

## MBI Terms and Conditions

### MBI B.V. - TERMS AND CONDITIONS OF SALE

#### **Article 1. General**

These general terms and conditions of sale ("Conditions") shall apply between MBI B.V. as seller (the "Seller") and its client as purchaser (the "Purchaser") in respect to the sale and delivery of Seller's products, among others but not limited to products which are made with a very specific technique to combine ceramics with concrete such as ceramic tiles with a concrete layer and all those products related to that ("Products"), unless otherwise expressly agreed in writing with respect to all or part of the provisions contained herein.

#### **Article 2. Applicability**

2.1 These conditions apply to all tender offers (hereinafter "Tender Offer(s)") and order confirmations (hereinafter "Order Confirmation") and agreements for the delivery of Products (hereinafter "Agreement") as defined in article 4.1 of these Conditions) between the Seller and the Purchaser (collectively: the "Parties").

2.2 If these Conditions are applicable to the Tender Offer, Order Confirmation or the Agreement, these Conditions shall also apply to all agreements arising from the Tender Offer, Order Confirmation or the Agreement.

2.3 These Conditions will prevail over and set aside any different or additional terms or conditions contained or referred to in an order form or other document or correspondence from the Purchaser, and no addition, alteration or substitution of these Conditions will bind the Seller or form part of any contract between the Parties unless they are expressly accepted in writing by a person authorized to sign on Seller's behalf. Seller explicitly rejects the applicability of Purchaser's (general or specific) purchasing terms and conditions or other similar Purchaser's terms and conditions.

#### **Article 3. Tender Offer and Order Confirmation**

3.1 A Tender Offer is binding for the period specified in the Tender Offer. If no period is specified, the offer is valid for 6 (six) weeks.

3.2 Tender Offers issued by Seller are without prejudice and subject to confirmation, and an agreement binding on Seller shall only come into effect after Seller issues an Order Confirmation to the Purchaser.

3.3 All purchase orders of Purchaser will be accepted entirely at Seller's discretion. Only in case of an Order Confirmation, an order is accepted.

#### **Article 4. Agreement**

4.1 Each Tender Offer and order that is accepted by the Seller will, together with the relevant Order Confirmation and the Conditions, constitute an individual legally binding agreement between the Parties and such

agreement will hereinafter be referred to in these Conditions as the "Agreement".

An order is only binding for the Seller if it has issued an Order Confirmation signed by a person authorized to sign on Seller's behalf.

The Purchaser is deemed to have accepted the Seller's Order Confirmation unless he has notified the Seller in writing to the contrary within 48 hours after the receipt of the Order Confirmation of Seller.

The Purchaser is also deemed to have accepted the Seller's Order Confirmation if he has requested or cooperates with the execution of the order.

Any confirmation from the Purchaser which deviates from the Seller's Order Confirmation, is only binding to the Seller if the Seller has explicitly accepted such deviations in writing.

The Seller's delivery instructions form part of the Agreement.

#### **Article 5. Price**

The prices for Products shall be Seller's applicable prices for Products in effect at the time of the Order Confirmation. The price in the Seller's Order Confirmation is set and fixed and exclusive of VAT. This price includes the costs of packing material.

Seller is entitled to increase the price if the cost price determining factors have been subject to an increase. These factors include, but are not limited to: production costs, and auxiliary materials, energy, products or materials obtained by Seller from third parties, taxes, levies, governmental charges, freight costs and insurance premiums. Seller shall notify Purchaser of such increase.

#### **Article 6. Delivery and delays**

6.1 To determine the delivery time, a specific date or a certain period will be specified in the Agreement. Insofar no specific period or date is agreed upon, the Seller will deliver the Products to the Purchaser within a reasonable amount of time (to be defined by the Seller in its sole discretion).

The place and method of delivery are determined in the Agreement. If no place and method of delivery is defined, the Products are delivered ex works Seller.

If the Seller delivers the Products ex works or at the agreed place and time as set out in the Agreement, the Parties shall consider such actions as delivery and receipt of the Products, even if the Purchaser does not accept or take the Products.

Seller is entitled to partial shipment and delivery of Products.

7.3 Seller shall be released from the agreed delivery dates and periods to the extent that and as long as circumstances occur, which substantially impede performance. All

difficulties, irrespective of their nature, the sphere and segment of the supply chain in which they occur, such as force majeure and acts of god (e.g. flooding, ice, loss of harvest, et cetera) export and import restrictions, problems in production, problems in procuring commodities, disruption of operations (breakdown of equipment or machinery, fire, et cetera), strikes, shortage of personnel or any similar actions, states of emergency or loading and transportation difficulties are deemed to be substantial impediments to performance.

In the event of a substantial impediment to performance under clause 6.5, Seller is entitled to (i) rescind the contract with immediate effect without damages being due to the Purchaser, or (ii) extend the agreed delivery period by the duration of such impediment and time required to make adjustments or to be able to deliver. If such an extension period will be longer than three (3) months, either party may rescind the Agreement.

In case of extension of delivery, Seller is entitled but not obliged to supply other products than stated in the Order Confirmation as long as those products are equivalent to those Products stated in the original Order Confirmation or to replace Products stated in the original Order Confirmation with third-party products of equal value and quality

In case Purchaser is in default with any obligation under the Agreement, then Seller is entitled to postpone delivery of Products and to suspend its other obligations. In case Purchaser becomes subject to bankruptcy law, Seller may either suspend any of its obligations or cancel further deliveries immediately; any loss or damages incurred by Seller and Purchaser is for the account of Purchaser.

#### **Article 7. Examination and conformity to specifications**

The Seller guarantees that the Products are of good quality for the purpose and meet the applicable standards as set out in the Agreement. If nothing has been explicitly agreed upon the quality of the Products, slight variations in thickness, color, surface, structure, any efflorescence and other detected minor defects are accepted by the Purchaser.

On delivery the Purchaser shall examine the Products and verify that the delivered Products at first sight meet all contractual requirements.

Any complaints about the delivered Products shall be made in writing and must reach Seller not later than fourteen (14) days of the date of delivery. The Products must be retained in their transport package to enable Seller to

assess whether a complaint of the Purchaser is justified. The fastening of the Products with visual non-conformity or visual defects on the ground shall be deemed to be an unconditional acceptance of the Products and a waiver of all claims in respect of the Products.

- 7.4 Determination of (non)conformity of the delivered Products shall be done by the Seller, at the Sellers' premises, by analyzing the samples or records retained by Seller. Insofar no samples or records have been retained, the determination of (non)conformity will be made by assessing the Products delivered to the Purchaser. Insofar the Products comply with the Agreement, the costs of the inspection shall be borne by the Purchaser.
- 7.5 Complaints do not affect the obligation of Purchaser to pay the price for the Products. Upon receipt of a complaint, Seller is entitled to suspend all further deliveries until the complaints are investigated and established to be unfounded and/or refuted or until the nonconformity has been totally cured.
- 7.6 If the Products or part(s) of the Products cannot be provided to the Purchaser as set out in the Agreement, the Seller will immediately inform the Purchaser and will adjust the performance of the Agreement (to its own expense) to the changed circumstances, in order to achieve any other reasonable solution for the Purchaser.
- 7.7 The Products may only be returned to Seller if Seller has confirmed this in writing. Returning of Products takes place at risk of Purchaser.

#### **Article 8. Transfer of risk and property**

- 8.1 The risk of the Products shall pass to Purchaser on delivery of the Products as set out in clause 6.
- 8.2 The ownership of the Products shall not pass to Purchaser and the full legal and beneficial ownership of the Products shall remain with Seller, unless and until Seller has received payment in full for the Products, including all secondary costs, such as interest, demurrage, charges, expenses, et cetera.
- 8.3 In the event of termination of the Agreement, Seller shall, without prejudice to any other rights of Seller, be entitled to require immediate re-delivery of the Products for which it invokes the retention of title. Purchaser is obliged to immediately and fully cooperate to such request for re-delivery and retention of title.
- 8.4 Until payment for the Products in accordance with article 9 has been made, Purchaser is entitled to use the Products solely to the extent required in its ordinary course of business, and, to the extent possible, shall (i) keep the Products separate clearly identified as Products of the Seller; (ii) notify Seller immediately of any claims by third parties which may affect the Products; and (iii) adequately insure the Products.

#### **Article 9. Payment**

- 9.1 The Purchaser is obliged to pay invoices within 30 days after the invoice date, unless otherwise agreed upon in writing by the Parties.
- 9.2 In event of late payment (default) the Seller is entitled to charge statutory interest. Purchaser

shall be deemed to be in default without reminder or notice of default if it fails to effect payments due. Default interests may be charged at the statutory interest rate as referred to in Articles 6:119a and 6:120 of the Dutch Civil Code ('Burgerlijk wetboek' and hereinafter referred to as "DCC"). Irrespective of any late payment, Seller may assert claims for loss or damage.

Set-off or retention of payment by the Purchaser is not allowed, unless Seller confirmed in writing that set-off or retention of payment is allowed by Purchaser.

If the Purchaser at the due date of an invoice has not yet paid the price of the Products, the Seller is entitled:

- A. to suspend the delivery of the Products until such payment plus the interest due is paid, or
- B. to require advance payment or adequate security for deliveries that still need to be made.

In all cases the Seller remains, without any restriction, owner of the Products until the moment that the Purchaser has fulfilled all its commitment(s) and payments done in full have been received by the Seller.

#### **Article 10. Liability**

10.1 Any liability of the Seller for damage to the work of the Purchaser by delivery of the Products, is excluded, except for damage, as referred to in the articles 6:185, 6:190 and 6:192 DCC.

10.2 In case liability of Seller is established, such liability is limited to the loss or damage which was foreseeable at the time the Agreement was concluded up to a maximum amount equivalent to the purchase price agreed with Seller and as set out in the Agreement. Under no circumstances Seller shall be liable to Purchaser for any kind of special, incidental, direct or indirect, consequential or punitive damages or loss, cost or expense, including without limitation, damage based upon loss of goodwill, loss of business, loss of sales or profits, work stoppage, production failure, impairment of other products or otherwise and whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation or otherwise.

#### **Article 11. Compliance with laws and standards**

11.1 Seller makes no promise or representation that the Products shall conform to any law statute, ordinance, regulation codes or standard ("laws and standards") unless expressly stated in the Agreement. The Products may be subject to requirements or limitations under laws and standards in the country of delivery of the Products. Purchaser shall be exclusively responsible for: (i) ensuring compliance with all laws and standards associated with its intended use of the Products; and (ii) obtaining all necessary approvals, permits or clearances for such use.

#### **Article 12. Distribution and intellectual property**

12.1 Unless explicitly agreed upon, the sale of Products from the Seller to Purchaser shall not convey an appointment of the Purchaser as distributor of the Products, nor shall it convey any license to distribute the Products, nor shall the Agreement be deemed to create a

partnership, joint venture or principal-agent relationship between the Parties and permit Purchaser to act as an agent of Seller.

12.2 The sale of Products to Purchaser shall not convey any license or right under any intellectual property rights, relating to the compositions and/or applications of the Products, and Purchaser expressly assumes all risks of any intellectual property infringement by reason of its importation and/or use of the Products, whether or not in combination with other materials or in any processing operation. Without limitation to the foregoing, the Purchaser shall not use Seller's corporate name or any of Seller's trade name without the prior written consent of Seller.

#### **Article 13. Rights of Seller**

13.1 Seller may refuse performance under the Agreement, if: (i) the Purchaser is overdue with the examination and acceptance of delivered Products or payment of the Products; (ii) doubt (in its sole discretion to be determined by Seller) arises as to the Purchaser's solvency and willingness to pay for the Products; (iii) the Purchaser's company is liquidated or an administrator has been appointed; (iv) Purchaser's company is subject to a change of control, or if applicable (v) the credit limit of Seller's credit insurance and/or internal credit limit for delivery of the Products is exceeded or if an applicable credit limit is withdrawn.

13.2 Seller may - at any moment - require Purchaser to pay for the Products in advance of delivery of the Products.

#### **Article 14. Termination**

Subject to the law, Seller is entitled to terminate the Agreement in whole or in part by written notice if: The duration and /or the consequences of a suspension referred to in these Conditions, or a force majeure situation in all reasonability justifies termination; and / or Purchaser is in default with regard to its obligations as set out in the Agreement.

#### **Article 15. Waiver**

15.1 Failure of Seller to enforce at any time any provision of these Conditions, shall not be construed as a waiver of Seller's rights to act or to enforce any such term or condition.

15.2 The provisions of these Conditions, shall not affect the right of Seller to demand full payment of the purchase price for the Products due and to assert any other rights in respect of defects as otherwise provided in these Conditions or the Agreement.

#### **Article 16. Limitation of action and assignment**

16.1 No action by Purchaser shall be brought unless Purchaser first provides written notice to Seller of any alleged or existing claim against Seller. The Purchaser may no longer invoke a defect in the performance of the Agreement in accordance with article 6:89 DCC, if the Purchaser has not protested to the Seller in respect thereof promptly and within fourteen (14) days after the Seller has delivered and subsequently Purchaser should reasonably have discovered, the defect.

16.2 Any Agreement and the rights of claim following such Agreement between the Parties

may not be assigned by the Purchaser, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of the Seller. This limitation of the transferability of the Agreement and the rights of claim following such Agreement has effect both under the law of obligations and under property law (*goederenrechtelijk effect*) as described in Article 3:83 (2) DCC.

**Article 17. Governing law and jurisdiction**

- 17.1 All disputes that arise from or in connection with the Agreement and further agreements resulting there from, will be subject to the exclusive jurisdiction of the competent District Court of Oost-Brabant in The Netherlands.
- 17.2 The agreement is governed by Dutch law.
- 17.3 The applicability of the U.N. convention on contracts for the international sale of Products (CISG), concluded in Vienna on the 11<sup>th</sup> of April 1980, is excluded.

