

GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF BUILDING MATERIALS from MCINTYRE TILE, INC.

The Purchaser agrees to purchase, and McIntyre Tile, hereinafter "MTC," agrees to sell the building materials described on the ORDER ACKNOWLEDGMENT at the prices and in the quantities therein indicated.

Payment(s) and deposit are due and payable to MCINTYRE TILE, PO BOX 14, HEALDSBURG, CA 95448 in accordance to the payment terms shown on the Order Acknowledgement or Invoice. The Purchaser understands and agrees that MTC is entitled to and will invoice the Purchaser pursuant to this agreement upon date of shipment, or if shipment is not accepted by Purchaser within thirty (30) days from the delivery date stated on this document.

MTC SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE BUILDING MATERIALS SOLD TO THE PURCHASER. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, THAT EXTEND BEYOND THE FACE HEREOF, AND PURCHASER TAKES THE BUILDING MATERIALS "AS-IS". UNDER NO CIRCUMSTANCES SHALL MTC BE LIABLE TO THE PURCHASER FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, THIRD PARTY PENALTIES, THIRD PARTY FINES, OR THIRD-PARTY DELAY DAMAGES.

MTC shall not be responsible for any damage resulting from war; labor, raw material or energy shortages; strikes, fires or natural disasters; major equipment breakdowns; delivery restriction; or other causes beyond control of the manufacturer or those sources that MTC may represent.

Freight is to be paid by Purchaser and will be added to billing. If increased freight rates become effective prior to shipment of any part of the order, such an increase on unshipped portion is to be paid by Purchaser. Title to the building materials purchased shall pass to Purchaser when such building materials are delivered to the Purchaser or Purchaser's agents or when the building materials are placed in the possession of a public carrier for delivery to Purchaser, whichever occurs first. MTC shall not under any circumstances be responsible for any damage to the building materials' occurring after Title to the building materials has passed to the Purchaser.

The Purchaser agrees to count and inspect building materials delivered by MTC as they are unloaded, but in no event shall inspection take more than two (2) days from the date the building materials are delivered. If any shortage exists, Purchaser shall make a notation of same on the Shipping Notice (including Purchaser's signature and date) and Purchaser will cause the driver or railroad (if shipment is by rail) to confirm Purchaser's count, in writing, on the Shipping Notice (including the driver's or railroad agent's signature and date). Purchaser will then forward a copy of such Shipping Notice to MTC within ten (10) days after delivery and such mailing shall constitute the filing of the Purchaser's claim for missing materials. No shortage claim will be recognized under any other circumstances. Upon filing and verification of any claim of shortage, Purchaser's sole remedy will be replacement, if possible, and alternatively, a partial refund based on a per unit price. However, MTC shall not under any circumstances be responsible for any shortage in the building materials occurring after Title to the building materials has passed to the Purchaser.

Purchaser shall not be entitled to the return of any building materials to MTC after shipment of same to Purchaser unless MTC agrees, in its sole discretion, in writing, to such return. In the event MTC agrees, in writing, to a return of building materials previously shipped to Purchaser, Purchaser shall be responsible for a restocking fee in the amount of twenty five percent (25%) of the sales price and the responsibility of returning the material prepaid. In no event shall MTC accept returns of broken packages of building materials from the Purchaser. The foregoing "return policy" does not apply to the order, manufacture, or shipment of specially manufactured goods, which are not subject to return.

The shipping weights of materials sold pursuant to this agreement cannot be and are not guaranteed by MTC.

Any sales, processing, or similar tax imposed by any government unit that is now or may hereafter become effective and applicable to this sales transaction shall be paid by Purchaser.

MTC retains the right to institute a reasonable temporary surcharge if, at the time of production, MTC experiences significant price increases in certain of its key production elements, notably natural gas and electricity. The threshold level for these costs will be published in MTC's periodically issued price list's, which has either been previously received by Purchaser or shall be made available to Purchaser upon request. A copy of the Company's internal policy determining the calculation of the surcharge will be made available upon request.

Purchaser assumes responsibility for all costs and expenses incident to the unloading of materials shipped to Purchaser by MTC and for any and all tests and inspections of the building materials made by Purchaser. Purchaser shall unload and blend building materials from several packages simultaneously in order to obtain best color range. Any questions concerning the color or appearance of building materials sold by MTC should be directed to an MTC representative, in writing, PRIOR TO LAYING OR INSTALLATION. Purchaser's use of building materials sold by MTC constitutes unqualified acceptance thereof.

If Purchaser fails to furnish required shop drawings or other materials of information necessary to the manufacture of building materials on a timely basis, MTC assumes no responsibility for shipment of such building materials by stated shipment date.

Purchaser shall **NOT** use acid for any purpose on unglazed brick and tile and shall **NOT** utilize high pressure cleaning methods on any building materials purchased from MTC.

All orders are accepted by MTC to supply the project in a commercially reasonable time. MTC shall, in good faith attempt to tender the building materials to Purchaser on the agreed schedule for delivery date; however, the Purchaser and MTC understand and agree that the agreed schedule for delivery date is only an approximation and that any delivery made before or within thirty (30) days of the agreed schedule for delivery date is presumed commercially reasonable.

MTC shall not be liable to purchaser or any third party for damages for delay, hindrances or disruptions caused by any failure of MTC to timely deliver materials and Purchaser agrees to INDEMNIFY AND HOLD HARMLESS MTC from any such claims, action and demands or damages arising from such delivery EVEN THOUGH CAUSED IN WHOLE OR IN PART BY A PRE-EXISTING DEFECT, THE

NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), GROSS NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL FAULT OF MTC.

The terms of this agreement supersede the terms and provisions of any and all purchase orders or other documents submitted by the Purchaser to MTC and the terms and provisions of this agreement supersede any and all other oral or written agreements by and between the Purchaser and MTC with respect to the subject matter hereof, unless the order is for a specially manufactured good, in which case, this agreement together with the Contract for Purchase of Specially Manufactured Goods, shall form the entire agreement of the Parties.

This agreement shall be construed and is governed by the laws of the State of Texas.

Any legal dispute arising under this agreement resulting in a civil action shall be brought in the appropriate court in the state of Texas.

Performance under this agreement is due in Bastrop County, Texas. MTC and the Purchaser agrees that any legal action arising under this agreement shall be brought in Bastrop County, unless Texas law regarding venue mandates and requires that such a lawsuit be brought elsewhere.

AGREED:

Purchaser Name (print)

Purchaser Signature & Date

Company Name/Location

REQUIRED: Sales Order # / Job Name / Purchase Order #