



A SIKA BRAND

TILING TRADE SUPPLIES LTD

Terms and Conditions of Trade

1. GENERAL

1.1 The following Terms and Conditions shall be incorporated into all contracts involving goods supplied by TILING TRADE SUPPLIES LIMITED (“the Company”) Trading as: Technokolla NZ. These Terms and Conditions shall prevail over any Purchaser’s Terms and Conditions to the intent that any sale of goods by the Company shall be concluded on these Terms and Conditions only.

1.2 Notwithstanding clause 1.1, the Company may by written notice to the Purchaser alter or replace these Terms and Conditions. All orders placed subsequently by the Purchaser shall be upon the altered or replaced Terms and Conditions.

2. QUOTATIONS AND PRICES

2.1 The Company’s prices are subject to alteration without notice and the price payable by the Purchaser shall be the price ruling at the time the goods are made available.

2.2 All prices quoted do not include GST and are ex store Auckland. Unless stated otherwise, in addition to the price quoted, the Purchaser shall pay GST, any other taxes or duties, insurance, freight and handling charges in relation to the sale and delivery of the goods, all of which shall be added to the price and payable by the Purchaser.

2.3 No order shall be binding on the Company until accepted in writing by the Company or a person authorised on its behalf. Quotations may be revised or withdrawn by the Company at any time prior to its written acceptance of an order based on a quotation.

3. PAYMENT

3.1 Payment is to be made without deduction or set-off of any kind no later than the 20th day of the month following the date of the invoice for the goods.

3.2 The Company may at any time after the goods are made available require immediate payment (without the need to make formal demand) or withhold deliveries if the Company considers the Purchaser to be a credit risk.

3.3 Where any payment is not made on the due date, then without prejudice to any other rights or remedies available to the Company under these Terms and Conditions or at law or in equity or otherwise the Company may:

- (a) Charge interest, by way of liquidated damages, on all overdue accounts at the rate of 2% per month calculated on a daily basis from the date on which payment was due until payment is made;
- (b) Withhold deliveries or cancel undelivered orders or portions thereof;
- (c) Cancel an order or portion thereof, retain as liquidated damages any monies paid by the Purchaser (up to a maximum of 10% of the purchase price) and sue the Purchaser for damages;
- (d) Cancel any other order or contract or arrangement between the Company and the Purchaser or suspend performance of such order, contract or arrangement pending payment without being liable to the Purchaser for any losses (of any kind and whether direct or indirect or consequential) it might suffer.

3.4 The Purchaser shall upon demand reimburse the Company for all costs (including legal costs on a solicitor/client basis), expenses or other sums reasonably incurred by the Company in exercising any right or remedy available to it consequent upon default by the Purchaser which sum shall also carry interest at the rate specified in clause **3.3(a)** if unpaid within one calendar month of demand having being made.

3.5 In addition to any other lien to which the Company may by law be entitled, the Company shall be entitled to a general lien on all goods of the Purchaser in the Company's possession (whether or not payment has been made partly or wholly for those goods) for all amounts due from the Purchaser and may sell (privately, by tender or by auction) all or any of those goods if after receiving 28 days prior written notice of intention to sell the Purchaser fails to pay such amounts to the Company. The Company shall apply the sale proceeds towards all amounts owed to the Company by the Purchaser and shall pay any surplus to the Purchaser.

4. FORCE MAJEURE

4.1 No liability is accepted for loss or damage (in either case, of any kind and whether direct, indirect or consequential) or delay caused by Government order, civil commotion, accidents, fires, strikes, lock-outs or delay in obtaining raw materials whether as a result of shortage or otherwise or any other cause beyond the Company's reasonable control.

5. RETURN OF GOODS

5.1 Upon proof of purchase (packing slip/invoice) goods may be returned to the Company for credit provided the re- turns are made within 28 days of the date of delivery and the goods are in their original packaging and suitable for re- sale. The Purchaser shall pre-pay delivery of the returned goods to the Company and there shall be no refund but the Purchaser's account with the Company shall be credited with the original selling price less a 15% administration and handling fee on returns not caused by the error/omission of the Company.

6. PACKING

6.1 Packing is free of charge and non-refundable. Special packaging is charged as an extra.

7. DELIVERY

7.1 The Company's delivery obligations shall be limited to making the goods available at the Company's premises unless otherwise agreed by the Company in writing.

7.2 Where the Company has agreed to deliver the goods to the Purchaser's premises, the Purchaser shall ensure the Carriers will have uninterrupted access to the Purchaser's premises to enable the goods to be delivered by the Carriers.

7.3 Where the goods are not collected by the Purchaser within 7 days of the Purchaser being notified by the Company that the goods are available for collection, or, where the goods are to be delivered to the Purchaser's premises and access is not provided in accordance with clause 7.2, the Purchaser shall pay the Company upon demand such amount calculated by the Company as will compensate the Company and the Carriers for wasted time and expenditure and any storage charges.

7.4 The Company shall use its best endeavours to meet the required delivery date but will not be responsible for any loss or damage (in either case, of any kind and whether direct or indirect or consequential) arising from any delay in the delivery of the goods from any cause whatsoever nor shall any such delay entitle the Purchaser to cancel any order or to refuse to accept delivery at any time.

8. RISK AND PROPERTY

8.1 The risk of any loss or damage to or deterioration of goods shall pass to the Purchaser when the goods are delivered and it shall be the Purchaser's obligation to insure the goods from that time.

8.2 Ownership of all goods supplied by the Company shall be retained by the Company until payment in full or all monies (whether for the goods or otherwise and including default interest) owed by the Purchaser to the Company. Until payment is made:

- (a) The Purchaser shall hold the goods as bailee for the Company;
- (b) The Purchaser shall keep the goods in good condition and in a secure manner;
- (c) The Purchaser shall, prior to use or resale of the goods, store the goods separately from goods not supplied by the Company and shall not remove or obscure any brand name, marking or other means of identification appearing on the goods or any packaging;
- (d) The Company may enter the premises occupied by the Purchaser to take possession of the goods at any time after payment is due. If all or any of the goods are wholly or partially attached to, intermingled with or incorporated in any other goods the Company may in its sole discretion disconnect, retrieve or sever the goods in order to remove them without being liable for any loss or damage caused or any liability incurred thereby and the Purchaser hereby indemnifies the Company for any claims for loss or damage that may be made against the Company as a result of the exercise by the Company of its rights pursuant to this clause.

8.3 If the Purchaser re-sells the goods or any of them before such payment is made it shall hold the sale proceeds in trust for the Company in a separate bank account so the proceeds are identifiable and traceable and account to the Company for all monies owed by the Purchaser to the Company. If the Purchaser re-sells the goods or any of them so as to create a debt owed to the Purchaser, the Purchaser hereby assigns all legal and equitable title to that debt to the Company and the Purchaser hereby irrevocably appoints the Company as its attorney with all powers permitted by law for the purpose of effecting any such assignment and recovery of any such debt in the name of the Purchaser for the benefit of the Company.

9. PERSONAL PROPERTY SECURITIES ACT 1999

9.1 The Purchaser acknowledges that these Terms and Conditions create a security interest in all present and after acquired goods and any proceeds of the sale of the goods as security for all of the Purchaser's obligations to the Company pursuant to the Personal Property Securities Act 1999 ("the PPSA") and that the Company may register a financing statement to perfect its security interest in the goods delivered or to be delivered to the Purchaser in accordance with the provisions of the PPSA.

9.2 The Purchaser shall provide all information, execute or arrange for execution of all documents and do all other things that the Company may require to ensure that the Company has a perfected first ranking security interest in the goods under the PPSA.

9.3 The Purchaser waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of the Company under the PPSA and agrees that as between the Company and the Purchaser the Purchaser will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where the Company has rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.

9.4 The Purchaser shall immediately upon request by the Company, procure from any person considered by the Company to be relevant to its security position such agreements and waivers as the Company may at any time require.

9.5 The Purchaser shall immediately notify the Company of any change in the Purchaser's name, address details and any other information provided to the Company to enable the Company to register a financing change statement if required.

10. WARRANTIES AND LIABILITIES

10.1 Save for any warranties and conditions conferred in writing by the Company on the Purchaser in relation to particular goods sold by the Company to the Purchaser, the Company makes no representation and gives no assurance, condition or warranty of any kind to the Purchaser (including any assurance, condition or warranty implied by law to the extent that the assurance, condition or warranty can be excluded) in relation to the goods and accepts no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in these Terms and Conditions or in any quotation or other writing given by the Company to the Purchaser. The Purchaser specifically acknowledges that where it is acquiring the goods for business purposes the provision of the Consumer Guarantees Act 1993 is excluded.

10.2 The Company will replace with reasonable despatch (subject to clause 5) any goods which under proper and normal condition of storage or use are revealed not to comply with specifications published by the Company within 28 days from the date of delivery. The Company may require such goods to be returned to the Company's premises at the Purchaser's cost together with proof of purchase.

10.3 The benefit of any warranties and conditions conferred by the Company on the Purchaser are personal to the Purchaser and are non-assignable.

10.4 In no case shall the Company be liable to the Purchaser or any other person for indirect or consequential loss or damage of any kind arising out of attributable to any breach by the Company of its warranties or conditions or obligations under this contract or negligence or otherwise and for the purposes of these Terms and Conditions consequential loss includes (without limitation) loss or use of goods or services, loss of income or profit and loss or damage to persons and property.

10.5 The Company reserves the right not to accept liability for damaged or faulty goods, short delivery or errors in despatch which would be apparent by inspection on delivery, unless intimation by writing is given to the Carriers and the Company within 3 days from the receipt of goods by the Purchaser. The Company accepts no liability for loss of goods ordered but not delivered unless notice to the Company and the Carrier is given within 28 days of the date of the packing slip or invoice (whichever is the earliest).

10.6 Regardless of the legal basis of any claim of any kind made against the Company, the Company's maximum liability to the Purchaser under any circumstances shall not exceed the purchase price paid or payable for the goods supplied by the Company which gave rise to that claim.

10.7 No employee, agent of, or independent contractor engaged by the Company shall in any circumstances be under any liability of any kind to the Purchaser for any loss or damage whether arising or resulting directly, indirectly or consequentially from any act, neglect or default on the part of such person while acting in the course of or in connection with his or her employment, agency or engagement and, without prejudice to the generality of the foregoing provision, every exemption limitation, condition and right expressed or implied in these Terms and Conditions on the part of, or in favour of, the Company shall extend to protect every such employee, agent or independent contractor acting as aforesaid.

11. RE-SALE

11.1 If the Purchaser shall sell any of the goods the Purchaser must do so under the trademarks registered by the Company and the Purchaser must ensure such goods are sold upon Terms and Conditions that include terms identical to the provisions of these Terms and Conditions.

12. WAIVER/VARIATION

12.1 The Company shall not be deemed to have waived or varied any provision of these Terms and Conditions or any right or remedy which it may have under these Terms and Conditions or at law or in equity or otherwise unless the waiver or variation is in writing signed by the Company or an authorised person on its behalf. No waiver of a breach shall be deemed to be a waiver of any other breach or any further breach.

13. NOTICE

13.1 Any notice or other document required to be in writing by virtue of these Terms and Conditions shall only be effective on the part of the Company if signed by the General Manager of the Company.

14. APPLICABLE LAW

14.1 These Terms and Conditions and the relationship between the parties shall be governed by the laws of New Zealand.

Tiling Trade Supplies Ltd t/a Technokolla NZ
30c, Porana Road
Glenfield
Auckland
New Zealand



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