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Terms & Conditions of Sale

GENERAL. Safety Flooring Solutions LLC agrees to arrange for the purchase and shipment of the Aqua Tile products (the “Products”) and the installation and other services ordered by Purchaser (the “Services”) in accordance with these Terms and Conditions, which is part of any Purchase Order and is incorporated by this reference. If Purchaser has not otherwise agreed to these Terms and Conditions as a part of a Purchase Order, Purchaser’s acceptance of delivery of the Products or payment constitutes Purchaser’s acknowledgment of its agreement to these Terms and Conditions. To the extent of any conflict or inconsistency between these Terms and Conditions and the terms and conditions set forth in any Purchaser purchase order, order confirmation or other document, these Terms and Conditions control. Any Purchase Order, these Terms and Conditions, and any attachments hereto shall be collectively referred to herein as the “Agreement.”

PAYMENT TERMS. In consideration of the delivery of the Products and/or performance of the Services, Purchaser shall pay Safety Flooring Solutions LLC the price stated in the Purchase Order. Payment of such purchase price shall be made in cash or certified check (U.S. currency) as specified in the Purchase Order. The price for the Products and Services covered by the Agreement excludes all transportation costs, freight, insurance and special handling and packaging, or any required federal, state or local sales or other taxes, duties, export or custom charges, VAT charges, brokerage or other fees, for which costs Purchaser shall be fully responsible unless otherwise stated in the Purchase Order. Purchaser shall have no right of set-off or withholding, and no deduction of any amounts due from Purchaser.

LATE PAYMENT. Late payments shall bear interest at the rate of one and one-half percent (1.5%) per month, or the maximum rate allowed by law, whichever is less, commencing on the date that the purchase price payment was due pursuant to the terms of the Purchase Order. Delinquent account balances are subject to placement for collection, and Purchaser shall pay all attorney’s fees and expenses incurred by Safety Flooring Solutions LLC for such collection activities. Safety Flooring Solutions LLC reserves the right to cancel or suspend any outstanding orders to Purchaser in the event of Purchaser’s failure to make timely payment.

SHIPMENT AND STORAGE. Delivery will be EXW or FOB, Aqua Tile’s facility or other point of origin designated by Safety Flooring Solutions LLC. Purchaser shall be responsible for receiving Aqua Tile product from the shipper and Purchaser shall be solely responsible for the handling and storage of Aqua Tile product prior to the commencement of Safety Flooring Solutions LLC’s installation. Safety Flooring Solutions LLC shall have the right to determine the method of shipment and routing of the Products, unless otherwise agreed in writing. Safety Flooring Solutions LLC shall not be liable for damages caused by delays in shipping or delivery for any reason whatsoever. Delay in the delivery of any Products shall not relieve Purchaser from the obligation to accept and pay for such Products. Purchaser understands and agrees that the delivery dates are approximate and that delivery of any Products or Services may be delayed for a period of time sufficient to allow Aqua Tile to manufacture and assemble the Products for Purchaser.

SERVICES. Safety Flooring Solutions LLC shall have no obligation to perform any installation or other Services except for those specifically identified on the Purchase Order or otherwise agreed in writing by the parties.

CHANGE IN SITE CONDITIONS. In the event Safety Flooring Solutions LLC encounters concealed, changed or unknown physical conditions at the Purchaser’s site that differ materially from those indicated in the Proposal or from those conditions ordinarily found to exist, the Proposal Sum shall be subject to equitable adjustment.



INSTALLATION WARRANTY. Safety Flooring Solutions requires approved installers warrant all installation services they provide to be free of defects in workmanship and adhesion for a term of one (1) year from the date of completion of the installation of the Products (the "Warranty Period"), subject to any exclusions listed herein or in the Purchase Order.

EXPRESS LIMITED WARRANTY. Safety Flooring Solutions LLC provides no other express warranties with respect to the Products. See attached for Aqua Tile's manufacturer's warranty.

UNLESS OTHERWISE STATED BY AQUA TILE'S EXPRESS WARRANTIES, THE PRODUCTS SOLD UNDER THIS AGREEMENT ARE PURCHASED BY THE PURCHASER "AS IS" AND SAFETY FLOORING SOLUTIONS LLC DOES NOT PROVIDE ANY WARRANTY FOR THE PRODUCTS, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES THAT THE PRODUCTS ARE OF MERCHANTABLE QUALITY OR THAT THE PRODUCTS CAN BE USED FOR ANY PARTICULAR PURPOSE.

Purchaser acknowledges that it has not been induced by any statements or representations of any person with respect to the quality or condition of the Products and that no such statements or representations have been made. Purchaser acknowledges that it has relied solely on the investigations, examinations, and inspections as Purchaser has chosen to make and that Safety Flooring Solutions LLC has afforded Purchaser the opportunity for full and complete investigations, examinations, and inspections.

DISCLAIMER. Purchaser acknowledges and agrees that the installation warranty and express limited warranty set forth above are the sole warranties with regard to the products and services. Safety Flooring Solutions LLC expressly disclaims any other warranty, either express or implied, with respect to the products and services, including but not limited to, their quality, performance, merchantability, or fitness for a particular purpose or Purchaser.

LIMITATION OF LIABILITY. IN NO EVENT SHALL SAFETY FLOORING SOLUTIONS LLC BE LIABLE UNDER THIS AGREEMENT TO PURCHASER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, SHUTDOWN OR SLOWDOWN COSTS, INCONVENIENCE, LOSS BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, OR OTHER ECONOMIC LOSS, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. THE LIABILITY OF SAFETY FLOORING SOLUTIONS LLC, AND PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIM OF ANY KIND WHATSOEVER UNDER THIS AGREEMENT, REGARDLESS OF LEGAL THEORY, SHALL NOT BE GREATER THAN THE ACTUAL PURCHASE PRICE OF THOSE PRODUCTS AND SERVICES WITH RESPECT TO WHICH SUCH CLAIM IS MADE.

NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT MORE THAN 1 YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE ON AN OPEN ACCOUNT.

FORCE MAJEURE. Safety Flooring Solutions LLC shall not be liable for any delays in delivery, or for non-delivery or nonperformance in whole or in part, caused by the occurrence of any contingency beyond the reasonable control of either Safety Flooring Solutions LLC. or its suppliers including but not limited to one or more of the following causes: non-availability or shortage of materials, fire, destruction of plant, strike, labor disputes, epidemic, flood, delay in transportation, war, insurrection, embargo, acts, or demands or requirements of any governmental body. The existence of any such cause or causes of delay shall extend the time of performance to the extent of the resulting delay.



CANCELLATION, COUNTERMAND AND RETURN OF GOODS. Orders accepted by Safety Flooring Solutions LLC. cannot be cancelled or countermanded, or shipments deferred, or Product returned, except with the prior written consent of Safety Flooring Solutions LLC and upon such terms that may be reasonably established by Safety Flooring Solutions LLC.

INDEMNITY. Purchaser will defend, indemnify and hold Safety Flooring Solutions LLC harmless from and against all damages, losses, claims and expenses, including reasonable attorneys' fees incurred by Safety Flooring Solutions LLC as a result of any breach by Purchaser of the Agreement, or any violation by Purchaser of applicable law.

ASSIGNMENT. Purchaser may not assign this Agreement, either in whole or in part, nor delegate any performance hereunder, without the express, written consent of Safety Flooring Solutions LLC, which consent shall be at Safety Flooring Solutions LLC's sole and absolute discretion. Any assignment without such consent shall be null and void. Safety Flooring Solutions LLC may assign this Agreement upon written notice to Buyer. Safety Flooring Solutions LLC may subcontract any portion of the services provided under the Proposal and Purchase Order, at its sole discretion.

SEVERABILITY, WAIVER, AND SURVIVAL. In case any provision in or obligation under the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions or obligations shall not in any way be affected or impaired thereby. The waiver of any provision or condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition. The Agreement constitutes the complete and final integrated agreement between the parties in regard to the specific terms contained herein. All prior negotiations, discussions and representations are merged into the Agreement. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns. The acknowledgments, covenants and obligations of the parties set forth in the Agreement shall survive the expiration or termination of the Agreement, unless inapplicable by their terms. This Agreement may be modified only by a written amendment signed by authorized representatives of both Parties.

APPLICABLE LAW. The Agreement shall be interpreted in accordance with the substantive laws of the State of Minnesota, without giving effect to conflict of laws principles. The parties agree that the exclusive venue for any claims or actions arising under or in relation to the Agreement shall be in Hennepin County, Minnesota, or in United States District Court for the District of Minnesota. The parties hereto consent to the personal jurisdiction of such courts and waive any argument that such a forum is not convenient.

AUTHORIZED SIGNATORIES; COUNTERPARTS. It is agreed and warranted by the Parties that the individuals signing this Agreement on behalf of the respective Party are authorized to execute such an Agreement. No further proof of authorization shall be required. This Agreement may be executed by facsimile, email, DocuSign, PDF and in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others.



Aqua Tile Manufacturer's Warranty

Aqua Tile warrants;

- A. ¾" thick Aqua Tile products to be free of defect in workmanship or materials for a term of five (5) years from the date of delivery of the Products (the "Warranty Period").**
 - B. 3/16" thick Aqua Tile products and landing pads products to be free of defect in workmanship or materials for a term of two (2) years from the date of delivery of the Products (the "Warranty Period").**
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- 1. Limitations to the warranty period include areas of extreme traffic, and extreme chemical exposure. Extreme traffic defined by areas with annual traffic of 250,000 users or greater. Extreme chemical exposure defined as water chemistry used on the product with more than 28 days cumulative time in a 365 day period outside of the "ideal" set in APSP Water Quality Standards. Warranty does not cover color changes of any kind.**
 - 2. Aqua Tile warrants all Products in areas of extreme traffic, and extreme chemical exposure for a term of two (2) years from the date of delivery of the Products.**
 - 3. The Purchaser shall notify Aqua Tile in writing within thirty (30) days of the discovery of a defect causing the Products to be noncompliant with this express warranty. Any such notice must be received during the Warranty Period in order to be valid. If Aqua Tile after testing (or performing an on-site audit), determines that there is a defect causing the Products to be noncompliant with this express warranty during the Warranty Period, Aqua Tile sole responsibility under this express warranty shall be either to repair or replace, at Aqua Tile's option and expense, any such defective Product. Aqua Tile's express warranty herein set forth is expressly conditioned upon the proper maintenance, care, and use of the Products. Improper maintenance, care, and/or use of the Products will invalidate the warranty including failure to follow the Aqua Tile Recommended Cleaning Process.**
 - 4. Aqua Tile does not warranty installation services.**