



## Warranty for Fenta™ Ceiling Tiles

April 2021

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- 1.1 **Terms and Conditions:** The following terms and conditions set out in this Warranty apply to the application and use of Fenta™ Ceiling Tiles (the Goods) sold by Bates Surface Solutions (BATES). All other terms, conditions, representations and warranties whatsoever expressed or implied (whether by law or otherwise), including those in the Sale of Goods Act 1908, are expressly excluded to the maximum extent permitted by law
  - 1.2 **Warranty:** BATES warrants that the Goods will be free from defects in materials or workmanship and will substantially conform with the BATES specifications for the Goods.
  - 1.3 **Representations:** Goods are purchased by the purchaser on the basis that, unless otherwise expressly stated in writing, BATES does not warrant or imply that they are fit for any particular purpose or are of a quality or standard fit for any particular purpose, notwithstanding that the purchaser may have made known to the particular purpose for which the Goods were required or intended. The purchaser hereby acknowledges that it does not rely upon the skill or judgment or advice of BATES or any of its agents, officers or employees in selecting the Goods, nor does it rely upon any statement or undertaking given by or on behalf of BATES unless it was given in writing signed by a duly authorised officer of BATES.
  - 1.4 **Description:** Any description of the Goods given by BATES is given as an aid in identification of the Goods. BATES does not warrant that the Goods shall correspond precisely with any description given by BATES.
  - 1.5 **Colour:** Should BATES be required to match any shade or colour, a light and dark tolerance shall be allowed to such extent as shall be agreed upon by BATES and the purchaser at the time the standard colour is specified and, in the absence of any such agreement, a reasonable tolerance shall be allowed.
  - 1.6 **Consumer Guarantees Act:** The purchaser confirms that it acquires the Goods for the purposes of a business and that the provisions of the Consumer Guarantees Act 1993 are therefore excluded.
  - 1.7 **Liability:** Except to the extent prohibited by law, BATES shall not be liable in contract, tort or otherwise (including gross negligence) for any loss of profits, loss of use, loss of revenue or any other financial or economic loss (whether direct or indirect) or for any consequential or indirect loss or damage.
  - 1.8 **Limitation of Liability:** If, notwithstanding the provisions of these Terms, BATES is found to be liable to the purchaser, the liability of BATES (whether under the law of contract, tort or otherwise) for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of the Goods supplied is (to the extent permitted by law) limited at the option of BATES to: (a) replacement or repair of such Goods, or (b) the actual loss or damages suffered by the purchaser but in any event not exceeding the invoice value of such defective or non-complying Goods, provided always that: (i) such defect is notified to BATES in writing within 30 days of the purchaser's receipt of Goods, and (ii) BATES

is given the opportunity to inspect the Goods. Notwithstanding the above, BATES total liability to the purchaser in relation to an order shall not exceed the invoice value of the relevant Goods.

- 1.9 Exclusion of Liability: Notwithstanding any of the above, BATES shall not be liable at all for any loss, damage or injury arising directly or indirectly from any defect or non-compliance of the Goods supplied where: (a) the Goods have been repaired or altered by the purchaser or any other person without the written consent of BATES, or (b) the Goods have not been used in accordance with the normal use of the Goods or any other use expressly stated in writing to the purchaser prior to the sale of such Goods, or (c) the Goods have been incorrectly stored, handled, installed or have been modified, or any instructions as to use installation or maintenance have not been complied with.
- 1.10 Indemnity: The purchaser indemnifies BATES against all and any costs (including legal costs on a solicitor/client basis), expenses, losses, damages or claims by any persons whatsoever arising in any way as a result of any use by the purchaser of the Goods not strictly in accordance with the normal use of the Goods or any other use expressly stated in writing to the purchaser prior to the sale, any incorrect information supplied by the purchaser, or any failure of the purchaser to comply with these Terms.
- 1.11 Invalidity: If any provision of this Warranty is held to be invalid, illegal or unenforceable for any reason, the relevant provision will be deemed to be modified to the extent necessary to remedy such unenforceability or invalidity or, if this is not possible, then such provision will be severed from this Warranty and the remaining provisions of this Warranty will not be affected and will continue in full force and effect.
- 1.12 No assignment: Neither party may assign or transfer any rights or obligations under this Warranty to any other party without the prior written consent of the other party.
- 1.13 Governing Law: This Warranty will be governed by and interpreted in accordance with the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts.