

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Contract: the contract between Kerakoll UK and the Customer for the sale and purchase of the Goods in accordance with these Terms.

Customer: the person or firm to whom or which Kerakoll UK wishes to provide the Goods and which wishes to purchase the Goods from Kerakoll UK.

Distribution Centre: Unit 1, Eaton Point, Matrix Park, 1 Eaton Avenue, Buckshaw Village, Chorley, Lancashire, PR7 7NA.

Force Majeure Event: events, circumstances or causes beyond its reasonable control including but not limited to, Acts of God, flood, drought, earthquake or other natural disaster, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations, nuclear, chemical, biological contamination or sonic boom, epidemic or pandemic (or any guidance, regulations or rules associated therewith), any law or any action taken by a Government or a public authority including without limitation imposing an export or import restriction, quota or prohibition, and the collapse of buildings, fire, explosion or accident and in the case of Kerakoll UK failure of its suppliers or subcontractors.

Goods: the goods (or any part of them), which shall primarily be tile adhesives, grouts and ancillary products as set out in the Order, having been referred to initially within Kerakoll UK's published price list or quotation and detailed within the Specification.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Insolvency Event: means circumstances whereby:

- a) a party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if any such step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- b) a party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

Loss: actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements, and losses shall be construed accordingly.

Order: an order placed by the Customer for the Goods in accordance with clause 2.2.

Promotional Materials: the Kerakoll UK product guide, published price list, catalogues, brochures, websites or such other applicable sales or promotional literature, materials or publications in each case from time to time in use.

Specification: any specification for the Goods, including any related plans and drawings contained in the Promotional Materials or otherwise that is agreed by the Customer and Kerakoll UK.

Terms: these terms and conditions as amended from time to time.

KKUK: the abbreviation for Kerakoll UK and relates also to Kerakoll UK as a brand. Kerakoll UK, a company incorporated and registered in England and Wales with company number 04627336 and whose registered office is at Unit 4, Tomlinson Road, Leyland, Lancashire, PR25 2DY.

1.2 In these Terms, the following rules of interpretation apply:

- a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted including any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- c) a reference to **writing** or **written** includes emails.

2 BASIS OF CONTRACT

2.1 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 If the Customer:

- a) accepts the position set out in any written or oral quotation supplied by Kerakoll UK; or
- b) wishes to purchase the Goods on the basis of Kerakoll UK's published price list from time to time, then it shall submit an Order for the Goods.

2.3 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Terms and shall not incorporate any other terms and conditions beyond those set out in the Contract. The Customer is responsible for ensuring and warrants that the Order and any applicable Specification are complete and accurate.

2.4 Kerakoll UK may reject the Order at its absolute discretion and for any reason whatsoever and the Order shall only be deemed to be accepted when Kerakoll UK's authorised representative issues a written acceptance of the Order incorporating these Terms, at which point the Contract shall come into existence.

2.5 Once accepted, the Order may not be cancelled by the Customer except with the prior agreement of Kerakoll UK in writing and subject to payment, by the Customer of any Losses suffered or incurred by Kerakoll UK as a result of such cancellation.

2.6 Any samples, drawings, descriptive matter or advertising produced by Kerakoll UK and any descriptions or illustrations contained in the Promotional Materials are illustrative only and do not form part of the Contract. It is the Customer's responsibility to ensure that the Goods are suitable for the Customer's intended application or use and Kerakoll UK makes no warranty and excludes all implied warranties in such respect.

3 THE GOODS

3.1 The Goods are described in the Promotional Materials as modified or supplemented by any applicable Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Kerakoll UK, keep Kerakoll UK indemnified and hold Kerakoll UK harmless from and against all losses suffered or incurred by Kerakoll UK in connection with any claim made against Kerakoll UK for

actual or alleged infringement of any Intellectual Property Rights arising out of or in connection with Kerakoll UK's use of the Specification. This clause 3.2 shall survive termination of the Contract.

3.3 Kerakoll UK reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements from time to time or to improve the Goods where to do so would not have a material adverse effect on the Customer.

3.4 If for any reason beyond its control, Kerakoll UK is unable to supply a particular item of Goods, Kerakoll UK will notify the Customer of such circumstances and will use reasonable endeavours to replace it with an item of equivalent standard and value.

4 DELIVERY

4.1 Kerakoll UK shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all agreed reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 Unless otherwise agreed, delivery shall be on the basis of:

- FCA (Distribution Centre) (Free Carrier Incoterms 2020) where the Customer is to collect the Goods from the Distribution Centre; or
- CPT (destination agreed in writing) (Carriage Paid To Incoterms 2020) where the Goods are to be transported to the Customer's premises or other agreed destination.

4.3 In making physical delivery of the Goods in accordance with clause 4.2b), the Customer shall provide Kerakoll UK, or any agent or courier instructed on its behalf, with safe and unrestricted access to, movement around and egress from the Customer's premises or other agreed destination.

4.4 In respect of Delivery:

- any dates quoted by Kerakoll UK for delivery are approximate only;
- Kerakoll UK shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Kerakoll UK with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods; and
- Kerakoll UK may in advance of the proposed delivery date deliver the Goods by giving reasonable notice of the same to the Customer.

4.5 If the Customer fails to take or accept delivery of the Goods then, except where such failure or delay is caused by a Force Majeure Event or Kerakoll UK's failure to comply with its obligations under the Contract:

- delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Kerakoll UK notified the Customer that the Goods were ready; and
- Kerakoll UK shall store the Goods until delivery takes place, and may charge the Customer for all related costs and expenses (including insurance and redelivery charges).

4.6 If 10 Business Days after the day on which Kerakoll UK notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, Kerakoll UK may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.7 Kerakoll UK may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in

delivery or defect in an instalment shall not entitle the Customer to cancel that or any other instalment.

5 QUALITY

5.1 Upon delivery of the Goods to the Customer, the Goods shall:

- subject to the Customer's warranty at clause 2.3, conform in all material respects with their description and the Specification;
- be free from material defects in design, material and workmanship; and
- be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, if:

- the Customer gives notice in writing to Kerakoll UK within a reasonable period of time of discovery or any applicable warranty period that some or all of the Goods do not comply with clause 5.1;
- Kerakoll UK is given a reasonable opportunity of examining such Goods; and
- the Customer (if asked to do so by Kerakoll UK) must return such Goods in the same condition that they were delivered to the Customer, to Kerakoll UK's Premises at the Customer's cost (such reasonable return costs to be refunded to the Customer if the Goods are found not to comply with clause 5.1,

Kerakoll UK shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in addition to any reasonable return costs in accordance with clause 5.2c).

5.3 Kerakoll UK shall not be liable for the Goods' failure to comply with clause 5.1 in any of the following events:

- the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- the defect arises because the Customer failed to follow Kerakoll UK's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- the defect arises as a result of Kerakoll UK following any Specification supplied by the Customer;
- the Customer alters or repairs such Goods without the written consent of Kerakoll UK;
- the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements or for their improvement under clause 3.3.

5.4 Except as provided in this clause 5, Kerakoll UK shall have no liability to the Customer in respect of the Goods' failure to comply with the commitments set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Terms shall apply to any repaired or replacement Goods supplied by Kerakoll UK.

6 TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer in accordance with clause 4.2.

6.2 Title to the Goods shall not pass to the Customer until Kerakoll UK receives payment in full (in cash or cleared funds) for the Goods.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Kerakoll UK's property;
- b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- d) notify Kerakoll UK immediately if it becomes subject to an Insolvency Event;
- e) give Kerakoll UK such information relating to the Goods as Kerakoll UK may require from time to time; and
- f) not grant any pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Kerakoll UK.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Kerakoll UK receives payment for the Goods. However, if the Customer resells the Goods before that time it does so as principal and not as Kerakoll UK's agent and title to the Goods shall pass from Kerakoll UK to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer breaches any of its obligations under clause 6.3 or Kerakoll UK is entitled to terminate the Contract pursuant to clause 8.1 then, without limiting any other right or remedy Kerakoll UK may have the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately and Kerakoll UK may at any time:
- a) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7 PRICE AND PAYMENT**
- 7.1 Unless otherwise agreed between the parties, the price of the Goods shall be the price set out in Kerakoll UK's published price list.
- 7.2 Kerakoll UK may by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to any:
- a) factor beyond Kerakoll UK's reasonable control (including foreign exchange fluctuations, increases in taxes and duties (which shall include import and export duties), and increases in labour, materials and other manufacturing costs);
- b) request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- c) delay caused by any instructions of the Customer or failure of the Customer to give Kerakoll UK adequate or accurate information or instructions.
- 7.3 The price of the Goods:
- a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to Kerakoll UK at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 Kerakoll UK may invoice the Customer for the Goods to be supplied at any time after the Goods are made available to the Customer for collection or delivery, regardless of whether the Customer collects or accepts delivery of the Goods.
- 7.5 Unless otherwise agreed in writing between the parties, the Customer shall pay each invoice in full and in cleared funds within the payment terms as agreed in the account opening documentation. Payment shall be made to the bank account nominated in writing by Kerakoll UK.
- 7.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 8 TERMINATION**
- 8.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other if the other: (i) commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 Business Days of being notified in writing to do so; (ii) repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to perform the Contract; or (iii) becomes subject to an Insolvency Event.
- 8.2 Without limiting its other rights or remedies, Kerakoll UK may terminate the Contract for any reason whatsoever by giving not less than 1 months' written notice to the Customer at any time.
- 8.3 Without limiting its other rights or remedies, Kerakoll UK may suspend/postpone supply of the Goods or else terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any undisputed amount due under the Contract on the due date for payment.
- 8.4 On termination of the Contract for any reason:
- a) the Customer shall immediately pay to Kerakoll UK all of Kerakoll UK's outstanding unpaid invoices and interest;
- b) any other agreements between the Customer and Kerakoll UK (including but not limited to any applicable rebate or discount agreement) shall also terminate automatically unless Kerakoll UK agrees in writing that they should remain in force
- 8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination and any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 9 LIMITATION OF LIABILITY**
- 9.1 Nothing in these Terms shall limit or exclude any party's liability for:
- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- b) fraud or fraudulent misrepresentation; or
- c) any matter in respect of which it would be unlawful for that party to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- a) Kerakoll UK shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any: (i) loss of profit; (ii) loss of goodwill; (iii) loss of business; (iv) wasted expenditure; (v) loss of business opportunity; (vi) loss of anticipated saving; (vii) loss or corruption of data or information; or (viii) any indirect, special or consequential Loss in each case that arises under or in connection with the Contract; and

- b) Kerakoll UK's total liability to the Customer in respect of all other Losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total price of the Goods paid or payable by the Customer to Kerakoll UK under the Contract.

10 INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights subsisting in any Goods supplied to the Customer by or on behalf of Kerakoll UK arising out of or in connection with the Contract shall remain vested in and belong to Kerakoll UK absolutely.

11 FORCE MAJEURE

- 11.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.
- 11.2 Kerakoll UK shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 11.3 If a Force Majeure Event prevents, hinders or delays Kerakoll UK's performance of its obligations for a continuous period of more than 30 days, the Customer may terminate the Contract immediately by giving written notice to Kerakoll UK and source the Goods from a third-party supplier.

12 CONFIDENTIALITY

- 12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract providing such persons are subject to binding obligations of confidentiality; and
 - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13 GENERAL

- 13.1 The Customer may not transfer/assign any or all of its rights or obligations under the Contract without the prior written consent of Kerakoll UK (such consent not to be unreasonably withheld or delayed).
- 13.2 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.3 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 13.4 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.5 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 13.6 A person who is not a party to the Contract shall not have any rights to enforce its terms as though it were a party to it and the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded to the fullest extent permitted by law.
- 13.7 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.