



FOR IMMEDIATE RELEASE – *Last Updated July 2022*

Tile X Design | 1720 Annapolis LN N, Plymouth Minnesota 55441 | 763.551.5900 | info@tilexdesign.com | www.tilexdesign.com

Terms and Conditions

- 1. Definitions** a) Seller is Tile by Design, 1720 Annapolis Lane North, Plymouth, MN 55441-3701. b) Buyer includes the direct purchaser of Seller's goods and all other persons natural or artificial, to whom the Seller's goods are sold in the ordinary course of business. c) Goods are the products sold by Tile by Design.
- 2. Payment Terms** Terms may be Net 30 or COD. Payment in full shall be due within 30 days of invoice date if credit is extended. Interest at the rate of 1.5% per month on the unpaid balance is payable on any amounts unpaid more than 30 days after the invoice date. Buyers 60 days in arrears will automatically be placed on credit hold. In the event of partial shipments, these terms and conditions shall apply to each shipment as though it were a separate contract. Seller may submit partial invoices for partial shipments. If Buyer fails to pay the price stated on the purchase order acknowledgment, refuses delivery, or otherwise defaults, or if doubt exists concerning Buyer's responsibilities, Seller, in addition to the remedies provided by law, may withhold delivery of the remainder of the goods, resell the goods, reclaim goods previously delivered, recover damages and cancel contract.
- 3. Limited Warranty** Subject to the limitations of Paragraphs 4-6, Seller warrants that its goods conform to the applicable specifications, if any, in Seller's current product brochures. Seller makes no representation of warranty of any kind, expressed or implied, with respect to merchantability of goods, to fitness of goods for a particular purpose or to any other matter related to goods.
- 4. Notice of Claims** Buyer shall be responsible for assuring that inspection of goods is made promptly after delivery. Any claim for shortage must be made within 10 days after delivery. All other claims, including claims for facial or structural defects, discrepancies in dimensional characteristics, inconsistencies with prior shipments or any other defects capable of discovery by non-destructive means, must be made prior to the installation of the goods. With respect to latent or hidden defects claims for any damages or losses as a rebuilt of such defects shall be denied unless made in writing and received by Seller within one year of installation of the goods.
- 5. Limitations of Liability** Buyer's exclusive remedy for claims arising hereunder shall be for damages. Seller's sole liability for any and all losses and damages resulting from any cause whatsoever, including Seller's negligence, alleged damage or defective goods, shall in no event exceed the purchase price, F.O.B. Seller's warehouse, of defective or damaged goods. In the case of latent defects, Seller may at its sole discretion, agree to pay reasonable labor costs. In no event, including a claim of negligence, shall Seller be liable for incidental or consequential damages.
- 6. Authority of Agents** No agent, employee or representative of the seller has any authority to bind the Seller to any affirmation, representation, or warranty made by an agent, employee, or representative. Unless specifically included within this written agreement, no such affirmations, representations, or warranties shall be enforceable against the seller.
- 7. Third Party Rights** Seller's immediate Buyer agrees to inform any third party to who it delivers the goods or any part thereof of the rights and obligations stated in this Paragraph, and in Paragraph 3 "Limited Warranty", Paragraph 4 "Notice of Claims," Paragraph 5 "Limitations of Liability," and Paragraph 6 "Authority of Agents."
- 8. Delivery** Any delivery stated on any purchase order acknowledgment is approximate only, unless otherwise specifically stated. All goods sold and delivered to Buyer shall be F.O.B the place of shipment unless otherwise expressly agreed by Seller. Risk of loss and title to the goods shall pass to the Buyer at the time and place of shipment. The carrier shall be Buyer's agent for purposes of delivery of goods to Buyer. Seller reserves the right, at its absolute discretion, to select the carrier and the routing of goods sold, unless it otherwise expressly agrees. Loading on the carrier will be during Seller's normal business hours unless Seller otherwise agrees in writing.
- 9. Transportation Charges** Any increase in transportation rates beyond the rate specified in the purchase order acknowledgment shall be borne by Buyer on any portion of the order remaining unshipped at the time such increase becomes effective. If reduction in transportation rates occurs, Buyer will receive benefit of such reduction. Buyer is responsible for any less than truckload orders and for charges involved in placement if such cannot be included in a truckload movement. No allowances will be made by Seller for shortage or damage incurred in transit.

10. Inspection Buyer or its agent designated in writing has the right at its own expense to inspect, examine and test the goods at Seller's warehouse or point of manufacture during the normal business hours before delivery, but Buyer's right to inspect, examine and test the goods shall not delay the delivery. Buyer may, at the time of such inspections, examination and testing, reject goods which fail to conform to specifications and shall promptly report to Seller in writing the reason for such rejection.

11. Return of Goods The Seller will accept the return of saleable stock material in full cartons if returned within 30 days of invoice and accompanied by a copy of the invoice. The Seller will charge 25% for handling returned items and refuse any shipments that are not prepaid. Special order goods shall not be returned to Seller unless Seller first consents in writing their return, regardless of whether such goods fail to meet specifications, exceed the number ordered or was delivered by mistake. Any such goods shall be withheld from use and safeguarded by Buyer until they are delivered to Seller, and if said goods fail to meet specifications, exceed the number ordered, or were delivered by Seller's mistake, the return shipping expense shall be paid by the Seller.

12. Delay of Delivery Seller shall not be liable for damages whether direct or incidental or consequential, for loss or for any other legal or equitable relief because of delay in delivery (either before or after the approximate delivery date) or for failure to deliver goods in whole or in part if said delay or failure whether it affects the Seller or suppliers of Seller, is caused directly or indirectly by flood; natural disaster; fire; explosion; Act of God; strike; embargo; shortage of labor; fuel; other energy source; transportation; equipment; or material war, war, or national emergency; compliance with or operation of any applicable law, ordinance, judgment, order of directive of a court of competent jurisdiction or of the federal, state, or local government or a subdivision thereof; or anything beyond Seller's control. Buyer shall not be permitted to reject the goods or terminate the contract because of the occurrence or threat of occurrence of any of the events provided for in this paragraph. If however any such event does occur and causes delivery to be delayed 60 days or more beyond any specified delivery date, Buyer shall have the options, at the end of such 60 days, to terminate its order for the undelivered portion of the goods.

13. Changes in Goods Seller reserves the right to change, at any time the specifications and descriptions of the goods described in product literature. Except in the case of events beyond its control, Seller will endeavor to complete all acknowledged purchase order in accordance with the specifications prevailing at the time of the acknowledgment.

14. Buyer's Specifications Seller shall not be liable to Buyer based upon any plans or specifications of the Buyer or any third party, whether or not delivered to the Seller, or for any errors or omissions in said plans and specifications for the failure of the goods covered by this contract to conform to said plans and specifications unless the Seller agrees in writing before shipment.

15. Price Policy Published prices and discounts are subject to change without notice. Acknowledgment prices are firm if delivery is to be made within 90 days of acknowledgment. On all acknowledgments specifying delivery in excess of 90 days, Buyer must obtain written price protection from the Seller.

16. Special Orders Special orders will be invoiced on the date Buyer requested them to be available as long as they have arrived at Seller's warehouse. If materials arrive earlier than expected and Buyer accepts delivery at an earlier date, the material will be invoiced on the date of acceptance.

17. Packing Charges The Buyer agrees to pay the Seller \$10.00 on the first carton and \$5.00 on subsequent cartons for packing charges on UPS shipments. The Buyer also agrees to pay reasonable broken carton charges or full carton charges when the manufacturer rounds order quantities up to the nearest full carton.

18. Sales Tax Minnesota, Wisconsin, South Dakota and North Dakota Buyers will be charged sales tax unless a tax exemption certificate is provided.

19. Samples Tile samples are submitted as being representative of the product, but because variations are inherent in all fired ceramic and natural stone products, the tiles actually delivered may vary from the submitted samples. Seller does not agree to match individual samples or pieces, and Buyer agrees that any sample shown does not form part of the basis of the bargain. No claim based on problems with color, shade, texture, or other alleged facial or structural defects, on discrepancies in dimensional characteristics, on inconsistencies with prior shipments, or on any other defect capable of discovery by nondestructive means shall be allowed after installation of the goods.

20. Illustrations Color charts, color illustrations, and reproductions in catalogs and other publications are not represented to match the color or shade of our goods. Color illustrations are offered as approximations only.

21. Quantity Estimate Seller will not make and the salespersons or other representatives of Seller are not authorized to make any quantity surveys or estimates for the goods required for any job or project, and therefore Seller will not be responsible for any such estimates or quantity survey of goods for any job or project. Buyer may purchase tile by the square foot but understands that one square foot or coverage is obtained by using the manufacturer's recommended grout joint width. Buyer agrees to hold Seller harmless should use of narrower joints result in a lower square foot coverage.

22. Acceptance-Entire Agreement All sales by Seller are made pursuant to the terms and conditions stated herein. No modification or addition to these terms and conditions shall be binding on Seller unless specifically agreed to in writing and signed by an officer of Seller. Acceptance by Seller of an offer or order from the Buyer is expressly subject to Buyers assent to these terms and conditions, which prevail over any other terms which may be contained in any purchase order, acceptance acknowledgment, or other forms of the Buyer. Buyer assents if he accepts the goods and fails to give notice or objections within 10 days. These terms and conditions, and any modifications or additions hereto specifically agreed to in writing and signed by an officer of Seller, contain all the terms and conditions of sale of the goods described on Sellers Purchase Order Acknowledgment.

23. Limitations of Actions Notwithstanding any law, ordinance, or regulation to the contrary, Buyer is barred from instituting or maintaining any action or proceeding against Seller with respect to this contract and the goods covered by this contract more than 12 months after the installation of the goods or more than 18 months after delivery to the ultimate user of the goods, whichever period shall first expire.

24. Order Termination If an acknowledged order for Seller's goods is terminated with the written consent of the Seller, Buyer shall promptly pay to Seller (a) the full price of all goods delivered pursuant to the contract, plus (b) the cost of work performed on incomplete goods (including the cost of materials in process and the cost of unprocessed materials purchased by the manufacturer for this contract), plus (c) any reasonable expense of Seller incidental to termination of this order, plus (d) a reasonable profit for work done in the incomplete portion of this contract, plus (e) any sums paid by the Seller for the account of Buyer, including, but not limited to, any taxes, freight and insurance expenses, less (f) any payments made by Buyer on this contract. Seller reserves the right not to enforce the obligations contained in this paragraph with respect to any other without impairment of its right to enforce the obligations in this paragraph for subsequent orders.

25. Advertising Seller reserves the right to use photographs of Buyers projects completed with Seller's goods for advertising purposes.

26. Attorney's Fees If Buyer refuses to accept goods, defaults in payment or otherwise defaults and if Seller then places the matter in the hands of an attorney, Buyer shall pay Seller's attorney fees.

27. Waiver The failure of Seller to insist on any one of more instances, upon the performance of any of Sellers terms and conditions or the failure of Seller to exercise any of its right there under shall not be construed as a waiver or relinquishment of any such term, condition, or right there under and shall not affect Sellers right to insist on strict performance of these terms and conditions.

28. Governing Law All contracts made pursuant to these terms and conditions shall be deemed to be made in and shall be governed by the laws of the State of Minnesota in effect at the time the contract is made.

29. Severability If any provision or portion of these terms and conditions is deemed invalid by a court having jurisdiction over the parties, it is the intention of the Buyer and the Seller that the remaining provisions remain fully effective.

30. Captions The captions herein are solely for the convenience of the parties and shall have no legal significance whatsoever.