

## EMERY & CIE – NOIR D'IVOIRE s.p.r.l : GENERAL CONDITIONS OF SALE - May 2010

**PRICES:** Our prices and quantity discounts are calculated at their finest point, in order to allow our clients to benefit from the fact that we create, produce, import, store and sell exclusive products of traditional manufacturing or produced in small series, without trade intermediaries. Shipping costs and samples, as well as taxes or import costs due in the country of delivery and banking fees, are not included in our prices. Our prices include VAT (value added tax). The VAT due in the European Community is that of the country where the merchandise was ordered. It is 21% in Belgium and 19.6% in France for our products. Clients possessing a valid EU VAT number may be invoiced without VAT. Embassy members and other clients having special exonerations must present the specific documents emitted by the embassy or consulate in order to benefit from the VAT exoneration. The VAT is also due for merchandise that will be exported. Nevertheless, the VAT may be refunded by bank transfer (with all the bank fees on client's charge, deducted from the due amount), upon presentation of the customs clearance documents and the client's IBAN and Swift bank information. A quotation and the first draft plan for our tiles based on a plan submitted by the client are free, but subsequent plans will be invoiced at € 15 per additional plan.

**PAYMENT:** A minimum 30% deposit upon ordering, the balance payable upon collection from our stores or from our warehouse in Brussels, or before any delivery (to the customer's site). All the bank fees due for payments by bank transfer are on the client's charge. Any sum not paid by the agreed date will be increased by contractual interests of 1% per month, and a fixed indemnity of 12% of the sum due with a minimum of € 200.

**EFFECT OF THE DEPOSIT:** The order comes into effect starting from the moment when the deposit was received. The deposit represents the first part of the payment and the buyer cannot renounce the purchase and abandon the deposit. The buyer must pay the balance and take possession of the merchandise. Equally, we cannot fail to honour an order, except if a fortuitous situation occurs. The fact that one of our suppliers has not delivered the order, entirely or partially, or that the merchandise delivered by our supplier is faulty, is considered to be a fortuitous situation. By paying the deposit, the client is also marking his acceptance of our general conditions of sale and of all the mentions written on the order document. He is supposed to have verified these mentions himself, in a detailed way (quantities, colours, dimensions, shapes, patterns etc.). Except in case of obvious mistake, these written mentions prevail on any verbal agreement and on any previous written agreements.

**COLLECTION:** If no other place is specifically mentioned on the order document, the normal collection place is our warehouse in Brussels. Small orders may be transferred to one of our stores. The collection conditions and opening hours are available in our stores.

**SHIPPING:** On request, we can organize the transport of the merchandise by a professional carrier, for a price that will be announced to the client in advance. No insurance whatsoever is included in this price. On client's request, we may undertake multiple-risk insurance with the shipping company (tariff on quotation). The carrier usually cannot announce the exact time of delivery and is not supposed to call the client in order to announce the delivery. We cannot be held responsible for any delays due to the transport. A person must be present on site and available by telephone at all times for the delivery. The delivery is made to the main door of the building (ground floor) or to the nearest point accessible by truck. The carrier is not authorized to move the merchandise beyond this point. Where necessary, a moving service will have to be organized by the client. If the delivery address is not accessible by a vehicle the size of a public transport bus, the client should have made this known before the delivery. In this case, there will be an extra charge of minimum 20% for delivery by small truck. If a person is not present for the delivery, or if the delivery could not be made due to inaccuracies in the conditions of accessibility, the cost of the new delivery will be charged to the client and must be paid before the new delivery takes place. If the transport is organized by the client or by the client's carrier, we may provide a packaging consisting of one or more euro-pallets and wrap-film to secure the goods onto the pallet ; in this case, a fixed rate will be charged to the client for the packing. If this type of packaging is unsuitable, the client or his carrier must provide the packaging themselves.

**DAMAGE:** Any damage to the merchandise shipped to the client is presumed to be caused by the client or by the carrier. If the merchandise was damaged during the transport, the client must state this in writing to the shipping company, upon receipt of the merchandise. General mentions like "subject to unpacking and checking" have no value and do not cover any damage noticed later. Written statements concerning the visible damage must be precise and detailed.

**RETURNS AND EXCHANGES:** upon presentation of the invoice or of the receipt. Our merchandise normally cannot be returned nor exchanged, except for the cases stated below :

Returns to the Brussels warehouse within one month from the purchase and on customer's charge :

-products used to lay tiles are taken back at the price stated on the sales invoice, if they are intact in their original packaging ;

-plain 10x10cm and 5x5cm glass tiles, plain 20x20cm floor cement tiles and 10x20cm skirting boards, 10x10cm and 5x5cm wall "zellige" tiles may be taken back at 70% of the price stated on the sales invoice, if returned in their full original boxes and in good condition. A full original box is understood to mean filled with the original tiles and possibly opened to check conformity. Under no circumstances will we take back a box that has been assorted or contains tiles other than the original ones, nor will we take back individual tiles.

Exchanges returned to the Brussels warehouse within one month from the purchase and on customer's charge:

-plain 10x10cm and 5x5cm glass tiles, plain 20x20cm floor cement tiles and 10x20cm skirting boards, 10x10cm and 5x5cm "zellige" wall tiles in full original boxes may be exchanged for the same quantity of the same product in a different colour, if it is available in stock. If the chosen colour is more expensive, the price difference will be charged to the client. For all exchange, an administration fee of 10% of the value of the exchanged merchandise will be charged to the client, with a minimum of € 25 VAT included per file.

**LEAD TIMES:** The prices mentioned in our quotations are valid for one month. The merchandise available in stock is prepared within a minimum period of 3 working days. In case of orders for merchandise normally in stock based on our listings, exceptionally the merchandise may be unavailable due to being sold on the same day or due to an error. In this case, the client will be notified within 3 working days starting from the preparation of the order. For merchandise that is not available in stock, the lead-time stated on the order document is merely an indication of the estimated time of availability, that can only be confirmed after we have received the merchandise from our suppliers.

**DELAYS and NON-CONFORMITY:** The tiles and other merchandise not in stock are delivered to us regularly in full truckloads or containers from our suppliers, with whom we have been working for many years. Delays, errors and non-conformities in deliveries are therefore infrequent. Nevertheless, considering the specificity of our merchandise, hand-crafted or manufactured in small series, it is virtually impossible to certify that an order will arrive on time or that it won't have any faults that are not by our mistake.

**Delays:** Therefore, in the event of a delay of more than 30 working days from the date stated on the order form, the client may, at his discretion, either cancel the part of the order that is being delayed and recover the concerning part of the deposit, or ask for a discount of 5% of the value of the delayed merchandise, and 1% per additional month of delay. The cancellation or the indemnity must be requested by the client, at his own initiative and in writing (fax, e-mail), before collection of the delayed merchandise. No other indemnity may be demanded in the event of a delay or cancellation of the order. Unless otherwise agreed in advance, merchandise ordered and not collected 3 months after the order was ready, may be put up for sale. In this case, the paid amounts (deposit or full price) will not be returned; moreover, damages and interests may be claimed. We may also request the client to collect the merchandise and pay the balance. Unless otherwise stated in writing, our warehousing costs are € 10 per week per package or pallet, starting from the 30<sup>th</sup> working day following the day when the order was ready for collection.

**Non-conformity:** If the collected merchandise does not conform to the order, and if conforming merchandise is not available for exchange within 30 working days, the client may, at his discretion, either renounce the non conforming part of the order and recover the concerning deposit, or have the non-conforming items replaced by other items of his choice and of equal value. In the event of a delay exceeding 30 working days starting from the date estimated for collection on the order document, the client may request the delay indemnity referred to above. No other indemnity may be demanded in the event of non-conformity. The non-conformity and the solution chosen by the client must be notified upon collection from our stores or warehouse or upon delivery. If the problems were not apparent at the time of collection or delivery, the non-conformity and the solution chosen by the client must be brought to our attention as soon as possible. We nevertheless reserve the right to assess by ourselves whether or not the merchandise conforms, in the light of the particularities of the merchandise that we sell, its small production runs and the craftwork nature of the products. Under no circumstances can we refer to any criteria usually used for standardized industrial productions. For custom made carpets, size differences of around 3% and slight differences in colours are possible. With regard to our cement tiles : they will only acquire their final aspect after a number of cleanings with greasy soap. Therefore, their aspect might be unsatisfactory shortly after the tiling. For all our tiles, given their craftwork origin, differences in colour compared with the sample chosen, between different tiles within the same order and within each tile, as well as surface imperfections (e.g. chips of no more than 0.5cm<sup>2</sup>, size differences of around 2% and thickness differences of around 8%, small scratches, micro-bubbles, irregularities, very thin crackles or water marks) and structural imperfections are inevitable. Our craftsmen cannot guarantee productions from the same batch, or the same shade within the order. In addition, the delivery will be deemed to conform if no more than 5% of the tiles show defects making them unsuitable for laying entirely, since a certain quantity of tiles must always be cut for corners and edges. It is strongly advised to order a safety margin of 6 to 10% of tiles in addition. Otherwise, in case of complementary order, differences of colour between the initial and the complementary order are all the more possible and the lead-times cannot be shorter for the new order, than for any regular order. The particularities, conformity criteria and laying constraints of our tiles are described in detail in our documentation, available in our stores and warehouse.

**Complaints:** Any complaint concerning the conformity of our products must be documented with detailed and overall photographs, and if necessary, sending of a sample of the non conforming product. We do not visit clients sites in order to observe laying faults or conformity problems. We do not accept any claims after the tiles have been laid. Laying the tiles is equivalent to acceptance of the merchandise. Our potential remarks on the placement of our products on clients sites should not be considered as a report of experts.

**APPLICABLE LAW AND JURISDICTION:** All of our contracts issued in Belgium are governed by Belgian law and in the event of a dispute the courts of Brussels shall have sole jurisdiction. All of our contracts issued in France are governed by French law and in the event of a dispute the courts of Paris shall have sole jurisdiction.