

# SAPIENSTONE

## "SAPIENSTONE, INC" GENERAL TERMS AND CONDITIONS OF SALE ("Sale Agreement") 06/05

**1. ORDERS.** All orders and modifications of orders must be in writing and are subject to Sapienstone, Inc.'s ("Seller") approval and acceptance at Seller's office located in Chicago, Illinois; provided, however, acceptance of delivery by Buyer of any order will constitute Buyer's agreement to be bound by this Sale Agreement. All of the undersigned's ("Buyer") acceptance of all orders and modifications of orders are subject to the terms and conditions of this Sale Agreement. Purchase orders or other forms prepared by Buyer may be used for products purchased; provided, however, that any and all terms or conditions included in such forms which conflict with or in addition to the Sale Agreement shall have no force and effect.

**2. PRICES AND PAYMENT TERMS.** Seller applies the current gross prices reflected in its price lists, less a discount, if any, that Seller has agreed in writing to provide Buyer for a period of ninety (90) days after the Seller's receipt of an order. Prices are subject to change without notice after ninety (90) days after receipt of an order, unless other agreement. Payment is due at the time the order is placed unless open account status has been previously arranged with Seller ("Open Account"). Once credit is granted, terms are NET 30 days from invoice date. The order is deemed fully invoiced at the time of delivery from Seller to carrier, even if only part of the order is picked up. Payment should be sent to the following address: Sapienstone, Inc., 314 W. Superior Street, Suite 201, Chicago, Illinois 60654. Past due amounts will incur a service charge for costs and expense of administration in the amount of 1-1/2% per month or the maximum permissible rate allowed by law, whichever is greater. Acceptance of any late payment by the Seller or any part thereof does not constitute a waiver of any of the Seller's rights hereunder.

Failure to make timely payment for any reason entitles Seller put buyer on credit hold and to accelerate all payments for outstanding invoices, without further notice or act (including those not due yet). Any payment that is submitted by Buyer and returned NSF by Seller shall require that Buyer pay an additional \$25.00 per check presented to Seller.

**3. TAXES.** Prices on the specified products are exclusive of all city, state, and federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Wherever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by the Buyer.

**4. SHIPPING.** The time of an order's delivery shall be specified in the order. All orders are shipped F.O.B. to Buyer's place of business unless otherwise specified in the order confirmation. All tile is sold in full cartons, with the exception of trim pieces and decorative pieces. Seller will automatically round up to the next full carton. Upon delivery of the goods to the Buyer, title and all risk of loss or damage shall be borne by and be deemed the responsibility of the Buyer. Unless a specific carrier is named by Buyer, all orders will be shipped via Seller's logistics program and all shipping charges shall be paid by Buyer.

**5. TERMINATION BY SELLER.** Seller may terminate this Sale Agreement upon 5 days' prior written notice to Buyer if (a) Buyer is unwilling or unable to accept delivery of the product on the delivery date agreed upon by the parties and (b) the parties are unable to agree upon another date for delivery. In the event that Seller chooses to terminate pursuant to this paragraph, Seller at its option may retain all money paid by Buyer as of the date of such termination as an early termination fee, and exercise all of its remaining remedies under Article 2 of the Uniform Commercial Code.

**6. ASSIGNMENT.** Buyer shall not assign or otherwise transfer any of its rights or obligations under this Sale Agreement without the prior written consent of Seller.

**7. RETURNS AND CLAIM.** Any and all material which Buyer desires to return and which Seller agrees to take back will be accepted only with prior written authorization and must be in full compliance of Sellers return policy. No returns will be honored on material if such order does not match any currently manufactured products produced by Seller. Buyer shall pay all transportation costs, delivery charges and a restocking charge of 25% of any goods value, which may be accepted for return. Any and all claims that the Buyer may have regarding acceptability of any goods must be resolved prior to Buyer's use thereof.

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Any use or attempted installation of the goods constitutes unconditional acceptance of the goods as conforming to the description appearing on the order form. Any goods claimed to be defective must be held for inspection by Seller and/or its agent. No claim or credit will be considered for goods that have been disposed of or destroyed prior to inspection and written authorization from Seller. No claims concerning compliance with the order requirements shall be made unless within 5 days after the receipt of the goods. Seller will supply the run/color in stock at the moment of the order unless otherwise requested. Color variation is inherent in any fired product or natural stone and Seller is not responsible for slight variations in the color of the goods. Seller is not responsible for damage occurring during the transportation or delivery of the goods. The Buyer must file any possible claim for material damaged during the transportation with the carrier.

**10. CHANGE ORDERS.** Change orders involving part number or quantity changes will be assigned new shipment dates consistent with Seller's current projected delivery schedule and product availability. Requests for expedited shipment dates may incur additional charges, for which Buyer shall be solely responsible.

**11. SPECIAL ORDERS.** Special orders are any orders placed for material that is not a standard inventory item. Fabricated material is always considered special order. Special orders may require a deposit even if Open Account status has been arranged. No returns or cancellations whatsoever will be honored after such special order goods have been produced by the manufacturer. Special orders that are brought in per Buyer's instruction will be invoiced upon receipt. Material not picked up upon receipt may incur storage fees in the amount of \$15.00 per pallet per month.

**12. SALE OF GOODS ON ORDER. Purchases of goods on order are final, and deposits for such goods are non refundable. If Buyer fails to take delivery of the good within sixty (60) days from notification of arrival, Seller may sell all or part of the goods.**

**13. NO EXPRESS OR IMPLIED WARRANTIES.** Buyer hereby acknowledges that Seller has not made any promises, affirmations of fact, or guarantees relating to the goods except as expressly set out herein.

**THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION OF THE GOODS APPEARING ON THE ORDER FORM. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND BUYER HEREBY ACKNOWLEDGES THAT THE GOODS ARE SOLD AS IS.**

Buyer

understands and acknowledges that variations in size, color and texture are inherent in all kiln-fired products. The Seller is not responsible for failures resulting from tiles being installed in unsuitable areas or improper installation.

**14. LIMITATION OF REMEDIES.** Seller shall not be liable for incidental or consequential losses, damages or expenses, directly or indirectly arising from the sale, handling or use of the goods, or from any other cause with respect to the goods or this Sale Agreement, whether such claim is based upon breach of contract, breach of warranty, strict liability in tort, negligence or any other legal theory. Seller's liability hereunder in any case is expressly limited, at Seller's election, to repair or replacement (in the form originally shipped) of goods found not to be in compliance with the parties' order, or to the repayment of, or crediting Buyer with, an amount equal to the purchase price of such goods. In addition, no claim arising out of or relating to these terms and conditions shall be deemed valid and under no circumstances shall be enforceable if not made within 180 days of the date of the order pursuant to these terms and conditions.

**15. BUYER'S SOLVENCY.** Buyer represents and warrants that it is presently solvent and does not reasonably anticipate filing for protection under the United States bankruptcy laws, or making an assignment for the benefit of creditors. Buyer's continued solvency and good credit standing are conditions for Seller's performance under this Sale Agreement.

**16. SECURITY INTEREST; COLLECTION EXPENSES.** Buyer grants to Seller a security interest in all Buyer's products now existing or hereafter acquired, including all proceeds thereof as defined by the Uniform Commercial Code as adopted in the State of Illinois, United States of America, and in all accounts receivable arising from the resale of the Buyer's products by Seller. This grant of security interest is made

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to secure payment of all debts or liabilities and performance of all obligations of Buyer to Seller, whether such debts, liabilities or obligations are now existing or hereafter arise and whether direct or contingent. Buyer agrees to execute all instruments and perform all acts, which may be deemed necessary by Seller for the creation, perfection and protection of such lien and security interest. In the event Buyer shall fail to make payment when due for purchases, Buyer agrees to pay all of Seller's costs of collection, including reasonable attorneys' fees, costs, and expenses.

**17. TRADEMARKS.** Seller authorizes and grants to Buyer the non-exclusive, revocable right to use the brand names, trademarks and other indicia of manufacturing origin and quality of the Seller's products (collectively, the "Trademarks") to advertise and promote the sale of the Seller's products so long as Buyer is entitled to sell the Seller's products. Buyer's use of the Trademarks shall at all times comport with Seller's Trademark Usage Guidelines, which is available to Buyer upon request. Buyer acknowledges and agrees that Buyer has no right, title or interest in or to any of the Trademarks, other than as a purchaser and reseller of the Seller's products and that all use of the Trademarks inures to the benefit of Seller. Buyer shall make no contrary representations and will not in any way contest Seller's rights to the Trademarks. Notwithstanding the foregoing, Buyer shall have no right to use or incorporate any of the Trademarks in any domain names, and shall convey to Seller any domain names, which Buyer owns, or controls and which incorporate any of the Trademarks.

**18. ENFORCEMENT.** Buyer shall be responsible and liable for all costs incurred by Seller in enforcing its rights and Buyer's obligations under this Agreement, including but not limited to reasonable attorneys' fees and any costs incurred in connection with the collection of any amounts due under this Sale Agreement, including any bankruptcy or appellate proceeding.

**19. BINDING EFFECT.** This Sale Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, legal representatives and permitted assigns.

**20. JURISDICTION AND APPLICABLE LAW.** Seller and Buyer mutually agree that any claims or other matters arising out of or involving any purchase orders for and sales of products and services shall be litigated in the Federal or State Courts location in Cook County, Illinois, United States of America, and Seller and Buyer each submit to the jurisdiction of such courts; provided, however, that the foregoing shall not preclude either party from taking any provisional measures or pursuing any provisional or other remedies, such as injunctions, attachment or similar proceedings, which may be available to such party under the laws of any jurisdiction against the actions or assets of the other party. This Sale Agreement and the quotations, agreements and purchase orders to which such Sale Agreement are attached shall be governed by the laws of the State of Illinois, United States of America, without regards to conflicts of law principles, specifically, without limitation, Article 2 of the Uniform Commercial Code. This purchase order shall not for any purpose be governed by the United Nations Convention on Contracts for the International Sale of Goods.

**21. FORCE MAJEURE.** While Seller's goal is to meet all of its performance obligations to Buyer, it may find itself unable or delayed by reason of matters or occurrences beyond its control, such as, but not limited to, acts of God, acts by Buyer, war, terrorism, unforeseen environmental conditions, civil commotion, delays in transportation, material shortages, strikes or other labor disturbances. Seller shall not be liable for any such failure or delay in manufacture or delivery of products or services as a result of any such matter or occurrence wholly or partially beyond its control.

**22. INDEMNITY.** Buyer shall defend, indemnify and hold harmless Seller, its successors, assigns, affiliates, agents and contractors, and the officers, directors and employees of each of them, from and against any damage, loss, claim, judgment or other liability or expense (including but not limited to reasonable attorneys' fees) which may in any way arise out of any act or omission in connection with this Sale Agreement and, except the extent caused by Seller, the purchase, resale or use of Seller's products by Buyer or Buyer's successors, assigns, affiliates, agents and contractors, or the officers, directors or employees of any of them. Seller reserves the right, without being required to do so, and without waiver of any indemnity hereunder, to defend any claim, action or lawsuit coming within the scope of this indemnity provision.

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**23. NO WAIVER.** All rights, privileges and remedies afforded the Seller shall be deemed cumulative and not exclusive, and the exercise of any one of such remedies shall not be deemed a waiver of any other right, privilege or remedy. No term or condition of this Sale Agreement shall be deemed to have been waived by Seller, nor shall there be any estoppel against Seller, except by written consent of the Seller.

**24. NOTICES.** All notices which are required to be given shall be in writing and delivered to the address set forth in this Sale Agreement. Any such notice shall be delivered by hand or by certified first class mail, postage prepaid, return receipt requested, and shall be deemed given upon the date hand delivered or three days after mailing.

**25. ENTIRE AGREEMENT.** This Sale Agreement constitutes the entire final, complete and exclusive understanding and agreement between the Buyer and Seller regarding the subject matter and supersedes all prior representations, proposals or understandings. This Sale Agreement may not be amended, modified or supplemented except in writing as agreed to and signed by the parties.

**26. SEVERABILITY.** The invalidity of any of the provisions of the Sale Agreement shall not effect or impair the validity of enforceability of the remainder of the provision of the Sale Agreement.