

# Project

## TERMS & CONDITIONS **OF SALE**

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**PLEASE READ THIS DOCUMENT THOROUGHLY AND CAREFULLY. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT APPLY TO YOU AS THE BUYER.**

**1. ENTIRE AGREEMENT:**

When confirming an order with Abitar Group (the “Seller”), the Buyer (“Buyer”) agrees to be legally bound to the fullest extent permitted by law to all of the Terms and Conditions found here within. These Terms and Conditions apply to all transactions between Seller and Buyer unless otherwise specifically agreed to in writing by both parties. All prior oral or written agreements, including but not limited to terms in Buyer’s purchase order, which are different from or in addition to these Terms and Conditions of Sale are not binding on Seller unless accepted in writing by Seller’s duly authorized representative.

**2. DELIVERY (INDIVIDUAL):**

If Buyer is an individual and purchasing individual products via any web platform (e.g. ecommerce) the Seller will select the delivery courier of its choice (e.g. FedEx, DHL, UPS etc.) and will satisfy and fulfill the shipping obligation by placing the order in possession of the selected courier. All orders will be reviewed prior to courier pick-up and analyzed by the Seller’s quality control department, to ensure safe delivery. Buyer is not obligated to use Seller’s shipping methods or courier of choice. Buyer has the option of arranging for their own transportation or goods can be picked up n person at one of Seller’s distribution and storage locations. If Buyer elects to pick-up products, they will assume all responsibility for the goods from the time of pickup. Insurance of the freight in this case will also be buyer’s sole responsibility.

**3. DELIVERY (GENERAL CONTRACTOR, BUILDER, REAL ESTATE DEVELOPER):**

If Buyer is a General Contractor, Builder, or Real Estate Developer and purchasing multiple products for multi-family residential commercial, and/or hospitality projects all orders are shipped F.O.B. final destination (e.g. construction site, warehouse or location specified by Buyer). Risk of loss will transfer to Buyer upon delivery and arrival of goods to Buyer’s confirmed final destination and prior to off-loading of goods.

**3.1. DELIVERY LEAD TIMES (MULTI-FAMILY RESIDENTIAL, COMMERCIAL AND HOSPITALITY PROJECTS):**

Upon order confirmation (e.g. receipt of initial deposit ) the following standard delivery lead times for products will be acknowledged and accepted as follows; (a) Standard Porcelain Tile, Marble Tile, Stone Tile, Marble Mosaics, Glass Mosaics and standard tile products – eight (8) to ten (10) week; (b) Natural Stone, Marble, and Quartz Counter Tops – eight (8) to ten (10) weeks; (c) Custom-made Natural Stone and Marble products – twelve (12) to fourteen (14) weeks; (d) Standard Vitreous China, Sanitary ware and Bathroom Accessories – eight (8) to ten(10) weeks; (e) Laminate Flooring, Luxury Vinyl Flooring, Engineered Wood Flooring – eight (8) to ten (10) weeks; (f) Kitchen Faucets, Kitchen Sinks and standard Kitchen Plumbing – eight (8) to ten (10) weeks; (g) Kitchen and Bathroom Cabinetry twelve (12) to fourteen (14) weeks. Seller will do everything its power to achieve expedited delivery lead times when possible. Buyer, its representatives and affiliates will confirm orders and plan in advance accordingly to Seller’s standard lead times.

**3.2. DELIVERY ADDRESS:**

Seller shall deliver products to the shipping address provided and confirmed by Buyer at the time of purchase. Delivery address will

be indicated on the final purchase invoice. If Buyer changes the final delivery address after order confirmation and execution of initial deposit, the Buyer shall pay a three hundred and fifty (\$350.00, USD) delivery address change-fee. If Buyer causes a delay, requests to reschedule a confirmed shipment, or causes Seller to erroneously deliver a shipment as a direct result of inaccurate, incomplete, or misleading information supplied by Buyer, Buyer’s agents or employees, all storage fees, demurrage, and other additional costs and risk will be borne by Buyer.

**3.3. DELIVERY NOTICE:**

Within the standard delivery lead times in section 3.1 of this agreement, Seller shall provide Buyer with delivery status updates as shipments approach their final destination. Seller shall confirm a final delivery date no less than 48 hours in advance. A delivery time “window” will be provided to Buyer. Seller will make a good faith effort within all of its power to deliver goods in accordance with the standard delivery lead times found in section 3.1 of this agreement; and in addition accommodate any reasonable scheduling requests (within its power) from Buyer. If a delay in delivery is caused solely by the Seller, the Seller shall be responsible for and absorb any additional costs for expedited shipping of delayed goods. Seller assumes no responsibility or liability for Seller’s non-performance caused by an act of God, government authorities, war, labor disputes, civil unrest, accidents, the inability to obtain materials, delays of carriers, contractors or suppliers or any other causes beyond Seller’s control. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expenses of any kind arising from any shipping or delivery delays.

**4. RECEIVING A SHIPMENT (CONSTRUCTION SITE):**

If shipment is to be delivered to a construction site, adequate street frontage must be prepared; free and clear of any obstructions and/or debris. When receiving 40’ and 40’HQ containers, buyer shall prepare a minimum of 70’-0” of clear, unobstructed street frontage. When receiving 20’ containers, buyer shall prepare a minimum of 50’-0” of clear, unobstructed street frontage. If Buyer fails to prepare adequate street frontage in advance, causes delay or requires re-routing and rescheduling of a confirmed shipment, all fees including but not limited to, re-routing, rescheduling, demurrage, storage and other additional costs and risk will be borne by Buyer.

**4.1. RECEIVING A SHIPMENT (WAREHOUSE OR STORAGE FACILITY WITH LOADING DOCKS):**

If shipment is being delivered to a warehouse location equipped with loading docks, the loading docks shall be clear and clean ready to receive delivery.

**4.2. BUYER OFFLOAD:**

Seller will deliver standard shipments in either a 20’ or 40’ shipping container unless noted and agreed to otherwise in writing by the Seller. Buyer will be prepared with adequate manpower of at least six (6) men, tools and machinery to receive and offload products. Buyer agrees to have a telescopic forklift present at job sites and heavy-duty, high-load capacity forklifts present at warehouse locations ready to offload all products that are palletized. At Seller’s sole discretion, Seller will assist with managing and directing Buyer supplied manpower. Seller does not provide offloading services for the buyer. The Buyer, Buyer’s representative or affiliate shall be responsible for and absorb all offloading, distribution, and storage costs incurred unless agreed to otherwise in writing by Seller.

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## 5. CANCELLATION:

Buyer may not cancel, change or modify a confirmed order without the written consent of Seller. Seller is no way obligated to approve any cancellation requests.

## 6. PRICE:

Contingent on purchase location, country and region, sales may be paid for and completed in U.S. Dollar (USD/\$), EURO (EU / €) or Canadian Dollar (CAD/\$). All prices are subject to change unless otherwise noted by Seller. Prices may change at any time prior to the acceptance and execution of payment from the Buyer.

## 7. PAYMENT CURRENCY:

Purchases completed and delivered in the United States shall be paid and executed in U.S. Dollars (USD/\$). Purchases completed and delivered in Canada shall be paid and executed in Canadian Dollars (CAD/\$). Purchases completed and delivered in the European Union and Africa shall be paid and executed in Euro (€).

## 8. PRICING AND PROPOSAL CONFIDENTIALITY:

Any pricing furnished to the Buyer or potential Buyer will stay confidential solely between the Seller and Buyer. Buyer can share and discuss Seller's estimates, pricing, and product proposal with intracompany employees and personnel; however, Seller's estimates, pricing, and product proposals provided to Buyer shall not be shared, distributed nor made available to any third-party companies, representatives, employees, personnel nor affiliates without the express written consent of the Seller.

## 9. SALES AND USE TAX:

All local and state sales and use taxes, are additional to quoted prices. The amount of any sales and use tax, excise or other taxes, if any, applicable to the goods shall be added to the purchase price and shall be paid by Buyer directly to their local State Board of Equalization (U.S.) or Revenue Agency (Canada). If Seller collects local state sales tax and Buyer is invoiced accordingly, Buyer shall not be responsible to remit and pay local state sales and use tax.

## 10. PAYMENT TERMS (INDIVIDUAL):

If Buyer is an individual purchasing individual products via any web platform (e.g. ecommerce), payment for goods and products shall be received in full prior to order fulfillment.

## 11. PAYMENT TERMS (GENERAL CONTRACTOR, BUILDER, REAL ESTATE DEVELOPER):

Unless agreed to otherwise in writing by Seller, if the Buyer is a General Contractor, Builder, or Real Estate Developer and purchasing multiple products for multi-family residential commercial, and/or hospitality projects, a 50% initial deposit is required to commence production and a 50% balance payment is due prior to release and delivery of products. If Buyer fails to execute the final 50% balance payment prior to a scheduled delivery all fees including but not limited to, re-routing, rescheduling, demurrage, storage and other additional costs and risk will be borne by Buyer.

## 12. IMMEDIATE INSPECTION AND ACCEPTANCE (FREIGHT DAMAGE):

Immediately upon receiving products the Buyer shall inspect the products for potential freight damage. Any claims for freight damage visible or hidden, must be made immediately within 48 hours in order for the carrier to assume full responsibility and absorb any associated costs. Buyer will be deemed to have accepted the goods in good condition from the carrier and will have no right to reject the goods or to revoke acceptance after this 48-hour window. Buyer will take photos and immediately memorialize any potential freight damage; photos must be included with any claims, within 48 hours of delivery. If Buyer does not include photo represen-

tation of freight damage buyer will be deemed to have accepted the goods in good condition from the carrier and will have no right to reject the goods or to revoke acceptance. Buyer and Seller acknowledge that damaged packaging does not always represent damaged products.

## 13. PRODUCT DEFECT:

If product defect is discovered it must be reported immediately upon opening product packaging. **DO NOT TRANSPORT ANY CLAIMED DEFECTIVE PRODUCT FROM ITS ORIGINAL DELIVERY ADDRESS.** Any claimed damage or defect to the finish and/or functionality of the product after it has been moved or transported from its original delivery address will be excluded from any manufacturer warranty. If product defect is discovered, **DO NOT INSTALL THE PRODUCT.** Any claimed damage or defect to the finish and/or functionality to the product after the product has been installed will be excluded from any manufacturer warranty.

## 14. WARRANTY AND LIMITATION OF LIABILITY:

Within the Manufacturer's warranty and warranty period, Seller (at its sole discretion) will replace parts or any product or part of the product that proves defective because of improper workmanship and/or material, when the product has been used in normal use conditions with proper installation (by a qualified contractor or technician), service, and maintenance. If Seller is unable to provide a replacement product or part, and repair is not feasible or cannot be made in a timely manner, Seller may elect to refund the purchase price in exchange for the return of the product. Buyer shall refer to all manufacturer's warranties for further information.

### 14.1. WARRANTY EXCLUSIONS:

Seller disclaims all other express or implied warranties and does not accept liability beyond the remedies set forth herein. Seller makes no representation, warranty, or promise that the products or services will conform to any applicable laws, ordinances, regulations, codes or standards, including but not limited to electricity laws, plumbing laws, low lead or lead free laws, formaldehyde laws, or regulations, except as specified and agreed to in writing by an authorized Abitar Group representative.

## 15. INDEMNIFICATION:

Each party ("Indemnitor") shall indemnify and hold harmless the other party and its employees, officers, directors, and agents (each an "Indemnitee") from any suit, cause of action, judgment or claim ("Claim") for damages to property or bodily injury, loss of life, infringement, liability of any nature, costs, or expenses, including reasonable attorney fees ("Damages") to the extent caused directly by the negligent act or omission or intentional misconduct of the Indemnitor. Indemnification shall not apply to Damages proximately caused by the negligence of the Indemnitee.

## 16. INSURANCE:

Seller shall maintain all insurance as required by law and shall not allow such coverage to lapse.

## 17. LIMITATION OF LIABILITY:

Under no circumstances shall seller be liable for any special, indirect, incidental, liquidated or consequential damages claimed by buyer or any third party related to a breach of warranty or any other non-conformity of the goods or services. In addition, Abitar Group, its employees, representatives, agents, service providers, distributors, affiliates, and subsidiaries (in their entirety) will not be responsible for lost profits, loss of revenue, goodwill, loss of data, loss of opportunity or of business.

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**18. SEVERABILITY:**

These Terms and Conditions of Sale will be construed as if prepared jointly by the parties hereto and any uncertainty or ambiguity will not be interpreted against any one party. If any provision contained in these Terms and Conditions of Sale is held to be unenforceable then such provision will be given effect in such reduced form as may be decided by a court of competent jurisdiction, provided that, if any provision should be declared unenforceable or invalid for any reason, such unenforceable or invalid provision will be severed from the remainder of these Terms and Conditions of Sale without affecting the enforceability or validity of the remaining provisions.

**19. NON-WAIVER:**

The failure of either Seller or Buyer to insist upon the strict performance of any of these Terms and Conditions of Sale will not be deemed to be a waiver of any of the right or remedies of Seller or Buyer, nor of its right to insist upon strict performance of such term or of any other term in the future. No waiver of any of these Terms and Conditions of Sale will be valid unless in writing signed by a duly authorized representative of the waiving party.

**20. DISPUTE RESOLUTION:**

The parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to these Terms and Conditions of Sale by negotiation between executives who have authority to settle the dispute. The executives must be at a higher level of management than the persons with direct responsibility for administration of these Terms and Conditions of Sale. If a dispute cannot be resolved by negotiation, then either party may bring a legal action in accordance with Section 21 of these Terms and Conditions of Sale.

**21. GOVERNING LAW:**

All disputes related to or arising out of Buyer's order are governed by the laws of the jurisdiction where the goods are delivered. Any legal action related to or arising from the Buyer's order shall be brought in such jurisdiction and any right to object to such venue or to assert the inconvenience of such forum is waived. The United Nations Convention on Contracts for the International Sale of Goods, and any successor thereto, shall not apply.

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