

ARGELITH CERAMIC TILES INC

STANDARD TERMS AND CONDITIONS

I. Applicability. These terms and conditions (“T&Cs”) are incorporated into the sales order between Argelith Ceramic Tiles, Inc. (“Seller”) and the buyer identified in the sales order (“Buyer”) for the product(s) identified therein (the “Products”). Seller shall not be deemed to have entered into a sale order with Buyer unless and until Seller acknowledges its acceptance of the sales order by issuance of an invoice or otherwise in writing. These T&Cs along with the sales order between Seller and Buyer (collectively, the “Contract”) comprise the entire agreement between Seller and Buyer with respect to the Products, and supersede all prior or contemporaneous understandings, agreements, negotiations and communications, both written and oral. No additional or different terms or conditions will be binding upon Seller unless specifically agreed to by Seller in writing; failure of Seller to object to provisions contained in any purchase order or other communication from Buyer shall not be construed as a waiver of these T&Cs nor an acceptance of any of such provisions. In the event of any conflict between the terms of these T&Cs and the terms of the sales order, the terms of these T&Cs control unless the sales order expressly states the conflicting provision in the sales order controls. Any of Buyer’s offers to purchase Seller’s Products from time to time may be accepted or rejected by Seller in Seller’s sole discretion, which determination is made by Seller at its principal place of business in St. Charles, Illinois. 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 determined by Seller, 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 a 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, nor shall Seller be deemed to have defaulted or breached the Contract, 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, or other hostilities, weather, national or regional emergency, delay in transportation or inability to obtain necessary labor, materials or manufacturing facilities. **5.** Seller will load/package the Products in accordance with Seller’s standard practices.

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 instructions, 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 as determined by Seller upon submission of invoices 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 commence 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 in addition to any remedies provided under law or these T&C's, at Seller's 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 sales 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 of 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 as 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 and Seller makes no representations or warranties regarding the work of any installer. **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 Buyer. 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.** All packing, insurance and shipping charges incurred by Seller are the responsibility of Buyer and Buyer shall reimburse Seller for any such charges, unless otherwise agreed upon in writing. **4.** Unless otherwise agreed by Buyer and Seller in writing, all amounts owed to Seller arising out of Buyer's purchase of the Products 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 not withhold payment of any amounts due by reason of any set-off of any claim or dispute with Seller. **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.

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, together with any interest or penalties thereon, whatsoever imposed by any governmental authority, domestic or foreign, arising out of or related to the Contract, including 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. Without limiting the foregoing, Seller is not responsible for any taxes that may be applied in the country/state/county/city of destination.

VIII. LIMITED WARRANTY. **1.** Seller warrants that the Products it or its parent company manufactured 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 to Buyer and Buyer's customers, and Buyer's sole remedy hereunder, and shall be conditioned upon Seller's receipt of written notice of any alleged defect within ten (10) days of discovery. If Seller chooses to replace any defective Products or part thereof then Buyer shall return the claimed defective Products to Seller 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 among other things, (a) is consumed by normal wear and tear; (b) has been damaged due to negligent or faulty use, alteration, maintenance, storage or handling by Buyer or Buyer's customer; or (c) has been improperly installed. In addition, any products sold by Seller that are not manufactured by Seller or Seller's parent company (each a "Third-Party Product") are not covered under this warranty. **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THIRD-PARTY PRODUCTS, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTY AGAINST INFRINGEMENT.** **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 BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, 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. **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 if Seller does not receive written notice of the alleged non-conformity within ten (10) days of Buyer's discovery of same.

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, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, OR FOR ANY OTHER LOSS, DAMAGE OR EXPENSE OF ANY KIND, INCLUDING LOSS OF PROFITS, 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, OR FOR CLAIMS OF BUYER'S CUSTOMERS OR ANY OTHER THIRD PARTY FOR ANY SUCH DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, REGARDLESS OF: (A) WHETHER THE DAMAGES WERE FORESEEABLE; (B) WHETHER SELLER WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES; AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.** **4.** 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, wherever located, as well as all proceeds (including insurance proceeds) of the Products, to secure complete payment for the Products and any and all present and future, indebtedness, obligations and liabilities of Buyer to Seller. Buyer 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 by 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. Compliance with Law. Buyer shall comply with all applicable laws, regulations, and ordinances. It is Buyer's sole responsibility to pay for and to obtain any required governmental or other licenses, certificates or documentation.

XIV. Proprietary Information/Confidentiality. **1.** All drawings, diagrams, specifications and other materials furnished by Seller (including 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.

XV. 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.

XVI. Waiver. No waiver by Seller of any provision of the Contract, including these T&Cs, is effective unless it is in writing signed by Seller. No failure by Seller to exercise, or delay in exercising, any of Seller's rights, remedies, powers, or privileges arising under the Contract operates or may be construed as a waiver thereof.

XVII. Relationship of the Parties. The relationship between Seller and Buyer is solely that of vendor and vendee, and they are independent contracting parties. Nothing in this Contract creates any agency, joint venture, partnership, or any other form of joint enterprise, employment, or fiduciary relationship between Seller and Buyer. Buyer does not hold an express or implied right to assume or create any obligations on behalf of or in the name of Seller or to bind Seller to any agreement with any third party. Buyer is not required to pay a franchise fee or similar fee, directly or indirectly, as a condition of Buyer's purchase or resale of the Products. Nothing in this Contract requires Buyer to comply with any particular marketing plan or system and Buyer acknowledges its business is not substantially associated with Seller.

XVIII. 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.

XIX. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Contract without the prior written consent of Seller. Any purported assignment or delegation in violation of this Article is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Contract.

XX. Choice of Forum. A party shall institute any action related to this Contract in the United States District Court for the Northern District of Illinois, or the Illinois state courts located in Kane County, Illinois. The parties irrevocably submit to the exclusive jurisdiction of these courts.

XXI. 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.

XXII. Limitations Period. BUYER MUST BRING ANY ACTION AGAINST SELLER RELATED TO THE CONTRACT WITHIN ONE-YEAR OF THE CLAIM ACCRUING. BUYER WAIVES ANY RIGHT TO FILE AN ACTION RELATED TO THE CONTRACT UNDER ANY LONGER STATUTE OF LIMITATIONS.

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.