

PARKSIDE

Parkside Ceramics Limited trading as 'Parkside'

TERMS and CONDITIONS OF SALE

Applicable to orders placed on or after 15/02/2022

Please read these terms and conditions carefully as they will bind you when you do business with us.

DEFINITIONS AND INTERPRETATION

1. The definitions and rules of interpretation in the Appendix apply to these terms and conditions.

ORDERING AND TERMS AND CONDITIONS

2. To buy from us, you must place an order, by confirming to us in writing your acceptance of our Quotation, within its validity period (this is sixty days from the date of the Quotation, or any other period given in the Quotation). Exceptionally, if you buy from us without a Quotation having been given by us, these terms and conditions shall apply and you will be deemed to have placed an order, with references to "Quotation" in these terms and conditions meaning the written communications between you and us specifying your requirements and how we propose to fulfil them.
3. When you place an Order, this will result in a separate Contract between you and us, under which we agree to sell and you agree to buy the Products specified in the applicable Quotation for the price stated in that Quotation, or where prices are not stated our list prices will apply, subject always to our rights to vary prices under clauses 5, 8 and 21. In addition you agree to pay for delivery costs and any other costs stated in that Quotation, or where not stated our list prices will apply, subject always to our rights to make additional charges, under clauses 6, 11, 14 and 21.
4. These terms and conditions and the content of the Quotation will make up the entire Contract between you and us. All other terms and conditions, whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law and we make no representations concerning the Products. In particular, if you attempt to apply further or different terms and/or conditions, they will be of no effect. To be effective, any variation to these terms and conditions and/or a Quotation, must be agreed between you and us in writing.

CHANGES TO ORDERS

5. If your Product requirements change after you place an Order, you may request, and we may at our discretion agree to change the Order to include additional Products and/or to accept the return of unwanted Products and supply substitute Products in their place. If we do this:
 - 5.1. you must pay for all additional Products at our list price prevailing on the date we accept your request.
 - 5.2. you must pay the difference if the price of the replacement Products (for an equivalent quantity and at our list price prevailing on the date we accept your request) is higher than price (as agreed in the Order) of the Products to be replaced.
 - 5.3. you must reimburse us for any costs and expenses we reasonably incur including, without limitation, additional delivery costs, storage costs and insurance costs; and
 - 5.4. we will not agree to make refunds, allow the return of Products ordered in excess of your requirements, nor allow the return of Products made to order.
6. If your delivery requirements (as to Delivery Point and/or timing) change after you place an Order, you may request, and we may at our discretion agree to change the Order to accommodate this by rearranging deliveries. If we do this, you must reimburse us for any costs and expenses we reasonably incur including, without limitation, additional delivery costs, storage, and any associated, costs and insurance costs.
7. Where a Product manufacturer revises the specification of a Product, or a Product becomes unavailable, after an Order has been placed, we may substitute the Product you ordered with the revised Product, at no additional cost to you, or we may cancel the Order without having any liability to you

PRODUCT DESCRIPTIONS AND QUANTITIES

8. You are responsible for deciding on your own requirements, and, for selecting Products with a specification suitable for your intended use and in sufficient quantities for your project, allowing for tolerances in estimating quantities, wastage, and breakage. When Products are cut to size from oversized porcelain or ceramic slabs, some breakage should be allowed for, and quantities should be increased to reflect this based on guidance from our sales team.
9. We will round up quantities of Products to ensure we deliver whole cartons and charge accordingly.
10. Samples, drawings, descriptive material, specifications, and advertising issued by us and by Product manufacturers and importers, and any descriptions or illustrations contained in our or any manufacturers or importer's catalogues, brochures or websites are for illustration purposes only. They do not form part of the Contract and we do not sell by reference to samples. In particular:
 - 10.1. printed material and electronic devices may not display the colour and/or texture of Products accurately.
 - 10.2. some Products have a random or repeating pattern, requiring a minimum expanse of tiling to best display the pattern.
 - 10.3. resulting from the use of natural materials and the nature of the manufacturing processes involved, there may be variations in size, colour, shade and texture of individual Products; Products may be porous, subject to veining, prone to staining, prone to pitting and/or prone to change their appearance and/or performance over time and Products may need regular care, attention and treatment to avoid deterioration. Contact us for information on individual Products.

DELIVERY, COLLECTION, AND INSPECTION

11. Our aim is to deliver Products to the Delivery Point or to make Products available for collection from designated premises, as applicable, within a reasonable time after a Quotation is accepted. However, time is not of the essence. When we give a delivery or collection date, this will be an estimate and is not guaranteed as a firm date. Our staff have no authority to guarantee delivery or collection dates.
12. We have the right to deliver or make Products available for collection in instalments. We will deliver Products in instalments at your request; however, you must reimburse us for any costs and expenses we reasonably incur including, without limitation, additional delivery costs, storage costs and insurance costs. Please note, deliveries outside of core hours of 09.00 to 17.00 and deliveries to remote locations incur higher delivery fees.
13. At your own cost you must make appropriate arrangements to collect or take delivery of Products and you must:
 - 13.1. provide lawful and suitable access for the delivery vehicle at the Delivery Point and tell us of any anticipated problems with the Delivery Point at least 2 Business Days in advance.
 - 13.2. provide adequate and appropriate equipment and suitably trained and equipped manual labour for the safe loading or unloading.
 - 13.3. ensure that the Delivery Point is a safe working environment for delivery personnel, in accordance with your responsibilities under applicable health and safety laws.
 - 13.4. provide a means of identification for your authorised personnel to help ensure Products are delivered to your authorised personnel.
14. We have the right to decline to deliver or make Products available for collection when:
 - 14.1. you have failed to pay for them, or for any other Products under any other Contract, in accordance with the applicable payment arrangements.
 - 14.2. you have failed to meet your obligations under the relevant Contract, or under any other Contract.

Parkside Ceramics Limited, company number 01732302, registered office at Barnsdale Way, Enderby, Leicester, England, LE19 1SN

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14.3. in our opinion you have not made appropriate arrangements for delivery or collection (including a means of identification).

14.4. you are Insolvent.

however, if we do deliver or make Products available for collection in these circumstances, that will not affect our rights under the Contract.

15. If you do not collect Products within three Business Days of us telling you that they are ready for collection, or you do not accept delivery of Products, or we decline to deliver or make Products available for collection; then, subject always to our rights under clause 13:
- 15.1. we will take reasonable steps to rearrange the delivery or collection and, in these circumstances, you must reimburse us for any costs and expenses we reasonably incur including, without limitation, additional delivery costs, storage costs and insurance costs until the Products are delivered or collected; and
- 15.2. if delivery or collection does not take place within three months of the date of the first attempted delivery or availability for collection, in these circumstances we have the right to sell or otherwise dispose of the Products.
16. The quantity of Products recorded by us or our agent on despatch, or making available for collection, will be sufficient evidence of the quantity received by you unless you can provide conclusive evidence to the contrary.
17. You must promptly inspect Products after collection or taking delivery and inform us promptly, and in any event no later than within two business days, in writing of any suspected shortage of quantities or problem with quality (**see clause 30 for your limited warranty**).

EXPORT

18. In the case of Products for delivery outside the UK, the following shall apply and prevail over any other inconsistent terms and conditions (written or implied): -
- 18.1. you must pay before we make arrangements for dispatch of the Products.
- 18.2. you take full responsibility for ensuring at your own expense compliance with all customs/import/export and/or trans-shipment regulations and we will use reasonable endeavours to assist with any reasonable requests for information or documentations in support.
- 18.3. provided that we meet the requirements of any agreed delivery schedule we reserve the right to ship the Products to you by any routes that are suitable and appropriate for our business; and
- 18.4. the application of the Uniform Laws on International Sales shall be excluded.

PASSING OF RISK AND TITLE

19. Once you take delivery or collect Products they are at your risk (and are not insured by us) and until you pay for them in full in cash or cleared funds:
- 19.1. we retain ownership and you hold them on a fiduciary basis as our bailee and must (at no cost to us) store them separately from all other goods, so that they remain readily identifiable as our property, ensuring that they are not damaged, destroyed or used and keeping them insured against the risk of loss or damage.
- 19.2. we have the right, or where applicable you must obtain for us the right, to enter the premises where they are stored in order to inspect them or re-possess them and you must indemnify us against any liability to any third party in respect of any such entry, including in respect of any damage caused.
- 19.3. we have the right to bring an action against you for the price of Products delivered or made available, in the event that you do not pay for them by the due date, as if the property in the Products had already passed to you.

TERMINATION

20. We may by notice in writing to you terminate any Contract, so far as unperformed, immediately if: -
- 20.1. you are Insolvent.
- 20.2. you commit any breach of any of the terms and conditions (including, without limitation, terms concerning the time for payment of the purchase price) of the Contract or any other contract between you and us.
21. In the event of such termination: -
- 21.1. you must on demand deliver to us any Products which are in your possession or control in which the property remains with.
- 21.2. we have the right by notice in writing to you to declare immediately due and payable any amounts outstanding from you to us under the Contract (such sums thereby becoming immediately due and payable); and
- 21.3. the provisions of this clause and the exercise by us of our rights under it will be without prejudice to any other rights and remedies we have.

PRICE AND PAYMENT

22. We have the right to increase the price of Products, delivery charges and other applicable charges, to reflect any increase in the cost to us due to: -
- 22.1. an event of Force Majeure and/or financial conditions beyond our reasonable control (including, but not limited to, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 22.2. your failure to make appropriate arrangements for delivery or collection.
- 22.3. the circumstances mentioned in clause 5.
23. Any square metre prices given in our Quotations are based on nominal sizing. Our Quotations include the number of tiles that will be received for the quoted price.
24. The prices given in our Quotations and price lists are stated in GBP £ sterling and exclusive of value added tax and any other applicable sales tax, duty, or levy, which you must pay in addition (or reimburse to us if we become legally liable to pay).
25. Payment must be made in GBP £ sterling.
26. We have the right to require payment of the whole or part of any amount payable, before arranging delivery, collection, or manufacturing. Invoices are payable immediately on receipt, unless stated otherwise in our invoice. Payment must be made to the payee or bank account given in our invoice.
27. Payment is made when we have received cash or cleared funds; and must be made in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
28. We have the right at any time, without limiting any other rights we have, to set off any amount owing to us by you against any amount payable by us to you.
29. You must pay interest to us on any overdue sum from the due date for payment at the rate equivalent to the annualised rate of 5% above the base lending rate from time to time of The Bank of England (or if that rate falls below 0, then 5%), but accruing and compounded on a daily basis until payment is made, whether before or after any judgment.

LIMITED WARRANTY

30. We warrant that Products will on delivery or collection:
- 30.1. conform in all material respects to the Quotation.
- 30.2. be free from material defects in design, material and workmanship.
- 30.3. be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

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for Products that do not meet these standards, subject always to clauses 31 and 32 (which take precedence), our entire obligation and your only rights are that we will at our option, repair, replace, or refund the price paid for the Products, after you have informed us in writing of the problem:

30.4. in the case of matters discoverable by physical inspection, before using the Products and in any event no later than 2 weeks after delivery or collection; and

30.5. in the case of matters not discoverable by physical inspection, as soon as reasonably practicable after you become aware (or should reasonably have become aware) and in any event no later than 12 months after delivery or collection; and given us sufficient information about the problem and allowed us a reasonable opportunity to examine the Products, returning a sample to us if we request it.

LIMITATION OF LIABILITY

31. Nothing in these terms and conditions excludes or limits our liability:

31.1. for death or personal injury.

31.2. under section 2(3), Consumer Protection Act 1987.

31.3. for any matter which it would be illegal for us to exclude or attempt to exclude liability for.

31.4. for fraud or fraudulent misrepresentation.

32. Subject to clause 310, for each Contract, we exclude liability for and will not pay for:

32.1.1. any indirect loss.

32.1.2. any consequential loss.

32.1.3. any loss of profit.

32.1.4. any loss or damage to the extent representing or resulting from additional costs of working, delay, liquidated damages, the cost of re-performing work, the cost of buying replacement materials, loss of profit, loss of contracts, loss of opportunity.

32.1.5. anything resulting from an event of Force Majeure.

32.1.6. anything resulting from our following any specification or requirement of yours in relation to the Products.

32.1.7. anything resulting from wear and tear or wilful damage, misuse, neglect or negligence by you or any third party.

32.1.8. anything resulting from your failure to comply with instructions and good industry practice concerning the storage, installation, use and maintenance of the Products.

32.1.9. anything resulting from your modification of Products.

32.1.10. anything resulting from your use of the Products after becoming aware, or notifying us, that they do not meet the warranty in clauses 30.

33. Subject to clause 310 (which takes precedence), for each Contract, when we are liable, our total aggregate financial liability howsoever arising in connection with the Contract will be limited to the amount you paid us under the Contract.

GENERAL CONTRACT TERMS

34. We have the right to assign a Contract or any part of it to any person, firm or company. You do not have the right to assign a Contract or any part of it to any person, firm or company.

35. Our privacy policy, as applicable from time to time, applies in connection with each Contract.

36. Each right or remedy of ours under a Contract is without prejudice to any other right or remedy.

37. If any provision of a 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 will 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 will continue in full force and effect.

38. Failure or delay by us in enforcing or partially enforcing any rights we have under a Contract will not be construed as a waiver of any of our rights.

39. Any waiver by us of any breach of, or any default under, any provision of any Contract by you will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of such Contract.

40. Neither we nor you intend that any Contract be enforceable by anyone else (other than us and you) under the Contracts (Rights of Third Parties) Act 1999, or otherwise.

41. Each Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

APPENDIX - DEFINITIONS AND INTERPRETATION

In each Contract, the definitions and rules of interpretation and definitions in this Appendix apply.

DEFINITIONS

- "Business Day" means a working weekday (other than a Saturday or Sunday or public bank holiday) in England when the banks in London are open.
- "Buyer", "you" or "your" means the person, firm or company named as the buyer in a Quotation.
- "Company", "we", "our" or "us" means Parkside Ceramics Limited Registered in England No. 01732302 VAT No. 372 2996 24. Parkside Ceramics Limited trades as 'Parkside' and 'Strata Tiles'.
- "Contract" means an agreement between you and us for the sale and purchase of the Products specified in a Quotation and incorporating these terms and conditions in accordance with clauses 2 - 4 (ORDERING AND TERMS AND CONDITIONS).
- "Delivery Point" means the location for delivery of Products as specified in a Quotation, or as otherwise agreed between you and us.
- "Force Majeure" means an event or sequence of events beyond our reasonable control preventing or delaying us from performing our obligations under a Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; restrictions on the operation of our business or that of any of our suppliers or transport operators which are imposed by law (including in response to COVID-19); war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; restriction on availability or unavailability of Products or other material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving our or our suppliers workforce. But excluding your inability to pay or circumstances resulting in your inability to meet your obligations.
- "Insolvent" means, being an individual you die, you have a bankruptcy order made against you, you make or take steps to make an arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except for a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed to your undertaking or any part of it, or documents are filed with the court for the appointment of an administrator of you or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to

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any court for your winding-up or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency; or you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or you cease to trade.

- “Order” means an order for Products within the meaning given in clause 2,
- “Quotation” means a quotation for Products within the meaning given in clause 2,
- “Products” are those saleable items to be supplied to us to you as specified in a Quotation (including any part or parts of them).

RULES OF INTERPRETATION

- A reference to a party (you or us) includes that party’s personal representatives, successors and permitted assigns.
- A reference to a ‘person’ includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns.
- A reference to a gender includes each other gender. Words in the singular include the plural and vice versa.
- Any words that follow ‘include’, ‘includes’, ‘including’, ‘in particular’ or any similar words and expressions will be construed as illustrative only and will not limit the sense of any word, phrase, term, definition, or description preceding those words.
- Any clause, schedule or other headings is included for convenience only and will have no effect on the interpretation of these terms and conditions.
- A reference to legislation is a reference to that legislation as amended, extended, re-enacted, or consolidated from time to time, except to the extent that any such amendment, extension or re-enactment would increase or alter our liability under a Contract.