



ITALTILE RETAIL

CNR WILLIAM NICOL DR & PETER PLACE, BRYANSTON, 2021

T: 011 510 9002 F: 011 510 9019

www.italtile.co.za

ITALTILE STANDARD TERMS AND CONDITIONS

These terms and conditions apply to, and form part of each and every agreement, whether written or oral, in terms of which you purchase goods and/or services from the Italtile entity defined below. Please read these terms and conditions carefully. All of the provisions of these terms and conditions are important, but please pay special attention to the parts that are inside a box with bold writing. These parts highlight and contain information about terms and conditions that have important consequences for you. They are only intended to bring such terms and conditions to your attention, and to explain their fact, nature and effect. They are aids to understanding only and are not terms and conditions themselves. They do not limit the meaning or application of the terms and conditions, and do not apply only to the situations and examples described in the boxes or to similar situations or examples.

1. INTERPRETATION

- 1.1. The clause headings contained in this Agreement are not to be used in the interpretation of this Agreement. Unless a meaning is inconsistent with the context, the following terms shall, for this Agreement, have the meanings below:
- 1.1.1. **"Agreement"** means an agreement in terms of which you purchase goods and/or services from Italtile on these terms and conditions;
 - 1.1.2. **"Credit Agreement"** means a credit agreement concluded with Italtile on Italtile's standard credit terms;
 - 1.1.3. **"Credit Approved Customer"** means a Customer who has concluded, and remains bound by, a valid Credit Agreement;
 - 1.1.4. **"Goods"** means goods which form the subject matter of the sale by Italtile to you;
 - 1.1.5. **"Italtile"** means Italtile Retail (Proprietary) Limited, registration number 2007/016836/07, (and its franchisees) of Italtile Building, corner of William Nicol and Peter Place, Bryanston, 2021, and "we", "us" and "our" have corresponding meanings;
 - 1.1.6. **"Italtile Website"** means the website of Italtile at www.italtile.co.za or at such other URL as Italtile may determine from time to time;
 - 1.1.7. **"Italtile group of companies"** means subsidiaries, including Italtile, of Italtile Limited;
 - 1.1.8. **"party"** means either Italtile or you, and "parties" means both Italtile and you;
 - 1.1.9. **"Quotation"** means the written quotation, if any, provided to you by Italtile for the supply and/or sale of any Goods;
 - 1.1.10. **"Standard Quantities"** shall mean the standard quantities in which Goods are packaged and/or sold by Italtile, which quantities may vary according to the type of the Goods sold, and "Standard Quantity" has a corresponding meaning;
 - 1.1.11. **"Tax Invoice"** means the tax invoice issued to you in respect of the Goods;



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1.1.12. **"you"** and **"Customer"** means the person purchasing Goods, and any person on whose behalf Goods are purchased; and

1.1.13. **"VAT"** means value-added tax levied in terms of the Value-Added Tax Act, 89 of 1991, as amended.

1.2. An Agreement for the purchase of Goods by you on these terms and conditions shall be deemed to have been entered into between Italtile and you at the time that we issue a Tax Invoice for you or such other date as the parties may agree in writing from time to time ("**Sale Date**").

1.3. In the event of any conflict between the provisions of these standard terms and conditions and any Schedule to this Agreement, the provisions of these standard terms and conditions shall prevail.

2. QUOTATIONS

2.1. **You acknowledge that:**

2.1.1. **most Goods are sold by Italtile in Standard Quantities; and**

2.1.2. **accordingly, should you place an order for any quantity of Goods that is not a Standard Quantity, having regard to the nature of the Goods ordered, Italtile is entitled to submit a Quotation for the nearest number of Standard Quantities of the Goods that is not less than the quantity of Goods ordered. If such Quotation is accepted by you, the resultant agreement shall (notwithstanding the quantity requested in the order) be for the supply of the quantity of Goods as specified in the Quotation.**

Clause 2.1 contains acknowledgements of certain facts by you and you will not be able to deny that these statements are true. We may take action against you and may have claims against you as a result of these statements. This clause also limits your rights against us, and may result in you giving up rights you might otherwise have. Please ensure you inspect the quantity of Goods carefully, especially those sold in Standard Quantities, to ensure that the quantity you purchase will satisfy your requirements.

2.2. Quotations are valid for 14 days, subject to the availability of Goods and services, unless withdrawn sooner or otherwise stipulated and will expire on the conclusion of that period.

2.3. Our prices exclude VAT (save as specified to the contrary in a Quotation and/or Tax Invoice) and unless the Parties agree expressly in writing:

2.3.1. the prices quoted in any Quotation shall exclude delivery costs; and

2.3.2. all delivery costs shall be borne solely by you.

2.4. **As far as the law allows, quotations are subject to correction of good faith errors by Italtile.**

2.5. **As far as the law allows:**

2.5.1. **you confirm that the Goods and/or services reflected on any Tax Invoice issued to you duly represent the Goods and/or services ordered by you at prices agreed to by you; and**



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- 2.5.2. where delivery and/or performance has occurred on or before the Sale Date, you confirm that you have had a reasonable opportunity to inspect the Goods and/or services, they have been inspected by you and you are satisfied that they conform with the quality and quantity ordered and are free from defects.

Clause 2 contains acknowledgements of certain facts by you and you will not be able to deny that these statements are true. We may take action against you and may have claims against you as a result of these statements. This clause also limits your rights against us, and may result in you giving up rights you might otherwise have. Please ensure you read the Quotation (if any) and Tax Invoice, and inspect the Goods, carefully.

3. STORAGE

If you require Italtile to store the Goods purchased at the premises of Italtile then you must complete, sign and submit to Italtile or its authorised representative, for its countersignature, a form substantially in the form attached marked Schedule A ("**Storage Form**"). This clause 3 will only apply if you do so and Italtile or its authorised representative countersigns the form.

- 3.1. For purposes of this clause 3, the terms "**Stored Goods**", "**Sale Invoice**", "**Storage Period**" and "**Storage Fee**" shall bear the meanings given to them in the Storage Form.
- 3.2. Italtile shall store the Stored Goods at Italtile's retail premises for the duration of the Storage Period, and shall:
- 3.2.1. on the last day of such Storage Period (or earlier on reasonable request by the Customer) make the Stored Goods available for collection by or on behalf of the Customer from Italtile's retail premises; or
- 3.2.2. if Customer has requested delivery of any Stored Goods as contemplated in clause 4, arrange for release of such Stored Goods to the third party engaged to deliver such Stored Goods on or about the Requested Delivery Date (as contemplated in clause 4.1).
- 3.3. In consideration of the storage services as above, Italtile shall in its discretion be entitled to determine and charge a reasonable amount for Storage Fees (plus VAT thereon) subject to the maximum amounts specified in the Storage Form, and to levy and invoice such Storage Fees, at any time or times (it being agreed that Italtile may do so once or at any intervals) on or before the date of collection or release of the Stored Goods as contemplated in this Agreement. Notwithstanding anything to the contrary in this Agreement, a Storage Fee (plus VAT thereon) shall only accrue and become payable by the Customer upon the date of issue by Italtile of the relevant VAT invoice therefor.
- 3.4. Italtile shall be entitled to withhold release of the Stored Goods from storage until all amounts owing by the Customer in relation to the Stored Goods have been paid, including, without limitation, the Storage Fees as well as any other amounts due under this Agreement.
- 3.5. **For as long as the Stored Goods remain in Italtile's possession, the Customer hereby, as far as the law allows, pledges and cedes *in securitatem debiti* the Stored Goods (and all its rights in and to the Stored Goods) to and in favour of Italtile as security for all obligations due by it to Italtile under this Agreement (including amounts payable). Without limiting or derogating from Italtile's rights under this Agreement or at law, in the event that this Agreement is terminated arising from any breach or event of default by the Customer, Italtile may, as far as the law allows, without notice to the Customer and without first obtaining an order of court, sell all or part**



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of the Stored Goods in its possession in order to set-off any amounts that the Customer owes to Italtile under this Agreement (including under a Storage Form).

In this clause, you grant a pledge in favour of Italtile as security for your obligations. This means that, if you breach this Agreement, Italtile is entitled to sell the Stored Goods and apply the proceeds towards settling the amounts you owe, as far as the law allows. It may result in you losing rights you might otherwise have.

- 3.6. **Risk in the Stored Goods shall pass to the Customer on the Sale Date and, for the duration of the Storage Period and for such longer period until Italtile has made the Stored Goods available for collection and/or released the Stored Goods, the Customer shall bear the risk of damage to, destruction or theft of the Stored Goods so stored, subject to clause 3.7.2 below, as far as the law allows.**

In this clause, as far as the law allows, you assume risk and liability for the Stored Goods even while they are in our possession. This may limit your rights if you suffer loss.

- 3.7. For as long as Italtile is in possession of the Stored Goods, Italtile shall:

- 3.7.1. not treat the Stored Goods as being the property of Italtile; and
- 3.7.2. in the handling, safeguarding and utilisation of that property, exercise the degree of care, diligence and skill that can reasonably be expected of a person responsible for managing any property belonging to another person.

By signing a Storage Form, you are agreeing to the further terms in this clause 3, and will assume risk and liability, and will be liable for further costs.

4. DELIVERY

- 4.1. If you require Italtile to facilitate transportation and delivery ("**delivery**") of any Goods to you and Italtile is agreeable to this, then at your request, Italtile will specify on a Tax Invoice such details as may be provided by you and such other details as Italtile considers reasonably necessary for such delivery ("**Delivery Details**"), including which Goods are to be delivered ("**Delivery Goods**"), the charges for such delivery ("**Delivery Charge**"), the address to which such Goods are to be delivered ("**Delivery Address**") and the estimated date of delivery ("**Requested Delivery Date**"). **By you accepting a Tax Invoice which contains Delivery Details and/or paying Delivery Charges as specified in any Tax Invoice, you agree to the further terms in this clause 4, and acknowledge that all Delivery Details are correctly reflected on the Tax Invoice.**
- 4.2. Customer authorises Italtile to appoint a third party to transport and deliver the Delivery Goods to the Delivery Address on Customer's behalf, on terms which Italtile, acting reasonably, considers appropriate.
- 4.3. For as long as Italtile is in possession of the Delivery Goods (prior to having released same to the third party contemplated in clause 4.2 above), Italtile shall in the handling, safeguarding and utilisation of the Delivery Goods, exercise the degree of care, diligence and skill that can reasonably be expected of a person responsible for managing any property belonging to another person.



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- 4.4. **As far as the law allows, Customer assumes full risk for, and hereby indemnifies and holds Italtile harmless from and against all loss, liability, damage and claims of whatsoever nature which may be made against or suffered by Italtile and/or any other person as a result of, the transportation and/or delivery of the Delivery Goods, or any failure or delay to do so, subject to clause 4.3.**

In clause 4.4 you indemnify us (hold us harmless, and will be liable) for claims, loss, damages, and harm that may be suffered as a result of certain events. This places various risks, liabilities, obligations and legal responsibilities on you and you will be responsible and liable for the payment of the value of the claims, loss, damages, and harm that that may be suffered or claimed.

- 4.5. Goods shall be delivered at the ground floor level at the Delivery Address. No deliveries will be carried out to any level above ground floor level.
- 4.6. **Any delivery note or waybill (copy or original) signed (including by electronic signature) by or on behalf of Customer or a third party engaged to transport the Goods shall be *prima facie* proof (in other words, accepted as correct until proved otherwise) that the goods were delivered to Customer.**
- 4.7. Without limiting or derogating from the provisions of the Agreement, the Delivery Charges (plus VAT thereon) shall accrue on the Sale Date and shall be payable by Customer in accordance with the provisions of clause 6.1.
- 4.8. As far as the law allows:
- 4.8.1. **the Requested Delivery Date is merely a request from Customer and is not binding on Italtile; and**
- 4.8.2. **Italtile provides no undertakings, representations or warranties in relation to such transportation and/or delivery, and specifically does not undertake, represent or warrant that such delivery shall take place on or before any specific time or day.**

By accepting a Tax Invoice which contains Delivery Details and/or by paying Delivery Charges, you are agreeing to the further terms in this clause 4. You agree to assume risk and liability, and may be liable for further costs. This clause 4 also constitutes an acknowledgement of fact by you that the Delivery Details are correct. If incorrect, we may take action against you and may have claims against you as a result of these statements, and this clause also limits your rights against us and may result in you giving up rights you might otherwise have. Please check the Tax Invoice to ensure that the correct Delivery Details are reflected.

5. RETURNS

- 5.1. If this Agreement and/or any agreement concluded under this Agreement is subject to the Consumer Protection Act 2008 ("CPA"), you may have a right to return Goods to Italtile at Italtile's own cost within 6 months following delivery in terms of and subject to the provisions of section 56, as read with section 55, of the CPA. Should you return any Goods under such right of return in circumstances in which such right of return does not apply, Italtile shall be entitled to reject the return of such Goods save where the return falls within the scope contemplated in clause 5.3 below and charge you a Return Fee as contemplated in clause 5.3 below.



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- 5.2. In addition to your rights under clause 5.1 and under any applicable laws, but subject to clause 5.3 below, you may return any Goods to us at your risk and expense within a reasonable period (which shall not exceed 90 days from the Sale Date) and request a refund, provided that:
- 5.2.1. such Goods are returned in their original packaging and condition, and without having been used or installed in whole or in part; and
- 5.2.2. Italtile shall be entitled to charge a Return Fee as contemplated in clause 5.3 below.
- 5.3. Where Italtile is entitled to charge a Return Fee, it shall be entitled to charge you an amount ("**Return Fee**") equal to all reasonable costs associated with collecting, delivering and/or returning such Goods, up to a maximum amount of 10% of the total amount of the purchase price for the Goods so returned (excluding VAT) for costs relating to handling, re-packaging and restoration of the Goods to render them fit for re-stocking and sale (plus value added tax, if applicable). The Return Fee shall be payable by you on the date of issue of the VAT invoice for such Return Fee.
- 5.4. **As far as the law allows, and without limiting or derogating from any rights that you may have as contemplated in this clause 5 and/or any applicable laws, you must ensure that you are:**
- 5.4.1. **satisfied with the nature, quality and quantity of the Goods prior to use and/or installation, as (save as contemplated in this Agreement) no returns will be accepted following the use or installation of such Goods; and**
- 5.4.2. **familiar with, understand and comply with the installation instructions applicable to the Goods. Italtile will not, as far as the law allows, accept any liability arising from your failure to adhere to installation instructions applicable to any Goods. Should you need assistance with any installation instructions, please contact the store from which you purchased the Goods for assistance.**

Clause 5.4 limits your right to return Goods (save for any right of return provided by law which cannot be so limited), and limits your rights. Please make sure you inspect Goods and ensure they are satisfactory before using or installing them. You take on risk for following installation instructions, so please make sure you understand and follow them carefully. We will not be liable for your failure to do so.

6. PRICE AND PAYMENT

- 6.1. Prices and other amounts specified on the Tax Invoice issued by Italtile (including Delivery Charges) shall be payable by you as follows:
- 6.1.1. if you are a Credit Approved Customer, within the period for payment as specified in your Credit Agreement (being 30 days or 60 days) after the end of the month in which the relevant Tax Invoice was issued; or
- 6.1.2. in all other cases, on or before issue of the Tax Invoice, prior to release or delivery of the Goods.
- 6.2. **To the extent that any provision of this Agreement is considered to be, or qualifies as, a penalty stipulation in terms of the Conventional Penalties Act 15 of 1962, it shall not be construed or interpreted in such a way as entitling Italtile to recover both damages and the penalty; and Italtile shall be entitled to recover damages**



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instead of the relevant penalty and, as far as the law allows, you acknowledge and agree, having taken account of the prejudice that will be suffered by Italtile, that the penalty stipulation is equitable in the circumstances.

- 6.3. As far as the law allows, a certificate under the hand of any executive director or manager of Italtile, whose appointment it shall not be necessary to prove, as to your indebtedness to Italtile, shall in the absence of manifest error be *prima facie* evidence (in other words, accepted as correct until proved otherwise) of such indebtedness.
- 6.4. As far as the law allows, you agree to pay all costs reasonably incurred by Italtile as a result of your acts or omissions including, without limitation, suspension of work, modification of requirements, failure or delay in giving particulars necessary to enable work to proceed on schedule or requirements that work be completed earlier than agreed. Such costs shall be calculated on the basis of Italtile's then prevailing price list, a copy of which is available on request.

In this clause 6 you agree to pay by certain dates, take on risk, legal responsibilities and liability, and limit your rights. If you pay late, you may be charged interest or be sued for damages. Clause 6.4 also constitutes an assumption of risk and liability by you for costs arising from your acts and omissions. This will increase the amount due by you.

7. RISK AND RESERVATION OF OWNERSHIP

- 7.1. As far as the law allows, save where Goods are subject to storage under a Storage Form (in which event clause 3 will apply), risk in any Goods shall pass to you upon release or dispatch of those Goods from our premises (whether released to you or to any person engaged to deliver such Goods to you as contemplated in clause 4), and if you wrongfully fail to take delivery of the Goods, the risk shall pass to you from the date the Goods are ready for dispatch to you.
- 7.2. Unless and until you have paid the purchase price of the Goods in full:
- 7.2.1. ownership of the Goods remains vested in Italtile;
- 7.2.2. you are not entitled to sell or dispose of the Goods;
- 7.2.3. you will not allow the Goods to become encumbered in any manner; and
- 7.2.4. you will notify all relevant third parties of Italtile's rights in the Goods.

This clause 7 is an important limitation on your rights. You will only own the Goods when you pay for them in full. This clause 7 also limits your rights and what you may do with the Goods until you have paid for them in full. You may carry risk, legal responsibility and liability for the Goods prior to the date on which you own or possess the Goods.

8. PERSONAL INFORMATION

- 8.1. Italtile will process your personal information in accordance with the terms of its privacy policy ("**Privacy Policy**") (accessible on the Italtile Website and/or available on request), which terms are hereby incorporated by reference, and to which you agree and consent.



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8.2. **Italtile respects your right to privacy and is committed to the protection thereof. Italtile needs to process your personal information in order to offer you the products and services in terms of this Agreement and keep you updated with regard to products and services which may benefit you.**

8.3. The purposes for which Italtile will use your personal information will include, amongst others:

8.3.1. identify you and conduct appropriate checks, audits and procedures;

8.3.2. marketing and promotions (including contacting you for such purposes);

8.3.3. administer and manage our products and services we offer to you;

8.3.4. address and resolve customer complaints;

8.3.5. participation in promotional competitions;

8.3.6. provision of access to Italtile's premises; and

8.3.7. get a better understanding of you, your needs and how you interact with us, so we can engage in product and service research, development and business strategy including managing the delivery of our services and products via the ways we communicate with you.

8.4. By the usage of our products, services or our website and by submitting any information to Italtile, **you acknowledge and agree that such conduct constitutes unconditional, specific and voluntary consent to the processing of your personal information**, whether or not by automatic means, which may include the following activities or operations:

8.4.1. the processing and further processing of your personal information by us or any of our operators or affiliates (who may be situated outside South Africa), on the condition that they will comply with the Protection of Personal Information Act 4 of 2013 ("POPI") and process your personal information in line with our instructions;

8.4.2. the collection of information by us from any other source to supplement the personal information that is held by Italtile about you;

8.4.3. the retention by us of your personal information even after you are no longer our customer for as long as permitted or required for legal, regulatory, fraud prevention, financial crime prevention and for marketing purposes; and

8.4.4. in terms of what is contained in this clause 8.

8.5. **You acknowledge that any information supplied to Italtile is voluntarily.**

8.6. Where specific personal information is required in order to render services or products, such personal information will be mandatory to provide and without submitting the relevant personal information and consenting to Italtile processing it, Italtile will not be able to render services and products. Mandatory minimum personal information shall include information which may include, but is not limited to:



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- 8.6.1. in the case of natural persons:
- 8.6.1.1. name and surname;
 - 8.6.1.2. contact details (contact number and e-mail address); and
 - 8.6.1.3. physical address; and
- 8.6.2. in the case of juristic persons:
- 8.6.2.1. registered company name and registration number;
 - 8.6.2.2. VAT number;
 - 8.6.2.3. director details;
 - 8.6.2.4. contact details (contact number and e-mail address); and
 - 8.6.2.5. physical address.
- 8.7. **By providing your information to Italtile in your capacity as a natural person, you warrant that you are 18 (eighteen) years of age or older and of full legal capacity.** If you are under the age of 18 (eighteen) or if you are not legally permitted to enter into a binding agreement, then you should only provide your information with the involvement and supervision of your parent or legal guardian. You must obtain your parents' or legal guardians' advance authorisation, permission and consent to be bound by this clause and to be liable and responsible for you and all your obligations under this clause before providing any of your information to Italtile.
- 8.8. You agree that personal information may be:
- 8.8.1. collected from another source, including public records, authorised Italtile dealers, third parties processing information on behalf of Italtile, Italtile affiliates and financial institutions, if not collected directly from you; and
 - 8.8.2. recorded by Italtile in any form or medium, including by means of computer equipment, whether hardware, software or both, tape recorders of any other device.
- 8.9. By submitting any information to Italtile, **you undertake to provide Italtile with correct, up to date and accurate information.** In the event that:
- 8.9.1. you provide false or inaccurate information to us, this may result in the services we provide to you being restricted or cancelled; and
 - 8.9.2. Italtile suffers damages, whether monetary or otherwise, as a result of the false and inaccurate information provided to us by you, Italtile may also institute legal proceedings against you to recover such damages.
- 8.10. You shall, subject to the grounds for refusal of access to records in terms of the Protection of Access to Information 2 of 2002, in terms of section 23 of POPI be entitled to request Italtile:
- 8.10.1. to provide you with a record or a description of the personal information about you held by Italtile, including information about third parties who have or have had access to the information; and
 - 8.10.2. to correct or delete information about you that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully.
- 8.11. **Italtile may share your personal information with other members of the Italtile group of companies, affiliates and its third-party service providers in accordance with purposes set out in this clause.** The third parties to whom we disclose your personal information may be located outside of the Republic of South Africa. Any disclosures of



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your personal information to third parties outside South Africa are done in line with the requirements set out in section 72 of POPI.

- 8.12. Unless you have consented, Italtile will not sell, exchange, transfer or otherwise make available any personal information about you to other parties and you indemnify Italtile from any unintentional disclosure of such information to unauthorised persons.
- 8.13. **You have a number of rights. These rights include the right to request from Italtile access to, correction or deletion of your personal information or restriction of processing concerning your data or to object to the processing of your personal information.** All your rights are contained in POPI. The information on these rights can be found at the Information Regulator's website at <https://www.justice.gov.za/inforeg>, to whom you have the right to make a complaint, if we do not resolve your complaint.
- 8.14. For purpose of this clause, "personal information" means personal information as defined in terms of POPI and shall include all information you provide to us, whether as a natural person or a juristic person.
- 8.15. **To the extent that you provide personal information of any other person, you hereby warrant that you have consent to provide it for such processing, and you hereby indemnify and hold Italtile harmless against all loss, liability, damage and claims of whatsoever nature which may be made against or suffered by Italtile and/or any other person arising from any breach of this warranty.**

Clause 8 has important legal consequences for you in relation to personal information. It sets out the reasons why we process your personal information, obtains consent from you to do so and confirms this information has been voluntarily submitted by you. In terms of the clause, you also undertake to provide accurate information to us, failing which we may look to recover any related damages from you. Your rights with regards to access to information are also detailed in the clause. Further, in this clause, you must ensure that you have consent from third parties whose information you share with us. If this is not true, you indemnify us (hold us harmless, and will be liable) for claims and liability, for which you take risk and responsibility.

9. DEFAULT

- 9.1. Without limiting Italtile's further rights under this Agreement or at law, an event of default will occur if:
- 9.1.1. you fail to make any payment in terms of this Agreement on due date and persist in such failure for a period of 3 days after the date of written notice by Italtile to you requiring you to affect such payment;
- 9.1.2. you commit an act which is an act of insolvency within the meaning of Section 8 of the Insolvency Act and you fail to remedy the default within 5 days of receipt of a notice from Italtile requiring such default to be remedied;
- 9.1.3. any of your assets are attached under writ of execution which writ is not satisfied within 5 days after the issue thereof;
- 9.1.4. you cease to carry on business;
- 9.1.5. you compromise or attempt to compromise with any creditor or body of creditors;



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- 9.1.6. you are sequestered, or you are provisionally or finally liquidated or wound-up other than the voluntary liquidation implemented for the purpose of reconstruction or amalgamation; and/or
- 9.1.7. you are placed in business rescue (as defined in the Companies Act, 71 of 2008) or any person commences business rescue proceedings against you.
- 9.2. Upon the occurrence of any event of default, Italtile shall, without prejudice to any other rights which it may have in law but only as far as the law allows, be entitled to summarily cancel this Agreement and declare the outstanding amount of your indebtedness to be immediately due and payable.
- 9.3. Either party shall be entitled to terminate this Agreement in the event that the other party is in material breach of its obligations under this Agreement and fails to remedy such material breach within 30 days following receipt of a written notice describing the material breach and requiring same to be remedied. Notwithstanding anything to the contrary in this Agreement (including this clause 9.3) but subject to any applicable laws, you may not (as far as the law allows) terminate this Agreement in instances where a breach by Italtile of this Agreement may be remedied by the payment of damages.
- 9.4. This Agreement may also be terminated by either party prior to release or delivery of Goods to the Customer, without any right to claim damages or any other relief on your part, if Italtile is unable to perform its obligations under this Agreement due to any Act of God and/or from any cause beyond the control of Italtile, including but not limited to inability to secure labour, power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

10. LIMITATION OF LIABILITY

- 10.1. **As far as the law allows, you accept that variations in colour, shade and/or size may occur amongst individual and batches of tiles.**
- 10.2. **As far as the law allows:**
- 10.2.1. **Italtile's total liability for damages, whether contractual or delictual, arising out of or in connection with the supply of Goods and/or the provision of any service shall be limited to an amount equal to a refund of the purchase price of the Goods; and**
- 10.2.2. without limiting the generality of the foregoing, in no event shall Italtile be liable for:
- 10.2.3. **any loss, liability, damage, claim or injury (including indirect or consequential loss) arising from or in connection with the supply of Goods, including any loss or injury (whether direct, indirect or consequential) attributable to any negligent act or omission by Italtile or its servants or agents; or**
- 10.2.4. **any incidental or consequential damages including but not limited to loss of profits, loss of sales, expenses incurred in anticipation of Italtile's performance or lost production, whether suffered by you or any third party.**
- 10.3. Insofar as any of Italtile's obligations are carried out by any of its servants, agents, sub-contractors, associates or subsidiaries, the provisions of this clause 10 shall operate for the benefit of each of them, and Italtile accepts the benefits on their behalf.



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10.4. As far as the law allows, you agree that neither Italtile nor any of its employees or agents will be liable for any innocent or negligent misrepresentations made to you.

10.5. As far as the law allows, any and all warranties implied by law in respect of the fitness of any Goods for your purpose are hereby excluded.

10.6. As far as the law allows, you hereby indemnify and hold Italtile harmless against all loss, liability, damage and claims of whatsoever nature which may be made against or suffered by Italtile and/or any other person arising from any undertaking of whatsoever nature given by you, whether in oral or writing, to any third party in respect of the supply of any Goods, and/or arising from your supply of such Goods to, or the use of such Goods by, any person.

Clause 10 has important legal consequences for you. In this clause, you:

- take on risk, legal responsibilities and liability;
- limit and exclude our risk, legal responsibilities and liability; and
- indemnify us (hold us harmless, and will be liable for) for claims and liability.

As a result of this clause, you may also be responsible for claims and other amounts. You will also be responsible for, and you accept, various risks, damages, harm and injury which may be suffered by you and others for what is stated in this clause. In addition, your rights and remedies against us and other persons and entities are limited and excluded, and this clause limits and excludes your right to recover or make claims for losses, damages, liability or harm you or others may suffer.

Specifically, save to the extent not permitted by law:

- clause 10.2 excludes our liability for consequential loss, and limits our maximum liability to the purchase price for the Goods;
- clause 10.4 limits our liability arising from any representation which is made innocently or negligently;
- clauses 10.1 and 10.5 limit our liability arising from inconsistencies, defects and any failure to be fit for purpose; and
- in clause 10.6, you indemnify us (hold us harmless, and will be liable) for any claims made arising from any undertaking you have made to any third party, or the supply of Goods to or use of Goods by any person.

11. GENERAL

11.1. The invalidity of any part of this Agreement shall not affect the validity of any other part.

11.2. This Agreement shall be governed by the laws of South Africa.



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- 11.3. As far as the law allows, any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement (including any dispute concerning its existence, conclusion, interpretation and/or termination) shall be finally determined in Johannesburg, without the right of appeal, by arbitration in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa ("**AFSA**") without recourse to the ordinary courts of law, by an independent arbitrator nominated by the Registrar of AFSA. Nothing in this clause prohibits a party from approaching any court of competent jurisdiction for urgent interim relief. In respect of such proceedings, each of the Parties specifically consents and submits to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).
- 11.4. As far as the law allows, you agree that Italtile shall not be required to furnish security for purposes of legal proceedings, and the Parties agree that the successful party in any dispute resolution process may recover all legal costs including costs on the scale as between an attorney and his own client and collection charges and tracing costs.
- 11.5. This document contains the entire agreement between Italtile and you in regard to the matters with which this Agreement is concerned and neither party shall be bound by any undertakings, representations, warranties, promises or the like other than those specifically set out herein or implied by the Consumer Laws (as defined in clause 12).
- 11.6. No addition to, variation or consensual cancellation of this Agreement, including this clause, and no waiver of any right contained in this Agreement, shall be of any force or effect unless reduced to writing and signed by you and an authorised representative of Italtile.
- 11.7. Neither party shall be regarded as having waived, or be precluded in any way from exercising any right under or arising from this Agreement by reason of its having at any time granted any extension of time for, or having shown any indulgence to the other party with reference to, any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of any right of action against such other party.
- 11.8. Each party chooses as its *domicilium citandi et executandi* (address for service of legal process) the following address, which *domicilium* may be changed by written notice to the other party with effect from the date of receipt or deemed receipt by the other party of such notice:
- 11.8.1. Italtile: the address specified in clause 1.1.5 or such other address for Italtile as may be specified on the applicable Tax Invoice; and
- 11.8.2. Customer: the Customer's address as provided by the Customer and reflected on the Tax Invoice.
- 11.9. Any notice, demand or other communication properly addressed by a party to the other party at the latter's *domicilium* for the time being and sent by prepaid registered post shall be deemed to be received by the latter on the tenth business day following the date of posting by prepaid registered post to the relevant address contemplated in clause 11.8. This provision shall not be construed as precluding the utilisation of other means and methods (including fax) for the transmission or delivery of notices, demands and other communications, but as far as the law allows no presumption of delivery shall arise if any such other means or method is used.
- 11.10. Italtile shall be entitled to cede and assign its rights and/or delegate and assign its obligations arising out of this Agreement:



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- 11.10.1. without your consent, to any person which acquires all or part of the business and/or assets of Italtile, and in any other case where such cession, delegation and/or assignment will not be to your reasonable detriment; or
- 11.10.2. with your consent, in all other cases.
- 11.11. You shall not be entitled to cede, assign and/or delegate all or any of your rights and/or obligations in terms of this Agreement without obtaining Italtile's prior written consent.

12. CONSUMER LAWS

12.1. If this Agreement (or any contract governed by this Agreement) is regulated by or subject to the Consumer Protection Act 2008, the Electronic Communications and Transactions Act 2002 and/or any other laws which cannot lawfully be limited or excluded (collectively the "**Consumer Laws**"), it is not intended that any provision of this Agreement contravenes or purports to contravene any provision of the Consumer Laws. Therefore, notwithstanding anything to the contrary, all provisions of this Agreement must be treated as being qualified, to the extent necessary, to ensure that the provisions of the Consumer Laws are complied with.

12.2. No provision of this Agreement (or any contract governed by this Agreement):

- 12.2.1. does or purports to limit or exempt Italtile from any liability (including, without limitation, for any loss directly or indirectly attributable to our gross negligence or wilful default or that of any person acting for or controlled by us) to the extent that the law does not allow such a limitation of exemption;
- 12.2.2. requires you to assume risk or liability for any particular liability or loss to the extent that the law does not allow such an assumption of risk or liability; and/or
- 12.2.3. limits or excludes any warranties or obligations which are implied into this Agreement (or any contract governed by this Agreement) by the Consumer Laws (to the extent applicable) or which we give under the Consumer Laws (to the extent applicable), to the extent that the law does not allow them to be limited or excluded.

12.3. Specifically, and without prejudice to this clause 12, if any provision of this Agreement is subject to the qualification of "as far as the law allows", then it shall also be subject to any rights you may have under the Consumer Laws and/or this clause 12.