

# VIRGINIA TILE COMPANY, LLC

## TERMS AND CONDITIONS OF SALE

### General:

- a. The sale of products ("**Goods**") by Virginia Tile Company, LLC, a Michigan limited liability company, or any of its affiliates (individually and collectively, the "**Company**") to the buyer (the "**Buyer**"), as designated on the purchase order to which these Terms and Conditions of Sale are attached (the "**Purchase Order**"), is subject to Buyer's acceptance of these Terms and Conditions of Sale (the "**Terms and Conditions**"), without modification.
- b. These Terms and Conditions are the only terms and conditions applicable to the sale of Goods, except for provisions relating to product price, quantity, specifications, delivery schedules and locations as elsewhere agreed to in writing by the parties.
- c. Buyer acknowledges and agrees that these Terms and Conditions are incorporated into, and are a part of each quotation, purchase order, purchase agreement, credit agreement, invoice, release, requisition, work order, shipping instruction, specification, and any other document, whether expressed verbally, in written form or electronic commerce, relating to the sale of Goods by Company to Buyer (these documents are individually and collectively referred to herein as the "**Contract**").
- d. Issuance of a purchase order or acceptance of the Goods by Buyer constitutes acceptance of these Terms and Conditions.
- e. Any additional or different terms or modifications to these Terms and Conditions proposed by Buyer are expressly rejected by Company and are not part of any Contract.
- f. No terms or conditions, other than those stated herein, and no agreement or understanding, oral or written, in any way purporting to modify these terms or conditions, whether contained in Buyer's purchase or shipment release forms, or elsewhere, shall be binding on Company unless hereafter made in writing and signed by Company's authorized representative.
- g. All orders and shipments are subject to acceptance by Company and approval of Company's credit department.
- h. Company reserves the right to sell or not to sell Goods to any particular person or party.
- i. Orders are accepted subject to our ability to ship at the time and in the quantity specified. Company is not liable for damages for failure to make such shipment. Company is not responsible for delays in manufacturing or supply chain.
- j. No salesperson or agent has the authority to make any change or binding commitments in addition to, or in conflict with, these Terms and Conditions.
- k. Any offers, credits and/or rebates granted by agents or other intermediaries, shall not be considered valid if they are not confirmed in a writing signed by Company's authorized representative.
- l. An exact copy of each order, as we interpret it, is furnished as an acknowledgment and should be carefully reviewed upon its receipt to make certain that the order, and associated requirements, have been properly entered.
- m. Prices for Goods and other related information shown in any Company or manufacturer product publication, including but not limited to catalogs, brochures, and websites, are subject to change without notice. Prices do not include related freight charges, use tax, sales tax, excise tax, value-added tax, or similar taxes, or charges of any nature whatsoever imposed by any governmental authority unless otherwise expressly noted by Company.
- n. Company reserves the right to invoice Goods for completed orders held over 30 days.
- o. All Goods held over 60 days will be subject to a storage service charge of 1.5% of the order value per month on completed orders.

### Pricing & Sales: Credit Terms, Open Accounts, Purchases, Cash and Payments:

- a. Sales are made on a cash basis only unless prior "Open Account" status has been arranged with Company's credit department. Cash Sale and COD terms are "net". Special Orders for Cash Accounts require 100% deposit and COD Accounts require 50% deposit at point of order. All Cash Sales and COD orders are required to be paid in advance prior to releasing or delivering of Goods.
- b. Beginning January 1, 2024, all purchases made using a credit card are subject to a 3% surcharge. In person debit card purchases and ACH payments are not subject to a surcharge.
- c. All COD checks are subject to check verification and acceptance. "Third Party" checks will not be accepted (i.e. homeowner payment on trade account). Return checks are subject to an NSF fee up to \$30.00.
- d. When credit is granted, interest is charged at 1.5 % per month (18% annually) and will be charged on all past due invoices. Past due invoices will result in suspension of credit until such invoices are cleared.
- e. All On-Line Payments made with credit cards, ACH (E-Checks) are final.
- f. The person signing the credit application on behalf of the Buyer certifies that he/she has the authority to bind the Buyer and is authorized by the Buyer to enter into the credit application.
- g. Shipments may be held if account is past due or over credit limit.
- h. Credit accounts may be restricted, or rescinded, if an account is consistently delinquent, as determined by Company in its sole discretion.
- i. SPECIAL ORDERS: Order Confirmations are provided for all Special Orders. Please review the Order Confirmation. Changes need to be received within 24 hours of order confirmation and prior to production or release of the order. Otherwise, the order is assumed correct and it is considered valid and non-cancellable.
- j. All payments must be made to the Company's registered office. No payments shall be made to agents, representatives, or sales assistants. Payments shall not be considered as made until the amounts are received by the Company.

- k. All payments shall be made in immediately available U.S. Dollars without reduction or setoff.
- l. Company will administer on a Net Settlement Basis all of the accounts of the Buyer or its Related Companies arising from the sales order acknowledgements and other agreements the Buyer or its Related Companies have with Company or its Related Companies. Net Settlement Basis means that, unless prohibited by law, the Company may without notice set off and recoup against the Company's accounts payable to the Buyer any amounts for which the Company determines in good faith the Buyer or its Related Companies are liable to it or its Related Companies under any sales order acknowledgement or other agreements with the Buyer or its Related Companies. A Related Company is any parent company of the Company or Buyer, as appropriate, and any subsidiary or affiliate in which any of them owns or controls at least 25% of the voting stock, partnership interest or other ownership interest. A set off and recoupment described above may include the actual professional fees and other costs of enforcement incurred by the Company or Related Company. Buyer shall have no right of setoff.
- m. Waiver requests may take several business days to process and be returned.

## **Contract Completion:**

- a. The Buyer shall send the orders to the Company, directly or through their customer service agents, or sales representatives. All orders must include the codes of the required products, quantity, price and destination.
- b. The sale shall be deemed completed when: (i) the Buyer receives a written confirmation from the Company, via e-mail, fax or other electronic means, that complies with the terms and conditions of the order; or (ii) if the confirmation sent by the Company contains conditions that differ from the order sent by the Buyer, when the latter accepts it in writing or in any case does not object within 7 (seven) days from receipt of the order confirmation; or (iii) if the Company does not provide a written confirmation, when the products are delivered and loaded by the Buyer.
- c. The Goods supplied shall remain exclusive property of the Company until the Buyer has paid the full invoice amount. Until that time, the Buyer shall undertake the obligations and responsibilities of a bailee with respect to the Goods and shall not transfer the Goods, grant their use, or let them be seized or distrained without declaring that the Goods are property of the Company, and the Buyer shall immediately inform the Company of any such event.

## **Delivery Terms:**

- a. Buyer acknowledges and agrees that delivery dates are approximate and that Company shall not be responsible for non-shipment of Goods, or delays in delivery due to causes beyond Company's reasonable control. All sales of Goods are ex-works (EXW - Incoterms 2010) Company's designated facility, unless otherwise agreed in writing by Company. Risk of loss to all Goods shall pass to Buyer upon delivery.
- b. If, after fourteen (14) days from the date of notification that the Goods are ready, the Buyer fails to collect them, the Company shall be forced for reasons of occupied space to return the goods to the storage facilities, thereby incurring additional costs; the Company reserves the right to charge the Buyer such additional costs.
- c. The Buyer is responsible to ensure that the vehicle sent to the Company's designated facility is suitable for the loading operations, considering the nature of the Goods. If the vehicle sent to collect the Goods is not, in Company's sole judgment, suitable for the loading operations, the Company reserves the right to refuse to load the Goods and the Buyer shall not have the right to claim compensation for any direct and/or indirect cost that may arise therefrom.
- d. The Buyer is responsible to inspect the Goods before loading or unloading. Any objections to the condition of the packaging or the quantities loaded or unloaded must be made by the Buyer upon collection of the Goods. All such objections must be written on all copies of the transport documents, otherwise the loaded or unloaded Goods shall be considered complete and in good condition. As a result, the Company shall not be liable for any missing or damaged Goods not reported by the Buyer.

## **Shipping & Distribution: Delays, Freight Claims, Damage and COD**

- a. When delivery service is available via Company truck in areas surrounding our distribution warehouse, freight policies and rates will vary by market. Please contact your sales representative or local branch for specific terms and schedules.
- b. Company reserves the right to select the carrier for shipments unless otherwise specified by the Buyer. Carriers will be selected based upon performance, reputation, reliability, rates and schedules. All freight and surcharges are the responsibility of the Buyer. Risk of loss, shall pass to Buyer upon delivery to the carrier at Company's designated facility. All shipping and insurance expenses are assumed by the Buyer. Company is not liable for loss or damage of Goods in transit and is not responsible for delays related to replacement Goods.
- c. Freight terms for factory direct orders will be governed by the individual manufacturer's terms and policies. Charges will be paid by the Customer for rush items shipped by LTL or other means. Freight costs are subject to change without notice. In the event of an increase or decrease, the new price will apply on all deliveries made on or after the date of price change. Applicable freight charges will be applied to all factory direct orders.
- d. Payment in full is required for COD orders to be shipped via UPS or common carrier. A packing charge is assessed on all UPS shipments to defray the additional cost of careful and accurate packaging to insure safe arrival of the Goods. Other charges from the manufacturer may be passed on, which will vary from time to time and from vendor to vendor. These charges may include and are not limited to; split carton charges, pallet charges and packing charges. We will attempt to make you aware of these, but they are subject to change without notice.

- e. Carriers accepting of hazardous material may assess special handling fees, which will be added to freight and handling charges for those shipments.
- f. Claims for damage or loss on LTL and direct shipments are to be made directly with the carrier. Company is not responsible for replacing Goods damaged in transit through no fault of ours. All damage and/or shortage must be noted upon receipt and be countersigned by the carrier's agent.
- g. Company shall not be held liable for delays caused by natural disasters, labor conflicts, accidents, government priorities, shortage of Goods or any cause beyond the company's control or as a result of shipping Goods. Under no circumstances will Company be responsible for consequential, punitive or exemplary damages.
- h. All Goods must be inspected promptly upon receipt. It is the responsibility of the Buyer, specifier, architect, contractor, builder, designer, installer, or end user to verify that all Goods received are correct and free from damage.
- i. Claims for discrepancies in shipments including, but not limited to, incorrect or damaged Goods must be made within 3 days of receiving the Goods, or the claim will not be accepted.

### **Credit: Authorization, Condition, Shipping, Returns, Restock and product Claims:**

- a. Goods for Return must meet the following criteria to be considered for acceptance by Company:
  - Return within 30 days of purchase and accompanied with a copy of original order.
  - Full, unopened and undamaged cartons of a currently stocked shade lot.
  - Returns are subject to inspection before acceptance and must be issued and accompanied by a Return Goods Authorization issued by Company.
  - Drivers may not accept any Goods without prior approval accompanied by a Return Goods Authorization issued by Company.
  - A \$25 minimum restocking fee or 25% restocking fee, whichever is greater, plus associated freight charges will be applied to all returns.
- b. Non-returnable Goods includes:
  - Special order, Discontinued Goods, and Natural stone products except when due to damage caused prior to Buyer's receipt of the Goods.
  - Grout, thinset, surface preparation product, mastic and other date/moisture/temperature sensitive Goods.

### **Manufacturer's Warranty – Disclaimer of Warranties:**

- a. UNLESS A SEPARATE WRITTEN DOCUMENT SHOWING TERMS OF ANY COMPANY WARRANTY OR SERVICE CONTRACT IS FURNISHED BY THE COMPANY TO THE BUYER, THE GOODS ARE SOLD "AS-IS", "WHERE-IS", AND COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO OR IN ANY WAY RELATING TO THE GOODS, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY WILL TRANSFER TO BUYER ANY WARRANTY EXTENDED BY THE MANUFACTURER OF THE GOODS, PROVIDED SUCH WARRANTY IS TRANSFERABLE. THE SOLE REMEDY AVAILABLE TO BUYER WITH RESPECT TO DEFECTS IN THE GOODS WILL BE AGAINST THE MANUFACTURER UNDER ANY APPLICABLE MANUFACTURER'S WARRANTY TO THE EXTENT AVAILABLE TO BUYER.
- b. If the Goods, or any portion thereof, are resold by Buyer, Buyer will include in its agreement for resale provisions that limit recoveries in accordance with the Contract. In case of Buyer's failure to include in any agreement for resale the terms providing for such limitations, Buyer will indemnify, defend and hold Company harmless against any liability, loss, cost, damage, or expense (including actual attorney fees) arising out of or resulting from the failure.
- c. IN NO EVENT WILL COMPANY BE LIABLE OR RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR EXPENSE OCCASIONED BY THE USE OF DEFECTIVE GOODS.
- d. BUYER ASSUMES FULL RESPONSIBILITY THAT THE GOODS PURCHASED UNDER THE CONTRACT MEET THE SPECIFICATIONS AND/OR INTENDED USE OF BUYER, AND COMPANY MAKES NO REPRESENTATION WITH RESPECT TO THEM.

**Force Majeure:** Company shall not be liable for failure or delay in delivery or performance due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of Buyer, acts of terrorism, wars, riots, strikes or other labor shortages or disturbances, fire, flood or other casualty, governmental regulation or requirements, inability to obtain or material increase in the cost of raw materials, supplies, fuel, power or other utilities, transportation facilities or materials, breakdown of equipment, or any other causes beyond Company's reasonable control whether of similar or dissimilar nature to those enumerated. In no event shall Company be liable for any consequential damages, claims for labor or any similar damages resulting from failure or delay in delivery. Under any circumstance covered by this paragraph, Company shall have the right to apportion its production and/or inventory among its customers, in its sole discretion, in such manner as it may consider reasonable.

**Ownership of Proprietary Materials:** Company shall retain all intellectual property rights in all patents, utility models,

design rights (and any pending applications), trademarks, copyrights, technical, business, economic or know-how information, trade secrets, confidential proprietary information, inventions, data, formulae, material compositions, drawings, specifications, and any right related thereto (whether or not patentable) that is not generally available to the public ("**Proprietary Materials**"). Buyer may not use any of Company's Proprietary Materials without the express written consent of the Company, which consent may be withheld in the Company's sole discretion. No Proprietary Materials created by Company in connection with the Contract shall be considered "works made for hire" as that term is used in connection with the U.S. Copyright Act.

**Confidentiality:** In connection with the Contract, Buyer may have access to certain of Company's confidential information ("**Company's Confidential Information**"). Buyer shall use Company's Confidential Information only for the purposes contemplated under this Contract and shall not disclose it to third parties, save for those of Buyer's employees and agents who need to know such information in connection with the Contract and who are bound by the terms of this paragraph. Buyer shall maintain the confidentiality of Company's Confidential Information in the same manner, but in no event less than the manner, in which it protects its own confidential information. Upon termination of the Contract, Buyer shall return or destroy Company's Confidential Information, at Company's election. Buyer's confidentiality obligations shall survive termination of the Contract for so long as Company's Confidential Information remains confidential. Company shall be entitled to injunctive relief, from any court of competent jurisdiction to enjoin any violation of the foregoing covenants, without the necessity of proving immediate irreparable harm or an inadequate remedy at law.

**Jurisdiction; Choice of Law; Venue; Non-Jury Trial:** You and any Guarantor hereto agree that this sale will be deemed for all purposes to be fully executed and performed in the State of Michigan and will be governed by Michigan law, without giving effect to its conflict of laws provisions, including Michigan's Builder's Trust Fund Act and its successors. You and any Guarantor expressly and irrevocably agree to: (a) be subject to the personal jurisdiction of the State of Michigan and any controversy that may arise relating to this sale or any guaranty, (b) accept venue in any federal or state court in Michigan and agree that such court will be a convenient and exclusive forum for any judicial action between the parties, and (c) waive any right to trial by jury. You and any Guarantor further acknowledge and agree that subsections (a) through (c) are conditions precedent to and are material inducements to our entering into this agreement with you and any Guaranty with any Guarantor.

## **GENERAL DISCLAIMER**

**PLEASE INSPECT ALL GOODS FOR ACCEPTANCE PRIOR TO INSTALLATION.** Installation demonstrates acceptance at all times, under all conditions, without exception. It is the responsibility of the Dealer, Contractor, Designer, Architect and/or Project Owner to inspect the Goods for acceptability prior to installation. Absolutely no claim will be honored after Goods have been installed. It is the responsibility of the Dealer, Contractor, Designer, Architect and/or Project Owner to ensure that all Goods are installed in accordance with the manufacturer's instructions and the published guidelines in the Tile Council of North America, Inc. installation manuals available at <https://www.tcnatile.com/products-and-services/publications/218-english-publications/188-handbook.html>. Under no circumstances shall Company be liable for any damages arising out of the improper installation of any Goods.

**SUITABLE APPLICATION:** It is the Buyer's responsibility to confirm whether a Company supplied product is suitable for the application. This would include, but not be limited to: Dynamic Coefficient of Friction (DCOF) requirements for the application. The Buyer shall be responsible for reading and complying with the content of documentation published on the Manufacturer's websites including but not limited to: Installation instructions, care and maintenance guides and instructions, and Technical Data Sheets.

**UNDER NO CIRCUMSTANCES RELATED TO ANY AND ALL CLAIMS,** will Company's responsibilities exceed the cost of the Goods to our customer. In the event that recovery of labor costs for replacement are claimed due only to Goods which have been deemed defective, Company reserves the right to seek additional labor estimates.

**ALL CERAMIC AND STONE TILES ARE SOLD SUBJECT TO VARIATIONS IN SHADE AND SIZE FROM TILE TO TILE, SHIPMENT TO SHIPMENT, AND FROM SAMPLES.** Such variations are an inherent characteristics of the Goods. Unless specifically requested and agreed to in writing before the order confirmation, the Company does not guarantee that the entire quantity of Goods on order shall be sent from one same production lot. Natural stone products are non-returnable unless subject to damage caused prior to Buyer taking possession of the Goods.

**NO GUARANTEE IS MADE AGAINST CRAZING.** Crazing is an inherent characteristic in some fired glazed tiles. We do not recommend the use of contrasting colored grouts as the darker pigments in these grouts can fill the crazing lines making the crazing visible, especially on white and light-colored tile.

**NO GUARANTEE IS MADE AGAINST WEAR, SCRATCHING, OR CHIPPING.** All glazed tiles will scratch, and wear and it should be expected in areas of heavy traffic. The degree of wear is a function of maintenance and abrasion. Company shall not be responsible for failures resulting from tiles being installed in areas where they are not suitable. Wear will be apparent sooner on white or light-colored tile.