

Terms and conditions of sale

1. These Terms and Conditions of Sale shall apply to all orders and contracts entered into by the manufacturer (the "Seller") and the Purchaser for the sale of products manufactured or distributed by the manufacturer (the "Products") unless Seller otherwise specifically agrees in writing. By placing any order for Products, the Purchaser agrees to these Terms and Conditions of Sale. Any other terms or conditions which may at any time be indicated by the Purchaser, in the Purchaser's order form or otherwise (whether oral, typed, written or printed) shall be null and void and of no effect, even if not expressly objected to by the Seller.

2. All prices are stated in U.S. Dollars per square foot or per piece unless otherwise noted.

3. Prices are for first choice material only.

4. Full Truckload (FTL) prices are applied only to orders for shipment of at least 43,000 pounds (including pallet weight) from the Loudon, TN factory and comprised exclusively of materials stored at that specific facility.

5. All pricing is calculated FOB Factory (Loudon, TN), excluding transportation and shipping charges, taxes, fees and custom duties.

6. The Purchaser shall make all payments pursuant to the invoices issued by the Seller, notwithstanding any claim for any alleged defect, fault or irregularity in the Products. Unless otherwise specifically agreed by the Seller in writing, payment by the Purchaser is due upon receipt of Seller's invoice. Invoice for FTL shall be payable within 30 days from the issuance of the invoice. In the event of any delay in payment, the Seller shall have the right to suspend deliveries and may, at its option (i) require immediate payment of all or any part of any and all sums owed by the Purchaser, irrespective of any credit terms previously agreed to, and (ii) terminate the Contract (as well as any and all other contracts with the Purchaser) in whole or in part, and hold the Purchaser liable for damages. In addition, in the event the Seller does not receive full payment by the due date, the Purchaser shall pay to the Seller interest on the unpaid amount, from the due date to the date payment is actually received by the Seller, at the monthly rate of interest of one and one half percent (1 ½%), but not to exceed the highest amount allowed by law. Seller's right to such interest shall be in addition to, and not in lieu of, all other rights and remedies arising by reason of such nonpayment. Any payment received by the Seller may be applied to any outstanding balance owed by the Purchaser to the Seller, as the Seller, in its sole discretion, may determine, any instructions of the Purchaser to the contrary notwithstanding.

7. The manufacturer reserves the right to apply a surcharge on orders comprising non-full pallets.

8. All orders are subject to availability. No order of the Purchaser will be binding upon the manufacturer unless accepted by the manufacturer on their form of Order Confirmation, signed by an officer or employee of the manufacturer duly authorized to sign on behalf of the manufacturer, and then only as and to the extent set forth in such Order Confirmation. The manufacturer reserves the right to reject any order in whole or in part. Any term, condition or provision set forth in Seller's Order Confirmation which is not objected to by the Purchaser in writing within ten days after the date thereof will conclusively be deemed to have been accepted by the Purchaser. Every order of the Purchaser will be binding on the Purchaser unless and until it is rejected in writing by the Seller, and may not be cancelled, withdrawn or modified by the Purchaser; however, in the event of a partial acceptance by the Seller, the Purchaser will no longer be bound with respect to the parts of the order not accepted by the Seller.

9. Purchaser will take delivery of the Products at the Seller's premises ("ex factory"). Unless otherwise specifically agreed by Seller in writing: (i) all risk of loss or damage to the Products shall pass to the Purchaser upon delivery of the Products by the Seller to a carrier; (ii) the Seller shall not be required to procure insurance to cover the Products during transportation in shipment; (iii) any shipping arrangements made by the Seller with carriers or forwarding agents at the Purchaser's request shall be made solely on the Purchaser's behalf and at the Purchaser's sole cost and risk; (iv) any agent appointed for such shipment shall be solely the Purchaser's agent for all purposes; (v) the Purchaser shall be responsible for all the unloading and receipt of the Products at its destination; and (vi) any claim for loss or damage shall be made by the Purchaser solely against the carrier.

10. Any delivery dates specified by the Seller will be deemed to be estimates only, unless specific commitments are made in writing by the Seller. In no event is the time of delivery of the Products of the essence. The Seller reserves the right to cancel, in whole or in part, or to suspend or delay, in whole or in part, any orders due to (i) shortages of, or failures of Seller's suppliers to deliver, or delays of Seller's suppliers in delivering materials, (ii) work stoppages or other labor troubles, (iii) acts of God or (iv) any event in the nature of force majeure or beyond Seller's control. Delivery dates will be extended by the amount of any additional time required by the Seller to make delivery as a result of any such condition or event. The Seller also reserves the right to discontinue particular Products or lines of Products, or to substitute other Products or lines, in response to production and market requirements and demands. The Purchaser waives any and all claims and rights which the Purchaser might otherwise have arising out of or in connection with or relating to any delay in delivery of the Products for any reason whatsoever or any failure of the Seller to deliver by reason of the exercise by the Seller of any of its rights pursuant to these Terms and Conditions of Sale, including, without limitation, any and all claims for or rights to direct, indirect, incidental, consequential or other damages or compensation, and any and all rights to terminate or cancel the order, in whole or in part.

11. Product representations made in photographs, catalogs, advertisement, sampling and online formats as well as in any other publications are indicative of the product only. Variations in color finish and size can occur and the Seller does not warrant the uniformity of color, tone or shade of the Products or the conformity of the Products to the color, tone or shade of any sample. It is Purchaser's responsibility to verify the suitability of the material before installation.

12. Any Product return shall be previously authorized by the manufacturer and returned products must be accompanied by an approved Return Authorization form and is subject to a 25% handling charge. Freight for the return is the responsibility of the Purchaser.

13. Limited Warranty / Product Claims: The manufacturer warrants that its first choice, domestically produced ceramic tile is manufactured according to ANSI A137.1 and meets or exceeds these requirements. If a first choice tile purchased by the Purchaser pursuant to these Terms and Conditions of Sale is proven to contain a manufacturing defect, the manufacturer will supply, free of charge, material of compatible color and shade, as determined by the manufacturer. **Labor charges are expressly excluded from this warranty.** The Purchaser waives any and all other claims and rights which the Purchaser might otherwise have arising out of or in connection with or relating to any breach of warranty or arising out of or in connection with or relating to any defect, fault or irregularity in the Products, including, without limitation, any and all claims for or rights to direct, indirect, incidental, consequential or other compensation or damages, and any and all rights to terminate or cancel the order, in whole or in part.

14. The manufacturer makes no warranty as to the suitability of its tile for a particular installation. The manufacturer does not warrant that its glazed or unglazed tile will not scratch, chip, or show signs of wear.

15. The manufacturer must be notified by the Purchaser of any claims or defects as soon as reasonably possible, but in any case not later than six months after the Products have been delivered by the manufacturer. Any claim of the Purchaser of any and every kind must be in writing and sent by certified mail, return receipt requested. Failure to make any claim in such manner or within such six month period shall constitute an irrevocable acceptance of the Products.

16. Claims concerning shade, appearance, caliber, finish or obvious defects in first choice production must be communicated before the tile is installed. No claims will be accepted for tile already installed or for defects in other than first choice material.

17. The manufacturer specifically excludes liability for consequential or incidental damages except where exclusion of consequential damage is not permitted by state law.

18. This limited warranty shall constitute the full extent of the manufacturer's liability and is in place of all other warranties or representations, express or implied, including, without limitation, any warranty of merchantability or fitness for a particular purpose.

19. Until the Seller collects in full all amounts required to be paid by the Purchaser for the Products, as well as any and all other amounts owed by the Purchaser to the Seller, the Seller retains title to the Products, and shall have a first and senior purchase money security interest in, an lien on, the Products and all proceeds thereof, under the Uniform Commercial Code as in effect in the United States, to secure the payment of all such amounts. By placing an order with the Seller, the Purchaser authorizes the Seller to file any and all financing statements with respect to such security interest which Seller may deem necessary or desirable. The Purchaser shall, at the request of the Seller, execute any and all financing statements and other documents which the Seller may request to perfect or evidence such title and such security interest.

20. In the event the Seller retains a collection agency to collect any amount owed by the Purchaser, or institutes proceedings to collect such amount or to enforce any right against the Purchaser, including enforcement of any security interest granted to the Seller, the Purchaser shall reimburse the Seller for all collection agency fees and costs, or all costs incurred in such legal proceedings, including reasonable attorneys' fees.

21. The Parties agree that the laws of the State of Tennessee (without giving effect to principles of conflicts of law), to the exclusion of the laws of any other state, shall be applicable to all orders or contracts entered into pursuant to this Terms and Conditions of Sale, their construction, interpretation, effect, performance or non-performance or the consequences thereof. For all disputes or controversies which may arise between the Parties out of or in connection with all orders or contracts entered into pursuant to this Terms and Conditions of Sale, their construction, interpretation, effect, performance or non-performance or the consequences thereof, the Parties hereby consent to the jurisdiction of the courts in the State of Tennessee, and agrees that such courts, to the exclusion of all other courts, shall have exclusive jurisdiction with respect to any and all such disputes and controversies.