

ARGELITH CERAMIC TILES INC

STANDARD TERMS AND CONDITIONS

I. Offer and Contract. This writing constitutes an offer by Argelith Ceramic Tiles, Inc. (“Seller”) to sell the product(s) and/or services described herein (the “Products”) in accordance with these terms and conditions (“T&Cs”). It is not an acceptance of any offer made by buyer (“Buyer”). Acceptance by Seller of Buyer’s order is expressly made conditioned on assent to these T&Cs, either by written acknowledgment or by conduct of Buyer that recognizes the existence of a contract (“Contract”) with respect to the Products described on Seller’s written acknowledgement. **No** additional or different terms of conditions will be binding upon Seller unless specifically agreed to in writing; failure of Seller to object to provisions contained in any purchase order or other communication from a Buyer shall not be construed as a waiver of these T&Cs nor an acceptance of any of such provisions. Terms and conditions on the Invoice for these products take precedence over this document. Unless otherwise specified on the face hereof, this offer is subject to written acceptance of Buyer’s order by Seller at its principal place of business in St. Charles, Illinois, within thirty (30) days. These T&Cs also serve as notice of Seller’s objection to and rejection of any terms and conditions of purchase or sale included in Buyer’s purchase order or other writing that are different from or additional to these T&Cs. Article headings herein are for convenience only and are not to be considered in interpreting any of the provisions herein.

II. Delivery and Risk of Loss and License. **1.** Delivery of Products to a common carrier at Seller’s principal place of business or at any other loading point, if so agreed to by the parties in writing, shall constitute delivery to Buyer (“Delivery”), and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall upon Delivery, shift to Buyer. **2.** Buyer shall provide to Seller written, detailed shipping instructions within a reasonable time prior Delivery. Buyer will be responsible for any increased costs or delays in Delivery resulting from Buyer’s failure to supply such instructions in a timely manner. Buyer may not withhold payment in the event of delay caused by Buyer. **3.** Delivery dates specified are approximate and are subject to revision at any time. Seller will use its commercially reasonable efforts to meet the approximate delivery date(s) provided that Buyer supplies all necessary information, but Seller shall not be held responsible for failure to do so, and shall not be liable for any damage or loss of whatever kind arising directly or indirectly out of any delay in such delivery. If Buyer is responsible for any shipment delay, Seller’s written notification to Buyer that Products ordered hereunder are ready for shipping shall constitute Delivery to Buyer, and all further risk of loss or damage as well as all costs for handling, transportation and storage shall be borne by Buyer. **4.** Seller shall not be liable for any damages as a result of any delay or failure to deliver due to any cause beyond Seller’s reasonable control, including without limitation, any act of God, act or failure to act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, act of terrorism, weather, delay in transportation or inability to obtain necessary labor, materials or manufacturing facilities. It is Buyer’s sole responsibility to pay for and to obtain any governmental or other licenses, certificates or documentation as may be required. **5.** Seller is responsible for proper loading/packing of the product and will carry proper insurance to ensure

that the Buyer receives the product in satisfactory condition.

III. Storage. If the Products are not shipped within fifteen (15) days after notification to Buyer that they are ready for shipping, for any reason beyond Seller's reasonable control, including Buyer's failure to give shipping instruction, Seller may store such Products at Buyer's sole risk in a warehouse or other storage facility or upon Seller's premises and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices therefore by Seller.

IV. Suspension and Cancellation. **1.** If Buyer shall omit delivery instructions or shall fail to accept Delivery or allow work to be done or shall fail to make any payment when it becomes due or shall commit any other breach of contract, and if Buyer shall fail to remedy the same within seven (7) days of receiving Seller's request in writing to do so, or if Buyer shall enter into any composition or arrangement with its creditors or if any distress or execution is levied upon any goods or property of Buyer, or if Buyer shall commit any act of bankruptcy or, if a corporation, a receiver shall be appointed of the whole or any part of its undertaking or assets or if Buyer shall pass a resolution for winding up or if a court shall make an order to that effect or if Buyer shall have a receiving order made against it, then at Seller's sole option Seller may defer or cancel any further deliveries or services and treat the Contract or any other contract between Seller and Buyer as terminated, but such termination shall be without prejudice to Seller's right to any unpaid price for goods or materials delivered or cost of work done under the Contract and to damages for loss suffered in consequence of such termination. **2.** Following Seller's acceptance of the order, the same may not be cancelled by Buyer without Seller's written consent. Upon such consent, the following payments shall become due to Seller: **(a)** The Contract price for all Products completed or services performed at the time of receipt of Buyer's request for cancellation, **(b)** For work in progress, order entry expense, engineering process expense and any materials and supplies procured by Seller or for which Seller is committed in connection with Buyer's order a sum equal to the actual cost thereof, together with overhead expenses determined by Seller in accordance with generally accepted accounting principles plus fifteen percent (15%). **(c)** If Buyer has received any price discounts due to the quantity of goods ordered, but has not purchased the applicable quantity at the time of cancellation, Buyer must also pay Seller the difference between the price Buyer paid and the price it would have paid had Seller's price been based on the quantity actually purchased. **3.** Seller shall suspend the performance of the Contract upon receipt of Buyer's written request to do so but only for a period not exceeding twenty-eight (28) days and Buyer shall reimburse Seller for all storage charges and other additional costs Seller incurs thereby. In the event of the suspension as aforesaid continuing for a period in excess of 28 days, then Seller may terminate the Contract and the rights and liabilities of the parties thereto shall be the same as if the Contract had been cancelled in accordance with the provisions of Article IV, Section 2 of these T&Cs.

V. Products. **1.** Any figures, measurements, statements, descriptions, illustrations, photographs, drawings, or any other matters contained in the Seller's brochures, catalogs, price lists, or advertising literature, or any samples provided to Buyer by Seller are not guaranteed to be accurate and are intended merely to represent a general description or depiction of the Products and shall not form part of any contract or agreement between the Seller and the Buyer, unless expressly specified and incorporated into any contract or agreement between the Parties in writing. **2.** Seller reserves the right to revise and discontinue Products at any time and without prior notice. Seller will ship Products that have the same or similar functionality and performance of the Products ordered, but changes, including but not limited to changes

with regard to color, measurements and weight, due to technical requirements between what is shipped and what is described in specification sheets, catalogs, brochures or the like, are possible and shall not constitute a defect in the Product or non-compliance on the part of the Seller. **3.** In order to best harmonize color and texture variations Buyers are encouraged to order correct and sufficient quantities in a single order to avoid receiving different shades or textures of Products, when placing separate orders. Seller cannot guarantee that shade and texture of Products will match for orders placed separately. Shade and texture variations in tiles are typical due to production processes. **4.** Seller will not be responsible for any **and all** installations of the Products. **5.** Any orders of custom colors will require an overrun of ten percent (10%). This overrun is necessary to allow full compliance with the quantity ordered by the customer. This overrun shall be included in the overall cost of the tile order. This charge will be reflected on the invoice as a custom color surcharge.

VI. Prices and Payment. **1.** Price quoted and billed includes freight, delivery and duties paid through to the jobsite/delivery point. Buyer is responsible for unloading of the containers in a timely manner. Unloading of each container must be complete within two (2) hours of arrival to avoid additional charges. Coordination of the delivery times/scheduling needs to be worked out between the Buyer and the delivery company. The delivery company will give twenty-four (24) hours' notice prior to delivery. Any delay in the delivery process not caused by the freight company or Seller will result in additional charges or fees to Buyer. All prices are subject to change prior to Seller's issuance of a written acknowledgement. Seller reserves the right to adjust prices and Products due to changing market conditions, product discontinuation, or other extenuating circumstances. **3.** Seller shall be responsible for any packing, insurance and shipping charges of domestic shipments of Products and Buyer shall reimburse Seller for any such charges paid by Seller, unless otherwise agreed upon in writing. **4.** Unless otherwise specified on the face hereof, the terms of payment of the total price, plus any additions for the Products ordered hereunder shall be paid in advance (at time of order placement). **5.** Overdue amounts shall bear a delinquency charge of interest at eighteen percent (18%) per annum or the maximum rate permitted by law. **6.** Buyer shall have no right of set-off with alleged counterclaims. Any assignments of Buyer's counterclaims to a third party without Seller's prior written consent shall be void. **7.** Buyer agrees to reimburse Seller for any costs and expenses (including reasonable attorney's fees) in connection with the collection of any amounts owed to Seller under this Contract.

VII. Taxes and Other Charges. Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee or charge of any nature whatsoever imposed by any governmental authority, domestic or foreign, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the price quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore unless otherwise agreed upon in writing. The recipient of goods/benefits is responsible for tax in the country/state/county/city of destination.

VIII. Limited Warranties. **1.** Seller warrants that the Products, including such parts manufactured by others which are integral therewith, shall be free from defects in material and workmanship for a period of twelve (12) months from the date of delivery. Seller's obligations under the aforesaid warranty shall be repairing or replacing the Products delivered to Buyer or its customer which if properly installed, used and maintained, prove to be defective in material or workmanship. Such repair or replacement shall be Seller's sole obligation and Buyer's sole remedy hereunder and shall be conditioned upon Seller's receipt of written

notice of any alleged defect within thirty (30) days after Delivery or within ten (10) days of discovery, whichever period is shorter, and at Seller's option return of such defective Products or part thereof freight prepaid to Seller's principal place of business. **2.** Seller's obligations under Section 1 of this Article VIII shall not apply to any component or part of Products sold hereunder, which **(a)** is consumed by normal wear and tear; **(b)** has a normal life inherently shorter than the herein stated warranty period; **(c)** has been damaged due to negligent or faulty use, alteration, maintenance, storage or handling by Buyer or Buyer's customer; or **(d)** has been improperly installed. **3.** Any description or representation of the Products whether in writing or made orally by Seller or Seller's agents, specifications, samples, color charts, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the purpose of identifying, marketing and promoting Products and shall not be construed as an express warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of Products shall not be construed as an express warranty unless confirmed to be such in writing by Seller. Actual Products may be different than samples and color charts. Color variations are to be expected. Seller is not responsible and is not liable for any claim if the Products fail to match any color charts, color illustrations, or reproductions. **4.** The warranty expressed herein shall be in lieu of any other warranties, expressed or implied, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose, and is in lieu of any and all other obligations or liability on seller's part. **5.** Any products, which by agreement of the parties are of less than seller's standard quality, are sold "as is". Visual defects or nonconformities, including but not limited to color, shade, texture, or other alleged facial or structural defects or discrepancies in dimensional characteristics, apparent prior to installation void this limited warranty.

IX. Warranty Claims, Inspection and Waiver of Defects. **1.** Written notice of any alleged defect must be presented to Seller immediately upon Buyer's discovery of the defect, and Seller must be allowed to inspect the Products while they are in the alleged defective condition. Use of the Products must be suspended until written clearance is issued by Seller for continued use, provided that Seller, upon receipt of written notice of an alleged defect, proceeds without unreasonable delay to remedy any defect covered by the warranty. **2.** Buyer shall inspect all Products immediately upon their arrival and shall immediately give written notice to Seller of any claim that the Products do not conform to the terms of the Contract. Seller shall have reasonable access to inspect any allegedly nonconforming Products. **3.** Buyer waives any right to assert any claim against Seller arising from any non-conformity of Products sold hereunder which would have been observable on reasonable inspection or testing within thirty (30) days after Delivery or within ten (10) days of discovery, whichever period is shorter.

X. Limitation of Liability. **1.** Except as otherwise agreed in writing, Seller's liability with respect to the Products is limited to the limited warranty provided in Articles VIII and IX hereof, and in no event shall exceed the Contract price of the Products. **2.** Seller shall not be subject to any other obligations or liabilities, whether arising out of breach of contract, warranty, tort (including negligence and strict liability), or other theories of law, with respect to products sold or service rendered by seller or undertakings, acts or omissions relating thereto. **3.** Under no circumstances will seller be liable for any incidental or consequential damages, or for any other loss, damage or expense of any kind, including loss of profits, arising in connection with the contract or with the use or liability to use seller's products furnished under this contract, or for any loss or damage caused by abuse of the products, faulty installation or repair. **4.** Seller's sole liability and buyer's sole remedy is limited to either **(a)** repair or replacement of defective parts or products, or **(b)** at seller's

option, return of the goods to seller and refund of the purchase price. **5.** Without limiting the generality of the foregoing Seller specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of Products, or any associated equipment, cost of capital, cost of repairs to Products subject to Seller's warranty performed by persons other than Seller without Seller's prior written consent, cost of substitute Products, facilities or services, down-time or slow-down costs or for any other types of economic loss, and for claims of Buyer's customers or any other third party for any such damages. Seller disclaims any liability for any claim, whether in contract or in tort, which arose more than one (1) year prior to the initiation of arbitration or litigation by Buyer against Seller. **6.** Buyer agrees to cause its customers and anybody in the chain of manufacturing supply and distribution including the end customer to be bound by limitations of liability substantially equal to those contained in these T&Cs.

XI. Security Interest. Buyer hereby grants to seller a security interest in the products sold hereunder to secure payment of the price of such products and agrees, and appoints seller its agent, to take all such action and to execute all such documents and instruments as may be necessary or reasonably requested by seller to perfect and continue perfected seller's security interest hereunder.

XII. Insurance. **1.** Seller is entitled to insure the Products sold hereunder against damage or loss during **(a)** transportation; and **(b)** if shipping is delayed by reasons beyond the reasonable control of Seller during this delay; at the expense of Buyer unless parties have agreed otherwise. However, Seller is not obligated to obtain insurance. **2.** Until final payment is made Buyer, Buyer shall insure such Products at its expense for the benefit of Seller against damages and loss, including, but not limited to, fire and flood, and shall give written proof thereof to Seller.

XIII. Proprietary Information/Confidentiality. **1.** All drawings, diagrams, specifications and other materials furnished by Seller (relating to the production, formulation and use of Products sold hereunder and the information therein) are propriety to Seller. All such information supplied by Seller except for information that **(a)** was generally available to Buyer from public or published sources, provided publication did not take place in violation of this Contract or through fault or omission of Buyer, **(b)** was lawfully obtained from a source under no obligation of confidentiality, directly or indirectly, to either Buyer or Seller, or **(c)** was disclosed to the general public with the written approval of Seller shall be received in confidence, and Buyer shall exercise due diligence and reasonable care to hold such information in confidence. **2.** In the event Buyer's personnel visits Seller's research or production facility or otherwise receive any proprietary or confidential information from Seller, said information shall be retained as confidential by Buyer and not disclosed to any third party without written prior consent of Seller. Seller retains all rights in any invention or improvement, discovery or patent it conceives relating to the Products sold under this Contract. **3.** This Article shall survive the termination or expiration of these T&Cs.

XIV. Patents, Copyrights and Trademarks. **1.** Seller assumes no liability as to any patent or copyright infringement by virtue of the use of Products in combination with other goods and services, or the use of Products manufactured to Buyer's specifications. **2.** Buyer shall not use Seller's trademarks without Seller's prior written consent.

XV. Severability. If at any time any one or more of the provisions of these T&Cs become invalid, illegal

or unenforceable in any respect, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions of these T&Cs shall not be in any way impaired.

XVI. Arbitration. All disputes arising under this Contract shall be settled by final and binding arbitration in the City of Chicago, Illinois, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The parties may agree on the selection of a single arbitrator, but in the event they cannot agree, each party select an arbitrator and the two selected arbitrators shall select a third arbitrator. The award by the arbitrator or arbitrators shall be final and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

XVII. Governing Law. The law governing this Contract and any further contracts between Seller and Buyer shall be the substantive laws of the State of Illinois, without regard to its conflicts of law rules. The application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

XVIII. Safety Recommendations.

A. Notice to Owners of Tile Flooring. **1.** Many factors affect a tile flooring surface to produce a reasonably safe walking surface. They include, but are not limited to, the proper selection of tile for the intended use and environment, how the tile is used by pedestrians, what the tile surface is subjected to, the environment and surrounding environmental conditions, any substances or contaminants on the tile surface that reduce traction, and the degree of or lack of proper maintenance. It is the tile owner's responsibility to periodically perform quality assurance testing of the tile surface to verify that it is adequately slip resistant. All tile surfaces can be slippery to some degree under various circumstances and conditions. The more texture a tile surface has the more slip resistant it will be, but the more texture it has the more difficult it will be to clean and keep clean. To ensure a safe walking surface keep the tile surface clean and dry, and provide walk-off mats at exterior entrances and at any transitional areas where the floor finish or condition changes. **2.** The presence of water on installed tiles (including standing water on floors not properly sloped for drainage or on tiles near entrances subjected to rain and snow), as well as the presence of oil, grease, and/or any other elements which reduce traction, creates slippery conditions where the risk of a slip cannot be completely eliminated. Tile installations with exposure to such elements require extra caution in a product selection, use, and maintenance per ANSI A137.1-6.2.2.1.10-2012.

3. Per ANSI/NFSI B101.6-2012 entrance mats for commercial facilities shall provide the following functions: **(a)** Safety - Matting of effective and sufficient quality shall be installed to remove contaminants, moisture and grit from footwear. **(b)** Mats perform an important safety benefit in areas where there is a hazard from contaminants, grit and moisture. Moisture and grit on floors, particularly hard floors, pose a significant slip-and-fall risk to pedestrians. Mats remove moisture and grit from floors to reduce slip hazards.

B. Maintenance. **1.** Regular removal of grit and dirt from the floor surface (via sweeping, dust mopping, or mechanical methods) is recommended. Keep the tile surface clean and use walk-off mats at entrances to minimize wear on tile and to provide protection against slipping during wet conditions. **2.** As needed, use a neutral cleaner to scrub tile and grout. Use of a wet and dry vacuum is recommended for picking up dirty water after cleaning and rinsing. Proper maintenance of a tile installation will extend the beauty and functional life of the tile, as well as keep it a safe area for public use. **3.** For exterior applications, don't allow sprinklers to over spray onto the tile surface.

C. Specifiers. **1.** Many factors affect the possibility of slip occurring on a tile surface, including, but not limited to, the material of the shoe sole and the degree of its wear; the presence and nature of surface contaminants; the speed and length of stride at the time of a slip; the physical and mental condition of the individual at the time of slip; whether the floor is flat or inclined; how the tile surface is used and maintained; the Coefficient of Friction of the tile; how the tile is structured; and how drainage takes place if liquids are involved. **2.** Per ANSI A137.1-6.2.2.1.10-2012 the specifier shall determine tiles appropriate for specific project conditions, considering by way of example, but not limited to, type of use, traffic, expected contaminants, expected maintenance, expected wear, and manufacturers' guidelines and recommendations.

D. Tile Flooring Owner's Responsibility. **1.** It is the tile flooring owner's responsibility to provide for routine inspection and appropriate maintenance, and to ensure compatibility of all cleaning methods and products with grout and mortar manufacturer recommendations per ANSI A108.01-3.9. **2.** It is the owner's responsibility to procure, place, and maintain entrance and non-entrance mats over the tiled flooring wherever they may be necessary. Mats perform an important safety benefit in areas where there is a hazard from contaminants, grit, and moisture. Moisture and grit on floors, particularly tiled (hard) floors, pose a significant threat to pedestrians of slipping and falling per ANSI/NFSIB101.6-2012.