

GENERAL CONDITIONS OF SALE FOR EXPORT AND GUARANTEES

GENERAL

- 1) The present general conditions constitute an integral part of all sales contracts tiles entered into by Emilceramica
- 2) Except for the individual cases where the conditions have been expressly derogated by agreements in writing signed by Emilceramica (here in after called the SELLER) the conditions shall constitute the sole discipline of those sale contracts.
- 3) If any part of the present conditions or of the contracts submitted to the same, should result invalid, the other parts of the general conditions as well as the written modifications thereof shall remain valid; the invalid parts shall be substituted by agreements which shall, as much as legally possible, adhere to the original will of the parties.
- 4) Any offer, acceptance of offer, delivery by SELLER is understood to have been made at the present conditions except where specifically derogated by an instrument in writing carrying the Seller's signature; acceptance of any such offer, as well as taking delivery by purchaser of products from the SELLER, implies, therefore, the acceptance of the part of purchaser of the present conditions and of their modifications, if any, agreed in writing by the parties.
- 5) The sales contract is entered at the moment when the purchasing or selling party has personal knowledge of the other party's written consent to its proposal; in case such consent is not expressed in writing, only the written notice of products ready for shipment, or in its absence, of forwarding of products to purchaser or, in its absence by effected delivery of products to purchaser and/or to his haulier shall be in place of the consent written consent to be proposal to enter a sale contract.
- 6) The order which has not been confirmed in writing may not be deemed to have been accepted unless and whenever followed by written notice of products ready for shipment, or of forwarding of products to purchaser or by the delivery of the products them products themselves.
- 7) Partial delivery of the products ordered does not imply the acceptance by the seller of the whole order, the acceptance being limited to the part of products actually delivered.
- 8) Any and all offers by seller are deemed to be free and revocable; if agreed in writing to be irrevocable they shall be so for 14 days from the day on which the offer is sent to the purchaser.
- 9) The carrying out of any sale contract shall, in any case be deemed to take place at the seller's registered seat.

ORDERS/DELIVERY

- 10) It is intended that consignment is carried out at our factory at Fiorano Modenese (Modena). The merchandise will always travel at the purchaser's risk even if sent free of carriage. The purchaser will also bear the risk and expense of any eventual breakage and/or tampering and deterioration.
- 11) The delivery of products takes place in accordance with the term "ex-seller's work's"; said term, as well as other alternative delivery terms that may be agreed upon in writing, make reference to the Incoterms 1953 of the International Chamber of Commerce, Paris, in its edition current at the time of sale.
- 12) Should the parties agree in writing that the delivery be made "F.O.B. Italian port", it is understood that the choice of the ship and of the Italian port of shipment shall be made by the seller who shall act for the account of the purchaser.
- 13) The delivery terms are only indicative and not binding. Eventual delays resulting from any cause whatsoever will never give the purchaser the right to cancel , orders or to expect compensation for any direct or indirect damages.
- 14) In case of delay in delivery purchaser may, after having served -a formal and appropriate notice to the seller, refuse further deliveries of products and terminate the contract only in respect of those products which have not yet been delivered due to the delay. The contract termination in respect of undelivered products shall give rise to a payment obligation only in respect of products effectively delivered, any and all damages of indemnities for failure to deliver and/or termination being expressly excluded.
- 15) Goods ordered by the purchaser in error or in excess, or remainders left in his possession, will not be taken back to our company.
- 16) Sizes, weights and characteristics indicated in our lists must be taken as indicative
- 17) The seller shall not be responsible towards the purchaser for failure to comply to the contract terms, in all cases, including late delivery or failure to deliver, where its failure is due to events which are beyond its reasonable control such as, but not limited to, failure to deliver or late delivery by seller's suppliers of manufacturing materials, breaks in the manufacturing machinery, strikes and labour difficulties, interruption of energy flows, interruption or difficulties in transportation.
- 18) In order to benefit from the present clause the seller shall notify to the purchaser the occurrence of a case of "force majeure" within 15 days from its taking place or knowledge thereof. Purchaser may, after 45 days have elapsed from the day of originally agreed delivery and provided it has received less than the 75% in value of products orderd, terminate the contract in respect of undelivered products by sending a written notice; in this case purchaser shall receive back all monies paid in advance on account of undelivered products, all other indemnities being hereby excluded.
- 19) Packing on europallets is chargeable to customers.

PAYMENTS

- 20) Payments of the goods must be effected at our office at Fiorano Modenese (Modena); the issue of drafts or the acceptance of bills payable in other places will not imply a derogation from this cause.
In the case of delay in the total or partial payment of an invoice, the vendor, reserving all his other rights, may suspend further consignments, even if these may be due in consequence of other contracts draw a bill for the amount of the due invoices, and also claim the immediate and entire payment of all material ordered, or have such payment guaranteed in some other way. In case of purchaser's delay in payments, seller may postpone its deliveries for a term equal to the delay in payments, whatever the amount, up to the full settlement of capital and delay interests.
Interest at 5% (five percent) will be charged on late payments, without prejudicing any other action, and in addition the official discount rate from the due date of every invoice will be payable, in any case within the limits of the L. 07/03/96 11.108 and possible followings amendments.
- 21) The prices in the invoices will be those listed in the price list current at the date of consignment. In the case of a change in prices between the confirmation of the order and the date of supply, we reserve the right to adjust the agreed prices to the new situation.

WARRANTY

- 22) The illustrations and descriptions in the catalogues and price lists, as well as all our literature and samples, are to be considered indicative and provided purely for illustrative purposes.
The product dimensions are nominal and, particularly for the porcelain stoneware floor tiles, are subject to the allowed tolerances for use.
Shade differences and decors created alteration are natural features of the artistic production.
Our materials are fired at high temperature therefore exact colour reproduction cannot be guaranteed. A certain seeding in the colour tone is normal.
The warranty on the goods is restricted to 1st grade materials. We therefore expressly decline responsibility for 2nd and 3rd choice or stock materials as well as for occasional and/or special lots that are sold subject to "approval on sight" and without any form of warranty.
The 1st choice materials are guaranteed to conform to the ISO standards in force at the time of sale; for all matters not explicitly specified elsewhere, they are sold with reference to the common practices and workmanlike standards of the ceramics sector, and the recommendations for use provided in our general catalogue.
An essential condition for the validity and effectiveness of the warranty is compliance with the DIN 18352 laying standards and the ISO/TC 189 WG 6 CEN TR 13548:2004; DIN 18202; DIN 18352; ANSI A108, A118, A136 vers. 2011.1 guidelines.
Any claims for defects in materials and workmanship must be notified in writing, to avert invalidation, by registered letter addressed exclusively to the headquarters of Emilceramica in Fiorano Modenese, within 8 days from the date of material delivery for manifest defects, or from the date of their discovery for hidden defects. Failure to comply with the above shall invalidate the warranty according to art. 1495 of the civil code.

COMPLAINTS

- 23) Any differences in shade shall not constitute a defect in the material and cannot be claimed as such.
If the claim is notified in time and proves to be justified, the vendor's obligation shall be limited to accepting the returns and subsequently replacing the flawed or defective goods in the same place as the original supply, with any resolution of the contract, reductions in price or compensation for damages being categorically excluded and renounced.
The responsibility and the warranty shall in no way be extended to materials that have already been laid.
The materials implicated in the claim shall not be replaced if the purchaser fails to immediately cease using the material upon discovering the defect.
In any case, the maximum warranty shall not exceed a value equal to five times the value of the defective materials, with an upper limit of e 10,000.00 (ten thousand).
- 24) a) Complaints for missing goods must be made at the time the goods are received.
b) Complaints of supply of goods not in conformity with those agreed must also be made at the moment they are received.
c) Delivery of goods sent must in any case be accepted by the purchaser. Any delivery containing contestable material and/or materials to be returned to our company must be stored by the purchaser in an adequate way and so as to be protected from eventual damage.,
d) The guarantee regarding hidden defects will be excluded or limited in the following cases: unauthorised removal of the work; where the laying has not been carried out according to standard; where our regulations and special directives as to application have not been observed; acts of damage where there has been a lack of the normal diligence which might have limited the eventual damage. The use of visibly defective goods implies the acceptance of the inferior quality and excludes any later complaint.
e) The goods supplied by us will be exchanged free of charge whenever a guaranteed characteristic is found to be missing and consequently the goods are unusable. A reduction in price may be agreed on instead of the replacement of defective goods.
f) Proof that the goods have been treated in an adequate manner and that the tiles have been laid according to standard is obligatory in any claim for indemnity.
In doubtful case an appraisal is necessary. In the case that a damage is evidenced and our company must pay a compensation, the expenses of the appraisal will be at our own charge.
g) We must be given the opportunity to check the defects subject of any complaint in their original state. In such case we must be granted the time to ascertain the cause of the damage. If this right is denied us by the purchaser, we decline every responsibility for any indemnity claimed.
h) The damaged party will be obliged to take every measure necessary to limit the damage to minimum. And further, he must ensure the availability of a sufficient number of samples of the contested goods.
- 25) Complaints regarding defects found in certain pieces of a supply will not affect the validity of the same, but will remain limited to the defective items.
- 26) The vendor is not required to pay direct or indirect damages of any kind arising out of the use or failure to use defective materials.
- 27) Any complaints or protests will not give rise to a suspension or refusal of the payment of any invoice, which must be effected completely and regularly according to the terms agreed.

APPLICABLE LAW, COMPETENT JURISDICTION, WRITTEN COMMUNICATIONS

- 28) The export sales contracts entered into by the seller are governed by the law of Italy and in particular by the Uniform Law on the International Sale of Goods and by the Uniform Law on the Formation of Contracts for the international sale of goods unless derogated by the present general conditions.
- 29) The competent jurisdiction in respect of all controversies relating to the sales of products by seller and to all legal relationships entered in connection therewith, shall be exclusively the one of the seller's registered seat.
- 30) Any-and all sale contracts based on the present General conditions may be modified only by an instrument in writing or by a communication in writing, signed by an authorised representative of the parties; any written communication and notice to be given in compliance with the present general conditions shall be either in the form of a telex or in the form of a registered letter, return receipt requested.
- 31) Emilceramica want to inform you that in case of demand for rendered goods for not imputable guilt to the VENDOR penal par to 15% of the value of the goods will come debited one to give back.