

Florida Tile, Inc. - Purchase Order Standard Terms and Conditions

- 1) ACCEPTANCE AND COMPLETE AGREEMENT. This order is Buyer's offer to Seller and is not an acceptance by Buyer of any offer to sell by Seller or of any terms and conditions contained in any such offer. Acceptance of this offer by Seller should be made by (a) executing and returning an acknowledgement copy, or (b) delivering any of the goods ordered herein or (c) rendering any of the services ordered herein. Any additional or different terms proposed by Seller are objected to and rejected unless expressly assented to in writing by Buyer. In the absence of a mutually agreed Supply Agreement, this order is a complete and exclusive statement of the terms and conditions of the agreement between Seller and Buyer.
- 2) TERMS OF DELIVERY. FCA Sellers Dock unless other instructions have been specified by the Buyer. No unauthorized or collect shipments will be accepted.
- 3) IDENTIFICATION OF ORDER. The Purchase Order number must appear on all correspondence, invoices, order acknowledgements, Bills of Lading and other shipping papers and packing lists. Container number, shipment number (provide by the Buyer) and Purchase Order number shall be indicated on Bill of Lading.
- 4) PACKING AND SHIPPING. All goods shall be packed, rated and braced to prevent damage or deterioration in accordance with Uniform Freight Classification Rules and Regulations and Carrier Tariffs. No charges will be paid by Buyer for preparation, packing, crating or cartage unless separately stated in the order. All shipments to be forwarded on one day via one route and shall be consolidated and shipped to ensure the lowest transportation charge. Bill of Lading description of goods shall be described in Uniform Freight Classification of Carrier Tariffs and not by trade or technical name. Shipping costs for goods on back order shall be paid only at the rate that would have been applicable had the complete order been shipped all at one time. All excess shipping costs shall be borne by Seller. A detailed and itemized packing list showing the Buyer material number and Purchase Order number must accompany all shipments.
- 5) CANCELLATION. Time is of the essence in this order. Buyer reserves the right to cancel this order, or any portion of this order, without liability, if: (1) delivery is not made when and as specified; (b) Seller fails to meet contract commitments as to exact time, price, quality or quantity; (c) Seller ceases to conduct its operation in the normal course of business; (d) Seller is unable to meet its obligations as they mature; (e) proceedings are instituted against Seller under the bankruptcy laws or any other laws relating to the relief of creditors; (f) a receiver is appointed or applied for by Seller; or (g) any assignment is made by Seller for the benefit of creditors.
- 6) INVOICE AND PAYMENT. A separate invoice shall be issued for each shipment. Invoice should be sent electronically in PDF format to ap@FloridaTile.com. All applicable taxes must be itemized on the invoice. Unless otherwise specified on this order, no invoice shall be issued prior to shipment of the goods and no payment shall be made prior to both a) the goods pass final inspection and acceptance and b) receipt of a complete and accurate invoice. Applicable discount periods shall be computed from the date of acceptance of the goods and receipt of a correct invoice, to the date Buyer's electronic payment is released. Unless freight and other charges are itemized, discount shall be taken on the full amount of invoice. Seller agrees that Buyer shall issue payment for all goods/services under this order via ACH Payment, unless otherwise agreed. Seller agrees that no payment shall be made prior to Seller's completion of the Federal Form W-9 and ACH Authorization Form, or for international suppliers, until Swift code, IBAN and VAT numbers are provided.
- 7) WARRANTIES. Seller warrants that: a) prices for the goods sold to Buyer under this order are no less favorable than those currently extended to any other customer for the same or like articles in comparable or less quantities; b) all goods delivered under this order will conform to the requirements of this order (including all applicable descriptions, specifications and drawings), will be free from defects in material and workmanship and will, to the extent not manufactured pursuant to detailed designs furnished by Buyer, be free from defect in design and fit for the intended purposes; and c) Seller's warranties and any more favorable warranties, service policies, or similar undertakings of Seller shall be enforceable by Buyer's customers and the users of Buyer's goods, as well as by Buyer.
- 8) INSPECTION AND REJECTION. All goods are subject to final inspection and acceptance by Buyer at destination notwithstanding any payment or prior inspection at source. Such inspection will be made within a reasonable time after receipt of goods. Buyer shall notify Seller if any goods delivered hereunder are rejected, and at Buyer's election and Seller's risk and expense, such goods shall be held by Buyer or returned to Seller. Buyer's count shall be final and conclusive on all shipments not accompanied by a packing list. No replacement or correction of nonconforming goods shall be made by Seller unless agreed to in writing by Buyer.
- 9) NONDISCRIMINATION. Seller assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment because of race, religion, creed, color, gender, age, disability, veteran status or national origin. Seller also agree to take affirmative action to ensure that applicants are employed and that employees are treated during the employment without regard to their race, religion, creed, color, gender, age, disability, veteran status or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.
- 10) COMPLIANCE WITH FEDERAL AND STATE LAWS. Seller shall comply with all applicable Federal, State and international laws and regulations in the performance of the order. This order shall be governed by and subject to the laws of the Commonwealth of Kentucky.
- 11) COPYRIGHTED/LICENSED PRODUCTS. Seller represents that it is authorized to use any trademarked, copyrighted or licensed products issued under this order, and assumes sole responsibility for all liabilities associated with any breach or violation of this Section.

Florida Tile, Inc. - Purchase Order Standard Terms and Conditions

12) INDEMNITY. a) Seller, at its expense, shall protect, defend and indemnify Buyer, Buyer's customers, the users of Buyer's goods and its and their affiliates (the "Buyer Indemnitees") from and against all claims and proceedings, including the cost of defending the same, alleging infringement of any United States or foreign patent, trademark or copyright by any goods delivered under this order, and Seller shall hold the Buyer Indemnitees harmless from any resulting liabilities and losses; b) Seller, at its expense, shall indemnify Buyer Indemnitees and hold them harmless from and against any and all liability, demands, causes of action or claims, whether well founded or otherwise, including the cost of defending the same, for bodily injury to any person or damage to property, either real or personal, of any person whomsoever in any way arising out of, in the course of, or in connection with the goods or services purchased hereunder or the operations of the Seller in carrying out the provisions and terms of this order; and c) Buyer Indemnitees shall not be bound by any limitations on remedies available to Buyer in connection with any claim for indemnity arising under this Section.

13) INSURANCE. Seller shall maintain such commercial liability insurance, including products liability, contractors liability and protective liability, automobile liability insurance (including non-owned automobile liability) and Workmen's Compensation, and employer's liability insurance as will adequately protect Buyer against such damage, liabilities, claims, losses and expenses (including attorney's fees) as are described in paragraph 12 (INDEMNITY). Seller agrees to submit certificates of insurance evidencing its insurance coverage when requested by Buyer.

14) CLICK-WRAP AGREEMENTS. By acceptance of this order, the Seller agrees that "click-wrap" agreements or other similar agreements purportedly created by acceptance of terms over the Internet or by unauthorized personnel of Buyer acting in administrative capacities shall not be binding upon Buyer. No employee has the actual or apparent authority to enter into such agreements on behalf of Buyer without the approval of the Buyer's Purchasing Department and/or CFO's Office. No employee has the authority to modify, amend or supplement this order through a click-wrap or similar agreement. This order can only be modified, amended or supplemented under these terms through a written change order or amendment that is physically signed by an authorized representative of Buyer

15) CHANGES AND DISCREPANCIES. Any discrepancies, omissions or lack of clarity in drawings, specifications or orders, must be referred to the Buyer for written interpretation before this order is processed. Buyer shall have the right at any time before completion of the order, to make changes in quantities, in drawings and specifications, in delivery schedules, and in methods of shipment and packaging. If such changes cause an increase or decrease in price or in the time required for performance, Seller shall promptly notify Buyer thereof in writing and equitable adjustment shall be made. Changes shall not be binding upon Buyer unless evidenced by an order change notice and issued by Buyer.

16) FORCE MAJEURE. Seller shall not be liable for any delay or failure to deliver goods covered by this order in the event of delay or failure caused by governmental regulations, labor disputes, strikes, war, riots, insurrection, civil commotion, mobilization, explosion, fire, flood, accident, storm or any act of God, failure of crops or supplies, delays of common carriers, embargoes, or other causes beyond Seller's reasonable control. Similarly, Buyer shall not be liable for failure to take delivery of the goods for any of the above causes, or other causes beyond Buyer's reasonable control if they render it commercially impracticable for Buyer to receive or use the goods on a timely basis. Where only a part of Seller's capacity to perform is excused under this paragraph, Seller must allocate production and deliveries among itself and its various customers then under contract for similar goods during the period in a fair and equitable manner. Where either Seller or Buyer claims an excuse of nonperformance under this paragraph, it must give notice in writing to the other party. Seller shall not be obligated to sell nor Buyer obligated to purchase at a later date that portion of the goods that Seller is unable to deliver or Buyer is unable to receive or use because of any of the aforementioned causes.

17) ASSIGNMENTS. No assignment of any rights, including rights to money due or to become due hereunder, or delegation of any duties under this order shall be binding upon Buyer until its written consent has been obtained.

18) SERVICES. In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on Buyer's property, or property of Buyer's customers, the Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Buyer. Seller assumes full responsibility for its acts and omissions and agrees to save Buyer harmless from any claims whatever arising therefrom. Seller assumes exclusive liability for any payroll or other taxes imposed upon the employer by Federal or State law. Seller shall maintain all necessary insurance coverages, including liability and Workman's Compensation insurance. Seller shall indemnify and hold harmless and defend Buyer from any and all claims or liabilities arising out of the work covered by this paragraph.

19) DECLINE IN PRICE. Buyer shall be protected against declining prices on the undelivered portion of this order. Seller may elect to meet price reductions of other vendors or its own lower prices to other purchasers, but if Seller should refuse to do so, Buyer shall have the right to cancel any or all of the balance due on this order without cost to Buyer.

20) NOTICE OF LABOR DISPUTE. Whenever Seller has knowledge that any actual or potential labor dispute may delay this order, Seller shall immediately notify and submit all relevant information to Buyer.

21) CLEARANCE OF MATERIALS INTENDED FOR PUBLIC RELEASE. No news release, including photographs and film, advertisements, public announcement, denial or confirmation of same or any part of the subject matter of this order or any phase of any program thereunder shall be made without prior written approval of Buyer.