

GENERAL TERMS AND CONDITIONS OF SALE

Any and all orders fulfilled by ETAMORPH, LLC ("Seller") together with Notes and/or Special Notes set forth on the face of the governing proposal, invoice, or sales order, selection sheet or other document provided by ETAMORPH confirming your order (collectively "Terms"), except as otherwise modified in writing by Seller, shall govern the transaction between Seller and the party to whom the proposal, invoice, or sales order selection sheet, or other document provided by ETAMORPH (collectively "Proposal") is addressed ("Buyer"). Seller's acceptance of any order is limited to and expressly conditioned upon Buyer's acceptance of these Terms, notwithstanding any conflicting terms or condition of Buyer's purchase order, acknowledgment, or any other document or communication to the contrary.

1. **Seller's Proposal; Applicability of Terms.** All prices specified are valid 90 days from the date of the Proposal. If a Proposal is accepted by Buyer, the Terms will govern Seller's sale to Buyer of the products listed in the Proposal and any other products Seller may sell to Buyer after the date of the Proposal in transactions that are not governed by separate terms and conditions of sale. All such products are collectively called the "Products."
2. **Buyer's Acceptance; Binding Contract.** The Terms will become a binding contract between Seller and Buyer if, and on the date when, Buyer gives to the Seller a written confirmation of order. Buyer shall include with such acceptance (i) the location to which the Products are to be shipped and (ii) any up-front payments required by the Terms in accordance with Section 7. Seller may, at any time prior to the date on which Buyer so accepts a Proposal and the Terms, withdraw or amend the Terms.
3. **Certain Defined Terms.** The following terms have the following meanings: "Bill and Hold Products" means Products purchased by Buyer and held by Seller because Buyer, for any reason, has failed to: provide shipment instructions to Seller, pick up such Products as scheduled, or accept delivery of the Products. "Law" means any law, statute, treaty, regulation, rule, order, judgment, writ, decree, injunction or directive of any national, federal, state, local or other governmental authority or any court, administrative agency, commission, department, subdivision or other instrumentality. "Person" means an individual or an entity of any kind.
4. **Entire Agreement; Other Terms Void.** The Terms contain the entire agreement between Buyer and Seller related to the Products and supersede (i) any Buyer purchase order or orders for the Products, whether submitted before or after the date of the Terms and (ii) any previous communications, representations or agreements, whether verbal or written, related to the Products. Any terms and provisions inconsistent with the Terms shall be null and void. The Terms shall not be amended, changed, supplemented or waived except by means of a written instrument signed by the party to be bound. If there is a conflict between these Terms and the terms of any Notes or Special Notes set forth on the Proposal, said Notes and/or Special Notes shall govern.
5. **Buyer's Order Irrevocable; Price Increases; Backorders.**
 - a. All Deposits on orders are non-refundable.
 - b. Once Buyer accepts a Proposal and the Terms, or places a subsequent order, Buyer shall not have any right to cancel its order or reduce the quantity of Products ordered under any circumstances
 - c. Subject to the further terms of this Section 5c, Seller's lead time for supplying Products shall be as specified in the Proposal or otherwise mutually agreed by Seller and Buyer. All estimated lead times are from receipt of the signed Proposal and deposit. If the quantity of any Products listed in the Proposal or subsequently ordered by Buyer exceeds Seller's available inventory of such Products, Seller will fulfill Buyer's order to the extent of Seller's available inventory of such Products, backorder the remainder of such Products and fulfill the remainder of Buyer's order when a sufficient quantity of Products is available to Seller. Seller's lead time for supplying back-ordered Products shall be extended for the period reasonably required by Seller to obtain such Products and supply such Products to Buyer, and Seller shall have no liability to Buyer for such delay.
6. **Shipping; Risk of Loss; Bill and Hold.**
 - a. Buyer may (i) change the location and method to which Seller shall ship any Products and Buyer is responsible for any change in cost of freight, (ii) subject to Section 6c., specify that Buyer will arrange for pickup of any Products or (iii) unless designated otherwise by seller,
 - b. Unless designated otherwise by Seller, all prices for Products are F.O.B. the facility or facilities of Seller or Seller's suppliers from which Products are shipped to Buyer. Buyer shall pay all taxes, customs and other duties and exchange, interest, banking, collection and other charges related to its purchases of Products.
 - c. Seller will ship the Products to the location specified in this proposal by a common carrier selected by Seller or by other means of transport selected and provided by Seller, except to the extent that Seller, in its discretion, permits Buyer to pick up Products at Seller's location with a vehicle and driver acceptable to Seller, in its discretion. Buyer shall notify Seller in writing pursuant to Section 6a if Buyer desires to arrange for pickup and transportation of Products and

shall specify in that written notice the vehicle and driver that Buyer intends to use for such pick-up and transportation. Title to, and risk of loss of, any Products shipped to Buyer will pass to Buyer upon delivery of such Products to the carrier picking up the Products. Title to, and risk of loss of, any Products that Seller permits to be picked up by or on behalf of Buyer shall pass to Buyer when such Products are picked up from Seller's or Seller's supplier's facility by or on behalf of Buyer. Notwithstanding anything in this Section 6c to the contrary, Seller shall have no obligation to inspect or determine the suitability of any vehicle or driver used to pick-up and transport the Products.

- d. Where due to Buyer's conduct, Seller treats Products as Bill and Hold Products, then: (a) title and risk of loss of the Products shall pass to Buyer; (b) Buyer shall be deemed to have abandoned the Products; (c) Seller may, at its option, store the Products subject to storage charges as provided in Section 6b as well as any other related costs and expenses (including, without limitation, any insurance costs) for which Buyer shall be responsible; and (d) Seller shall have the right to sell or dispose of the abandoned property on 30 days' written notice to Buyer, and in addition to all other remedies allowed by law, Seller will retain all monies received and shall have the right to seek reimbursement from Buyer of all expenses associated with storage, resale or disposal of the abandoned property. Where Seller disposes of abandoned Products, Buyer expressly indemnifies, holds harmless, waives, and releases Seller from any and all claims, losses or damages resulting or relating to Seller's disposition of Buyer's abandoned Products.
- e. Quantity shipped may vary due to packaging, full box count, or full slab measurements, and will be billed accordingly.

7. Payment.

- a. Buyer shall pay to Seller, together with Buyer's acceptance of the Proposal and prior to shipment of Products to Buyer, the full amount of the price of the Products or the amount of any lesser up-front payment required by the Proposal. Seller will invoice Buyer for any balance of the purchase price for the Products and any Related Charges initially borne by Seller at a time or times determined by Seller in its discretion. Buyer shall pay each such invoiced amount within the time specified in the Proposal or, if not specified in the Proposal, as specified in Seller's invoice or, if not specified in the Proposal or such invoice, net 30 days of the date of the relevant invoice. Buyer shall pay all amounts due to Seller under the Terms in immediately available U.S. dollars.
- b. Notwithstanding any provision herein to the contrary, unless otherwise specified by Seller in the Proposal, Buyer shall pay all charges for air shipments at least five (5) business days before the scheduled date of shipment.
- c. Buyer shall not exercise, and hereby waives, any right of setoff, offset or deduction Buyer has, or may in the future have, against any amounts due to Seller under the Terms or otherwise.
- d. If Buyer fails to pay when due any amounts payable by Buyer to Seller, under the Terms or otherwise, in addition to any other rights Seller may have under the Terms and applicable Law, (i) such overdue amounts shall be subject to a service charge at the rate of 1.5% per month or the maximum legal rate, whichever is lower, (ii) Seller may cancel or delay any future shipments of Products to Buyer without any liability to Buyer and (iii) Seller may accelerate payment of any other amounts owed by Buyer to Seller, under the Terms or otherwise, and such amounts shall become immediately due and payable. Buyer will pay to Seller any amounts charged to Seller by its banks plus a service charge of \$20 for any Buyer checks that are returned by Seller's bank or are otherwise invalid or dishonored.
- e. If Seller accepts partial payment of any amount due to Seller under the Terms, Seller hereby reserves, and shall be deemed to have reserved, its rights in connection with such acceptance in accordance with Section 1-207 of the New York Uniform Commercial Code, regardless of whether Seller notes such reservation of rights in the course of such acceptance.
- f. Notwithstanding anything in the Proposal to the contrary, Seller may at any time and in its discretion (i) extend credit to Buyer, (ii) withhold or withdraw credit from Buyer or (iii) require Buyer to pay in cash all or any portion of the purchase price for any Products and any Related Charges (A) upon delivery of such Products or (B) at any earlier time. Notwithstanding any action or inaction by Seller permitted by this Section 7f, Buyer's obligations under the Terms shall remain in effect, unchanged.
- g. Any property of Buyer in Seller's possession at any time including Bill and Hold Products and Products to be delivered to Buyer shall be deemed held by Seller as security for Buyer's obligations to Seller under this agreement or arising in any other manner and Seller shall have the rights pertaining to such property of a secured party under article 9 of the New York Uniform Commercial Code.

8. Inspection of Products; Waiver of Objections.

- a. Buyer shall inspect all Products delivered to Buyer or picked up by or on behalf of Buyer immediately upon such delivery or pickup for (i) any discrepancy in the quantity of such Products from that specified in the Proposal and (ii) any damage visible without removing the packaging of such Products (collectively, "Initial Discrepancies"). Buyer shall list any such Initial Discrepancies in writing and have the delivery driver, or, if such Products are picked up by or on

behalf of Buyer, a representative of Seller or Seller's supplier, sign and date such list before leaving the delivery or pickup location. Prior to the close of business at the location of delivery or pickup on the day of delivery or pickup, Buyer shall send such signed list of Initial Discrepancies to Seller by facsimile or email and send a follow-up paper copy to Seller by mail. Buyer shall, at Seller's request, permit Seller to inspect any alleged Initial Discrepancies at the place where the Products are located during normal business hours.

- b. Buyer shall (i) inspect all Bill and Hold Products for Initial Discrepancies within 10 days after the date on which Buyer notifies Seller that Seller is holding such Products and (ii) notify Seller in writing of any Initial Discrepancies related to such Products before the close of business on that 10th day.
- c. Buyer shall (i) further inspect all Products within 5 days after the date on which such Products are delivered to, or picked up by or on behalf of, Buyer for (y) any non-compliance of such Products with the specifications therefore and (z) any damage visible only after removing the packaging of such Products (collectively, "Follow-Up Discrepancies," and together with Initial Discrepancies, "Discrepancies"), (ii) notify Seller in writing on or before the close of business on that 5th day of any such Follow-Up Discrepancies and (iii) at Seller's request, permit Seller to inspect any alleged Follow-Up Discrepancies at the place where the Products are located during normal business hours.
- d. To the extent that (i) the Products are installed or altered in any way or (ii) Buyer fails to notify Seller of, and permit Seller to inspect, any Discrepancies pursuant to Section B α , b or c, as applicable, time being of the essence, Buyer shall be deemed to have waived its right to object to such Discrepancies in such Products. Unless otherwise specified in the Proposal, installation, including the appropriate sealing and use of maintenance materials, is the sole responsibility of the Buyer. For setting specifications, we recommend that you contact an adhesive manufacturer such as Laticrete or Mapei.

9. Warranty; Disclaimer of Warranties; Seller's Cure; Limited Remedies.

- a. SELLER WARRANTS TO BUYER THAT THE PRODUCTS WILL BE THE QUANTITY AND TYPE OF PRODUCT PROVIDED IN THE PROPOSAL AND WILL BE FREE OF ANY SECURITY INTEREST OR OTHER LIEN. SELLER DOES NOT WARRANT AND HEREBY SPECIFICALLY DISCLAIMS THAT ITS PRODUCTS MEET ANY WRITTEN SPECIFICATIONS OF CUSTOMER UNLESS AN AUTHORIZED OFFICER OF SELLER HAS AGREED IN WRITING TO MEET SUCH CUSTOMER'S SPECIFICATIONS. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, RELATED TO THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- b. Product samples and the statements in Seller's brochures and advertising materials are for informational purposes only and are to be used only as a general guide for product specification. The color of natural **stone** and wood products and the percentage, size, and shape of markings on such products will vary, which variation can be further exaggerated when materials are from multiple production runs or different manufacturers. The pattern and shade of man-made products will also vary. All Product sizes are nominal, not actual.
- c. DO NOT ASSUME that tiles will line up, especially if they are from different manufacturers. To increase the likelihood of materials lining up: (i) choose rectified, mono-caliber tiles; AND (ii) if necessary, increase grout joint width or trim materials. If the project calls for different materials to line up, it is advisable that the installer do a dry lay prior to installation. Note that standards for tile manufacture allow for size variation from one tile to the next. Tile size ranges are within the acceptable ranges defined by MIA (Marble Institute of America and TCNA (Tile Council of North America). This is industry standard.
- d. Natural and man-made products of the type sold by Seller such as natural stone and wood manufactures inevitably contain irregularities and defects. Products containing irregularities or defects (x) that are beyond the control of Seller, (y) that Seller cannot prevent by the exercise of reasonable care or (z) that are natural to or inherent in any particular Product, shall not be deemed to be defective, and Buyer shall have no recourse to Seller for such irregularities or defects in such Products.
- e. BUYER HEREBY ASSUMES FULL RESPONSIBILITY FOR SELECTING PRODUCTS THAT MEET BUYER'S REQUIREMENTS AND INSPECTING SUCH PRODUCTS.
- f. Seller may cure any Discrepancy consisting of a shortage in quantity of any Products by delivering a conforming quantity of Products to Buyer, by a common carrier selected by Seller or other means of transport selected and provided by Seller or Seller's supplier, as soon as reasonably practicable after Buyer notifies Seller in writing of such shortage pursuant to Section 8a, b or c, as applicable, in which case Buyer shall have no further recourse to Seller.
- g. Buyer shall not have any right to return or exchange any Products to/with Seller unless Discrepancies exist in such Products. Buyer's sole remedy for any Discrepancies other than a shortage in quantity of Products shall be to return the affected Products to the Seller at Buyer's expense. Buyer shall not return any Products to Seller without first obtaining written return authorization from a duly authorized representative of Seller. Buyer shall ship the returned Products to Seller in accordance with any shipping instructions contained in such written return

authorization and shall include a copy of such written return authorization with the returned Products. FOR CUT-TO-SIZE AND SPECIAL ORDERED PRODUCTS THE SELLER WILL NOT ACCEPT ANY RETURN OF PRODUCT

- h. In the event Buyer and ETAMORPH resolve a future claim, the resolution of that claim shall be deemed to include a full release of ETAMORPH from any and all liability related to the underlying claim, including, but not limited to, any and all claims on behalf of Buyer for lost profits, or any other claim of any nature which Buyer might have. If the parties sign a separate release agreement in connection with the resolution of a claim, the terms and conditions of that written agreement shall control.

10. Limitation of Liability.

- a. NOTWITHSTANDING ANYTHING IN THE TERMS TO THE CONTRARY, SELLER SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO BUYER FOR ANTICIPATED PROFITS, LOST PROFITS OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY CLAIM ARISING OUT OF THE TERMS, OR OTHERWISE RELATED TO THE PRODUCTS, REGARDLESS OF WHETHER SUCH CLAIM SOUNDS IN TORT, CONTRACT, BREACH OF WARRANTY OR ANY OTHER THEORY. THE REMEDIES GRANTED TO BUYER IN SECTION 9 ARE SOLE AND EXCLUSIVE. BUYER ACKNOWLEDGES THAT SUCH REMEDIES ALLOCATE RISKS BETWEEN BUYER AND SELLER FAIRLY AND IN A MANNER WHICH UNDER NO CIRCUMSTANCES WILL CAUSE SUCH REMEDIES TO FAIL OF THEIR ESSENTIAL PURPOSE. IN ANY EVENT, SELLER'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER FOR ANY CLAIM SHALL BE LIMITED TO THE PURCHASE PRICE PAID OR REPLACEMENT OF THE PRODUCTS, AT SELLER'S SOLE DISCRETION.

11. Force Majeure. Seller shall not be liable for delays or defaults in delivery to the extent that an act of God, accident, strike, lockout, fire, vendor delay in delivery, transportation delays and any other cause beyond Seller's control that causes such delays or defaults.

Seller's time for delivery under the Terms shall be extended by the total of all such delays, and if any such delay exceeds 45 days, Seller may cancel affected deliveries in whole or in part without liability.

12. Compliance with Laws. Buyer shall comply with all Laws applicable to Buyer's possession, use, resale or disposal of, or other activities related to, the Products. As you are aware, you are responsible for full compliance with your federal, state and local health and safety laws and regulations. You are also responsible for adequately providing all relevant information and warnings related to health and safety to your employees and others who may be exposed to dust resulting from the fabrication and/or installation of the materials provided by ETAMORPH, LLC.

13. Insurance. Buyer shall at all times maintain adequate insurance for Buyer's activities.

14. Buyer Indemnity.

- a. Buyer shall defend and indemnify Seller and its members, managers, directors, officers, employees, agents and affiliates (collectively, the "Seller Indemnified Persons") against, and hold the Seller Indemnified Persons harmless from, any and all Losses arising from or related to (i) any claims by or on behalf of any third Person that relate to any Products and arise from or relate to events occurring after delivery of such Products to Buyer or (ii) any breach of the Proposal and the Terms by Buyer.
- b. "Losses" means any and all losses including lost profits and consequential and incidental losses, claims, shortages, damages, Liabilities, fees, expenses, and costs (including reasonable fees of attorneys and other professionals), assessments, taxes and insurance premium increases, including such items incurred in investigating, defending or asserting any claim.
- c. "Liability" means any liability or obligation, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated and whether due or to become due, regardless of when asserted.

15. Governing Law. The Terms and all matters related to the Products shall be governed by the Laws of the State of New York, without giving effect to any choice or conflict of law provision or rule (whether in the State of New York or any other jurisdiction) that would cause the Laws of any jurisdiction other than the State of New York to apply AND THE PARTIES EXPRESSLY WAIVE THE RIGHT TO A JURY TRIAL THEREWITH.

16. Mandatory Binding Arbitration.

- a. Any dispute or claim arising out of, or in connection with, any provision of the Terms or the Products shall be finally and exclusively settled by binding arbitration in New York County, New York, in accordance with the rules of the American Arbitration Association, by one arbitrator appointed in accordance with those rules. The arbitrator shall have no power to amend the Terms and shall apply the Laws of the State of New York to the resolution of such dispute or claim in accordance with Section 15.
- b. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each party hereby submits to the non exclusive jurisdiction of the New York State and United States federal courts sitting in New York County, New York in any action or proceeding for entry of judgment on the award rendered by the arbitrator, and each party hereby waives any objection (Y) to the laying of venue in any such court or (Z) based on the inconvenience of any such court as a forum in any such action or proceeding.

- c. Buyer and Seller will accept service by prepaid letter delivered by reputable courier in any arbitration proceeding involving Buyer and Seller.
 - d. Notwithstanding the other provisions of this Section 16, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this Section 16, without breach of this Section 16.
 - e. Seller shall not be compelled to participate in any consolidated or joint arbitration among Buyer and any customer of Buyer or any third Person, and Buyer hereby waives any right to seek such participation. However, in accordance with this Agreement, Seller may compel Buyer to assert any claims Buyer may have against Seller in a consolidated arbitration among Buyer, Seller, and Seller's suppliers or other third Persons.
17. Buyer shall pay all costs and expenses (including attorneys' fees, court costs and other collections costs) incurred by Seller in collecting all amounts due pursuant to the governing proposal, invoice or sales order and/or enforcing its rights under this Agreement.
18. **Severability.** The Terms shall be enforced to the fullest extent permissible under applicable Laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any provision of the Terms would be held in any jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of the Terms or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of the Terms or affecting the validity or enforceability of such provision in any other jurisdiction.
19. **No Waiver.** No failure by either party to enforce any of the provisions of the Terms or any rights with respect thereto, or to exercise any election provided in the Terms, shall in any way be considered a waiver of such provisions, rights or elections or in any way affect the validity of the Terms. No failure by a party to enforce any such provisions, rights or elections shall prejudice that party from later enforcing or exercising the same or any other provisions, rights or elections it may have under the Terms.
20. **Interpretation, Construction.** The use in the Terms of the term "including" or "include" means "including" or "include," "without limitation." The words "herein," "hereof," "hereunder," "hereby," "hereto," "hereinafter" and other words of similar import refer to the Terms as a whole, as they may be from time to time amended, modified, supplemented or restated, and not to any particular section, subsection, paragraph, subparagraph or clause contained in the Terms. All references to sections, subsections, paragraphs, sub-paragraphs or clauses mean such provisions of the Terms, except as otherwise stated. The title of, and the section headings in, the Terms are for convenience of reference only and shall not govern or affect the interpretation of any of the provisions of the Terms. The use herein of the masculine, feminine or neuter forms shall also denote the other forms, in each case as the context may require.
21. **Facsimile and Electronic Signatures.** Facsimile and electronic signatures on the Proposal, the Terms and other documents related to Seller's sale of the Products to Buyer shall be valid and binding. The parties hereby acknowledge and agree that their respective signatures delivered by facsimile or in electronic format (e.g., ".pdf" or ".tif") on the Proposal, the Terms and other documents related to Seller's sale of the Products verify that the subject document has been executed by an authorized representative of that party with the intent to sign it and that said electronic signatures have the same legal effect as handwritten signatures for the purposes of validity, enforceability and admissibility. The parties hereby waive any defenses attempting to invalidate the enforceability of the document to which its electronic signature is affixed.