

TERMS AND CONDITIONS OF SALE
(Commercial)

THE FOLLOWING TERMS AND CONDITIONS GOVERN THE SALE OF PRODUCTS BY SELLER

1. Acceptance of Order. These terms and conditions of sale ("Terms and Conditions") are not an offer to sell. A product order ("Order") from a prospective buyer ("Customer") must actually be received by Seller ("Company") at the Company's executive office. Company is not bound by any terms and conditions in Customer's Orders that attempt to impose any terms that are different from or in addition to these Terms and Conditions. No Order will be valid or binding upon the company until Company accepts such order by issuing to Customer a written acknowledgment ("Order Acknowledgment"), consisting of a copy of the Order as the Company interprets it and expects to fill it. CUSTOMER SHOULD CAREFULLY REVIEW THE ORDER ACKNOWLEDGMENT UPON ITS RECEIPT, TO INSURE THAT THE CUSTOMER'S REQUIREMENTS ARE ACCURATELY STATED. No Order may be canceled without the Company's prior written consent. Only an officer of the Company has the authority to change the Company's price, any trade discount or these Terms and Conditions. Any such changes must be in writing and signed by an officer of the Company. Orders are accepted subject to the Company's ability to ship at the time and in the quantity specified in the Order. The Company does not and will not assume any responsibility or liability for quantity estimates. THE COMPANY DOES NOT MAKE ESTIMATES AND DOES NOT GUARANTEE THE ACCURACY OF QUANTITIES OBTAINED FROM PLANS OR SPECIFICATIONS.

2. Changes. The Company reserves the right, in its sole discretion and without notice, to change the Terms and Conditions, product prices, and trade discounts, and to change, or eliminate entirely, any product sold by Company. Customer hereby agrees to contract electronically with the Company. The Company may modify these Terms and Conditions, product prices, and trade discounts by posting such modifications on its website, or at any other related internet address (the "Site"). The Company may modify these terms and conditions at any time, at its discretion, and modifications are effective upon being posted on the Site. Customer is responsible for reviewing the Site to ensure that Customer is aware of any changes made to these Terms and Conditions.

3. Limited Warranty and Disclaimers.

LIMITED WARRANTY FOR COMPANY'S MANUFACTURED PRODUCTS. THE COMPANY WARRANTS THAT ALL THE PRODUCTS MANUFACTURED BY IT AND SOLD AS "STANDARD GRADE" WILL EQUAL OR EXCEED THE MINIMUM REQUIREMENTS FOR THAT GRADE AS PUBLISHED IN THE AMERICAN NATIONAL STANDARD SPECIFICATIONS ANSI A.137-2008, AND EXCEPT AS LIMITED IN SECTIONS 4 AND 6 BELOW, WILL CONFORM TO THE DESCRIPTIONS AND SPECIFICATIONS PUBLISHED IN WRITING BY THE COMPANY FOR ANY SPECIFIC PRODUCT. THE FOREGOING IS COMPANY'S SOLE WARRANTY WITH RESPECT TO PRODUCTS IT MANUFACTURES ("MANUFACTURER'S LIMITED WARRANTY") AND COMPANY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANT-ABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE MANUFACTURER'S LIMITED WARRANTY IS MADE TO THE ORIGINAL PURCHASER ONLY. NO OTHER PERSON OR ENTITY, INCLUDING ANYONE WHO PURCHASES THE COMPANY'S TILE PRODUCTS FROM THE CUSTOMER, IS ENTITLED TO RELY ON OR ENFORCE THE MANUFACTURER'S LIMITED WARRANTY.

NO WARRANTY FOR PRODUCTS NOT MANUFACTURED BY COMPANY. THE COMPANY MAKES NO WARRANTY OF ANY KIND REGARDING ANY PRODUCT NOT MANUFACTURED BY THE COMPANY, AND THE COMPANY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANT-ABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY WARRANTY CLAIMS REGARDING PRODUCT NOT MANUFACTURED BY COMPANY MUST BE MADE DIRECTLY TO THE MANUFACTURER.

4. Color Illustrations and Samples. Some variation in color, texture and shade is inherent in all ceramic tile. Therefore, color charts, color illustration reproductions in catalogs, and tile samples may not precisely match the color, texture or shade of the tile shipped. CUSTOMER ACKNOWLEDGES AND AGREES THAT COLOR ILLUSTRATIONS AND PRODUCT SAMPLES DO NOT CONSTITUTE A WARRANTY THAT PRODUCTS SOLD WILL CONFORM TO THE COLOR ILLUSTRATIONS OR SAMPLES, AND WAIVES ANY CLAIM BASED ON FAILURE OF PRODUCTS TO CONFORM TO COLOR ILLUSTRATIONS OR SAMPLES.

5. Limitation of Liability. TO THE EXTENT PERMITTED BY LAW, COMPANY DISCLAIMS LIABILITY FOR ANY CONSEQUENTIAL, INCIDENTAL, AND SPECIAL DAMAGES, WHETHER OR NOT COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL COMPANY'S LIABILITY UNDER THESE TERMS AND CONDITIONS EXCEED THE PURCHASE PRICE PAID BY CUSTOMER FOR THE PRODUCT.

6. Force Majeure. Company shall be not liable to Customer for any failures or delays in the performance of any obligations to Customer with respect to Orders arising out of conditions beyond Company's control, including without limitation, work stoppages, strikes, fire, floods, storms, natural disasters, electrical failures, communications network failures, transportation unavailability, delays or failures caused by the Customer, and acts of God and similar occurrences.

7. Quality and Claims. It is the Customer's responsibility to inspect the Company's product before installing it, and if for any reason the Customer regards the product as unsatisfactory, the Customer must notify the Company in writing within seven days of Customer's receipt, or in any case whatsoever, before installation is begun, and defer installation until the problem is resolved. The Customer shall be deemed to have accepted the products upon commencement of installation, and the Company shall not be liable for any claims made after the start of installation.

8. Remedy for Breach. If any products are not as warranted in Section 3, or if the Company has materially breached any obligation with respect to the sale of its products hereunder, the Company's sole obligation, and Customer's exclusive remedy, will be for Company to either (a) provide substitute products to Customer, or (b) refund to Customer the purchase price of defective products, upon their return to the Company in accordance with Section 11 below, in either case without allowance for installation costs.

9. Payment. All sales are for cash unless Company agrees to extend credit to Customer. Customer may submit a credit application and, if approved, may purchase products subject to the Credit Agreement included in the credit application ("Credit Agreement"). If credit is extended, the Company may terminate, suspend, or modify the credit at any time, and payment terms will be net thirty (30) days, unless otherwise specified on Company's invoice or in the Credit Agreement. Payments received on account will be applied in such orders as the Company may determine.

10. Stop Off Charge. All truckload orders with more than one designated delivery point, or orders combined between two or more Customers (combined truckload), are subject to a stop off charge per drop off point. Drop off deliveries will be restricted to quantities exceeding 16,000 pounds, and drop off delivery points must be within 200 miles of final destination.

11. Returns. Returns will not be accepted unless the Company has first issued a return authorization number. Only Company's Customer Service Department can authorize a return, and all return authorizations must be in writing. No sales representative may accept the return of any products without such written authorization. Products may be returned to the Company only after inspection by the Company and after receipt by the Customer of shipping instructions. Returns will be charged a minimum restocking charge of 25% (unless the Company erred in filling the order) and will be limited to full and unopened cartons that have not been damaged or mutilated in any way. Shipping, handling, insurance, taxes, risk of loss and tariff charges for return products shall be borne by Customer.

12. Title; Shipping Terms. All prices are F.O.B. Company's Shipping Point. Risk of breakage, risk of loss in transit, and delays in delivery with respect to products ordered shall pass to the Customer when

such products are tendered by Company to the common or authorized carrier for shipment to the Customer. All claims arising out of shipping must be made to the carrier by the Customer. Title to the products shall transfer to Customer upon payment in full.

13. Taxes. Customer is responsible for payment of any federal, state, local or other taxes associated with the Order of products sold.

14. Governing Law; Jurisdiction; Etc. These Terms and Conditions, and all sales hereunder, shall be governed by the laws of the state of Tennessee, without regard to its conflict of laws principles. The terms of the Convention for the International Sale of Goods shall not apply. **THE EXCLUSIVE VENUE AND JURISDICTION FOR ALL DISPUTES ARISING FROM A SALE OF THE COMPANY'S PRODUCTS OR FROM THESE TERMS AND CONDITIONS SHALL BE IN THE TENNESSEE STATE COURTS AND FEDERAL COURTS IN DAVIDSON COUNTY, TENNESSEE. CUSTOMER WAIVES ANY OBJECTIONS TO SUCH VENUE.** In any such action, the prevailing party is entitled to a judgment against the other party for all reasonable attorneys' fees, costs and expenses incurred in or in connection with or in preparation for the action. If any provision of these Terms and Conditions is held to be invalid by the final determination of a court of competent jurisdiction, such invalidity shall not affect the enforceability of the provision of the Terms and Conditions.

15. Indemnifications; No Third Party Beneficiaries. If any products sold by the Company are subsequently resold by the Customer, the Customer will be responsible and liable to such third party in connection with any such resale, the Limited Warranty contained herein and will defend, hold harmless, and indemnify the Company, its affiliates, officers, directors, employees and agents against any claims, liability, causes of action, judgments, damages and/or costs (including without limitation reasonable attorneys' fees) that may arise from any representations, warranties, or agreements made or entered into by the Customer in violation of this paragraph. There shall be no third party beneficiaries to these Terms and Conditions of Sale.

16. Complete Agreement. These Terms and Conditions, together with the Order Acknowledgments, Company Invoices and Credit Agreements, constitutes the entire agreement between the Company and Customer with respect to the purchase of Company's products. Except as provided in Section 1 above, these Terms and Conditions cannot be modified or amended except by a writing signed by the party to be charged. No waiver by Seller of its rights or remedies shall be implied, but shall be effective only if in writing. All remedies of Seller are cumulative.