

# UK Terms and Conditions

## FOURWAYS ML - Terms and Conditions of Sale

### 1. INTERPRETATION

#### 1.1 In these Conditions:

“Buyer” means the person who places an order for the Goods from the Seller. “Conditions” means these standard terms and conditions of sale and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

“Contract” means the contract for the purchase and sale of the Goods. “Delivery” means the actual or deemed delivery of the Goods in accordance with Clause 6.

“Delivery Address” means the place where the Goods are to be delivered as specified in the Order Acknowledgement or Invoice.

“Director” means a main board director of the Seller.

“Distance Contract” means any contract concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service provision scheme run by the supplier who, for the purpose of the contract, makes exclusive use of one or more means of distance communications up to and including the moment at which the contract is concluded.

“Goods” means the goods (including any instalment of the goods) which the Seller is to supply in accordance with these Conditions.

“Order Acknowledgement or Invoice” means the acceptance in writing by the Seller in response to the Buyer’s order, to sell the Goods in accordance with the Seller’s quotation.

“Seller” means FOURWAYS ML , 42 Valentines Road, Ilford-Essex IG1 4SA , England.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

### 2. BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any order of the Buyer which is accepted by the Seller by way of the Order Acknowledgement or Invoice, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.

2.2 No variation to these Conditions shall be binding unless agreed in writing by a Director of the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by a Director of the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

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

### 3. ORDERS

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by way of Order Acknowledgement or Invoice.
- 3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the Order Acknowledgement or Invoice.
- 3.3 Product that we sell in “Sale” or with “special discount” are not refundable

#### 4. PRICE OF GOODS

- 4.1 The Price of the Goods shall be the price quoted by the Seller and confirmed in the Order Acknowledgement or Invoice.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before Delivery to increase the Price of the Goods to reflect any increase in the cost to the Seller due to any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated in the Order Acknowledgement or Invoice all prices shall be ex-works the Seller and the Buyer shall be liable to pay the Seller's charges for any transport, packaging and insurance and is not refundable.
- 4.4 The UK website price includes Value Added Tax (VAT). Orders placed for delivery outside the UK may exclude other taxes including but not limited to import duties which the Buyer shall be additionally liable to pay for.

#### 5. TERMS OF PAYMENT

- 5.1 Payment of the Price shall be due and payable on the date of issue of the Order Acknowledgement or Invoice unless otherwise agreed in writing by the parties and time of payment of the Price shall be of the essence of the Contract.
- 5.1.1 Payment only by bank transfer to our bank account and 100% of the amount of invoice. If you pay the invoice you agree with our Terms and Conditions of Sale.
- 5.2 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.2.1 cancel the contract or suspend any further deliveries to the Buyer;
- 5.2.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
- 5.2.3 charge interest to the Buyer at the rate of 8% per annum above the base rate from time to time of the Bank of England on the unpaid balance (such interest to accrue on a day to day basis from the due date for payment until receipt by the Seller of the full amount whether before or after any judgement); and
- 5.2.4 the Buyer shall indemnify the Seller against all costs and expenses (including any legal costs and expenses on a full indemnity basis) incurred or sustained by the Seller in recovering sums due or in exercising its rights pursuant to Clause 5.

#### 6. DELIVERY

- 6.1 Delivery shall occur when the Seller or its carrier arrives at the Delivery Address and notifies the Buyer of such arrival, or where physical conditions surrounding the Delivery Address do not allow

the carrier to reach its destination delivery shall occur at the place the journey is terminated when notified to the Buyer. Delivery shall also occur on the date the Seller proposes to make delivery where the Seller advises that the Goods will be despatched and the Buyer indicates that he will not take deliveries on such date. Where the Goods are collected or to be collected by the Buyer, delivery occurs when handed over to the Buyer or when the Seller notifies the Buyer that the Goods are available for collection. The Buyer warrants that in cases where delivery is to be made by road transport by the Seller or by its carrier sufficient and suitable access to the said destination including a road surface capable of withstanding the weight and size of the transport and loads is available. In the event of any additional costs or expenses being incurred by the Seller directly or indirectly through its carrier the full amount thereof will be payable on demand.

6.2 The Buyer shall be responsible at his expense for off-loading of the Goods except where agreed otherwise in writing.

6.3 Any dates quoted for Delivery of the Goods are approximate only and the Seller shall not be liable for any delay in Delivery of the Goods howsoever caused.

6.4 The Seller reserves the right to deliver the Goods in instalments.

6.5 If the Buyer fails to take Delivery of the Goods or fails to give the Seller adequate Delivery instructions when notified that the Goods are ready for Delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 store the goods until actual Delivery and charge the Buyer its storage charges current at the date thereof (including insurance); and

6.5.2 in the event that the Buyer fails to accept Delivery for a period of three months the Seller may sell the Goods at the best price readily obtainable and (after deducting all storage, packing, unpacking, transport and abortive Delivery costs and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

## 7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon Delivery.

7.2 Notwithstanding Delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds.

7.4 Until such time as the property in the Goods passes to the Buyer the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are situated and repossess the Goods.

## 8. WARRANTIES AND LIABILITY

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with any specification of the Goods forming part of the Contract at the time of Delivery and at the time will be free from defects (except minor defects) in material and workmanship.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear,

wilful damage, negligence, incorrect movement, installation or erection, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Seller's approval. FOURWAYS ML – TERMS AND CONDITIONS OF SALE

8.3 In the event of loss or damage occurring to Goods during transit where the Goods are transported by the Seller or its carrier the Buyer must give written notice to the Seller within two working days of the date of Delivery and further where such Goods are consigned by a carrier of the Seller the Buyer must in addition comply in all respects with that carrier's conditions of carriage for notification for omissions from the Delivery or loss or damage in transit. The Buyer must give written notice to the Seller within three working days of receipt of invoice if the Goods have not been delivered by the Seller or its carrier to the Delivery Address. Failure to give written notice pursuant to this sub-clause shall mean that the Buyer shall be deemed to have accepted the Goods as being in good order and in conformity with the Contract.

8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not Delivery is refused by the Buyer) be notified in writing to the Seller within 7 days from the date of Delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If Delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled, at the Seller's sole discretion, to replace, repair, supply a repair kit or in other ways rectify the Goods (or the part in question) free of charge, or refund to the Buyer the Price of the Goods (or a proportionate part of the Price), but the Seller shall have no further liability to the Buyer.

8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss or profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in the these Conditions.

8.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of delay in performing, or any failure to perform, any of the Seller's obligations in relation to the goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.7.1 Act of God, explosion, flood, tempest, fire or accident;

8.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.7.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.7.4 import or export regulations or embargoes;

8.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or a third party);

8.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery; and

8.7.7 power failure or breakdown in machinery.

8.8 Subject as expressly provided in these Conditions, and except where goods are sold to a person dealing as a consumer (within the meaning of The Unfair Contract Terms 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.9 Where the goods are sold under a consumer sale (as defined by The Consumer Transactions

(Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.10 Save for liability for death or personal injury resulting from negligence of the Seller the Seller's aggregate liability under any one claim or under the total of all claims arising from any one act or default of the Seller howsoever such claim or claims arise (be it by negligence, breach of **contract**, misrepresentation or otherwise) shall in no circumstances exceed one and a half (1.5) times the Price of the Goods which are the subject of the claim.

## 9. ERECTION/INSTALLATION

The erection and installation of the Goods is the Buyer's sole responsibility.

## 10. INSOLVENCY OF BUYER

10.1 This clause applies if:

10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

10.1.2 an encumbrance takes possession, or an administrative receiver or administrator is appointed, of any of the property or assets of the Buyer; or

10.1.3 the Buyer ceases, or threatens to cease, to carry on business or suffers any action in consequence of debt; or

10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this Clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 11. MOULDS

Any moulds created or used by the Seller to make the Goods shall remain the property of the Seller.

## 12. INTELLECTUAL PROPERTY

All intellectual property rights in the moulds and Goods shall vest in the Seller absolutely and the Buyer shall at the Seller's expense execute any documents or do any acts necessary to give effect to the vesting of such rights in the Seller.

## 13. MAKING ORDERS OF GOODS VIA WEBSITE

13.1 When making an order on the Seller's website, irrespective of any previous price the Buyer has seen or heard, once the Buyer selects Goods that it wishes to order, it will then be shown or told the charges it must pay including VAT, if applicable, and any applicable delivery charges. Depending on the weight of the item and destination for delivery, the Seller may advise the Buyer of a different delivery charge (orally, electronically or in writing) after the Buyer has submitted its order and asked the Buyer to confirm (orally, electronically or in writing) that the Buyer still wishes to proceed at that delivery charge), but in any event before the Seller accepts the Buyer's order.

13.2 When the Buyer orders on the website, the Buyer shall pay for the Goods at the time of ordering by one of the methods stipulated on the website, which the Seller requires in order to process the Buyer's order. The Seller shall not be bound to supply before the Seller has received

cleared funds. The Seller may obtain the money for payment of the Goods before the Seller has accepted the Buyer's order. Product that we sell in "Sale" or with "special discount" are not refundable and exclude delivery cost.

13.3 The Seller reserves the right to obtain validation of the Buyer's payment details before providing the Buyer with the Goods.

13.4 The Seller may in its discretion refuse to accept an order from the Buyer.

## 14. RETURNING THE GOODS WITHOUT FAULT

14.1 All product what is specifically manufactured to customer specification or hand made to order in the colour, structure, dimension and thickness of your choosing, (Non stock items) and Product that we sell in "Sale" or with "special discount" Fourways ML is not normally able to offer a returns service unless the product is found to be defective. Specifications (for example, where the Buyer chooses the colour or dimensions, or orders a non-stock item) or clearly personalised or which by reason of their nature cannot be returned for refund, without agreement of Seller. The return of the Goods, after agreement with Seller must be sent free to the address stated by the Seller.

---

14.1.1 Product; Brick-Panels. As each Brick-Panels product is specifically manufactured to customer specification or hand made to order in the colour, structure, dimension and thickness of your choosing, (Non stock items) Fourways ML is not normally able to offer a returns service unless the product is found to be defective. Fourways ML offers a five year warranty on all brick-panels purchased direct from the company on production of the product's original invoice. This warranty applies in the unlikely event that a product fails, due to a design or production fault. This warranty does not apply if Fourways ML assembly recommendations have not been followed or if a problem arises as a consequence of the actions of the client or a third party. Contact us for the full terms of this warranty which does not affect your statutory rights

14.1.2 Product: Brick-tiles, Accessories, Joint Alignment system, Fire place chamber and Window sills return of these materials only in consultation with supplier and no refund of any transport and packing costs

14.2 If the Buyer returns the Goods after agreement with Seller, as provided above:

14.2.1 the Seller will only be obliged to accept them if the Buyer returns them in their original condition. The Goods are the Buyer's responsibility and at the Buyer's risk until the Seller receives them. The Buyer shall be responsible for paying all the costs of returning the Goods; and

14.2.2 Within 30 days of the Buyer's notice of intention to return, the Seller shall refund the payment without the incurred cost such as: delivery cost, transport/packing cost, cancellation costs to Buyers bank account.

14.3 If the Seller has not received the Goods within 30 days of the Buyer's notice of intention to return, the Buyer agrees that the Seller will not takes the goods back and make no refund.

14.4 Differences in colour and structure are particular to the material used in crude ceramic products and therefore cannot be considered a defect in the product. Slight damage that does not essentially limit the usability of the products may also not be considered a defect in the product.

## 15. GENERAL

15.1 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.4 The Contract shall be governed by the laws of England and any dispute arising out of or in connection with it shall be determined by the non-exclusive jurisdiction of the English courts.

15.5 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid post or sent electronically by fax or e-mail to any address which forms part of the contract.

Issue date: January 2013