force majeure continues for a continuous period in excess of 3 months, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 11 Breach of Contract or Insolvency

11.1 The Company may immediately suspend performance of the Contract, cancel any outstanding delivery of the Goods, stop any Goods in transit or by notice in writing to the Customer terminate the Contract without liability to the Company if:

(a) the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy or fails to remedy a breach of its obligations under the Contract which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Company to remedy or desist from such breach within a period of 7 days; or

(b) the Customer enters into bankruptcy, individual voluntary arrangement, liquidation, receivership, administration or into a corporate voluntary arrangement as defined by the Insolvency Act 1986; or

(c) any sum payable under the Contract is not paid within seven days of its due date for payment in accordance with this contract.

11.2 Notwithstanding any such termination or suspension in accordance with Condition 11.1 the Customer shall pay the Company for all Goods delivered up to and including the date of suspension or termination.

11.3 Termination of the contract for any reason shall be without prejudice to the rights and remedies of either party which may have accrued up to termination.

## 12 General

12.1 Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

12.2 The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

12.3 If at any time any one or more of the Conditions or part of them of the Contract is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.

12.4 The Contract sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Goods and shall supersede and replace all documentation previously issued by the Company purporting to set out its terms and conditions of sale of the Goods.

12.5 This Contract shall be governed by and be construed in all respects in accordance with English law and all disputes or claims arising out of or relating to this Contract shall be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.

12.6 Any Intellectual Property Rights in the Goods or created by the Company in the course of performance of the Contract or otherwise, in the manufacture of the Goods shall belong to the Company or its licensor. Nothing in this Contract shall be deemed to grant to the Customer a licence or any other right to use the Intellectual Property Rights of the Company.

“Intellectual Property Rights” means any patent, copyright (including without limitation moral rights), database right, design right, registered design, trade mark or science mark, (both whether registered or otherwise), domain name, know-how, utility model, unregistered design or any other industrial or intellectual property right subsisting anywhere in the world and, where relevant, any application for protection or proprietorship of any such right.