

knoxtile - Buchtal

TO WHOM IT MAY CONCERN

CERAMIC TILE WARRANTY

knoxtile - Buchtal guarantees that all its products meet or exceed the performance specifications outlined in ANSI A137.1-1988. Furthermore, a dedication to quality assurance standards plus state-of-the-art production facilities and testing by external material testing institutions, have combined to ensure product reliability.

Defective units or units not meeting the standards, e.g. color and/or size deviations, will be replaced, provided notice is given and acknowledged ***prior to installation*** as per our Terms and Conditions of Sale. Because specific installation details, structural design, and environmental conditions are beyond the control of our company, we cannot accept responsibility for the performance of our products after they have been installed. However, in the event of latent defects caused by improper manufacture, our company will replace any defective units, provided we are notified within one year of installation or within 12 months of shipment of product, whichever occurs first.

TERMS AND CONDITIONS

1. DEFINITIONS A. Seller is DSA, Inc. B. Buyer includes the direct purchaser of Seller's goods and all other persons, natural or artificial, to whom Seller's goods are sold in the ordinary course of business. C. Goods are the products sold by DSA, Inc.
2. ACCEPTANCE-ENTIRE AGREEMENT. All sales by Seller are made pursuant to the terms and conditions stated herein, and are subject to changes in price, delivery time, and availability. 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 Buyer's assent to these terms and conditions, which prevail over any other terms which may be contained in any purchase order, acceptance acknowledgment, or other form of the Buyer. Buyer assents if it accepts the goods and fails to give notice of objection within ten 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 in Seller's Purchase Order Acknowledgment.
3. LIMITED WARRANTY. Subject to the limitations of Paragraphs 4, 5, and 6. Seller warrants that its goods conform to the applicable specifications, if any, contained in Seller's current product brochures. Seller MAKES NO REPRESENTATION OR WARRANTY OF ANY OTHER KIND, OR IMPLIED, WITH RESPECT TO THE GOODS WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER. Acceptance by Seller of an offer or order from the Buyer occurs when such offer or order is confirmed by Seller in writing and is expressly subject to Buyer's assent...
4. NOTICE OF CLAIMS. Buyer shall be responsible for assuring that inspection of the goods is made promptly after delivery to the job site. Any claim for shortage must be made within ten days after delivery. All other claims, including claims for facial or structural defects, discrepancies in dimensional characteristics, inconsistencies with prior shipments, or any other defect capable of discovery by non-destructive means, must be made prior to the installation of the goods. All claims not made in writing and received by Seller prior to the installation of the goods shall be waived. With respect to any defects incapable of discovery until in use, all claims for any damages or losses as a result of such defects shall be deemed waived unless made in writing and received by Seller within one year of installation of the goods.
5. LIMITATION 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 DAMAGED OR DEFECTIVE GOODS, IRRESPECTIVE OF WHETHER SUCH DEFECTS ARE DISCOVERABLE OR LATENT, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE. F.O.B. SELLER'S PLANT, OF DEFECTIVE OR DAMAGED GOODS, IN NO EVENT, INCLUDING IN THE CASE OF 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. No affirmation, representation, or warranty is enforceable against Seller unless specifically included within this written agreement.
7. THIRD PARTIES' RIGHTS. Seller's immediate Buyer agrees to inform any third party to whom it delivers the goods or any part thereof of the rights and obligations stated in this Paragraph and in Paragraph 3 "Warranty of Seller," Paragraph 4 "Notice of Claims," Paragraph 5 "Limitation of Liability," and Paragraph 6 "Authority of Agents."
8. DELIVERY. Any delivery date stated on any purchase order acknowledgment is approximate only, unless otherwise specifically stated. Seller reserves the right, after written notice to Buyer, to make shipments in advance of delivery date. All goods sold and delivered to Buyer shall be F.O.B. Seller's plant 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, in its absolute discretion to select the carrier and the routing of goods sold. Loading on the carrier will be during Seller's normal business hours unless Seller otherwise agrees in writing.

9. **TRANSPORTATION CHARGES.** Any increase in the transportation rates 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 the benefit of such reduction. Rail transportation charges will not be prepaid and the prices stated in the purchase order acknowledgment are based on full carload or truckload shipments except as otherwise expressly provided. Buyer is responsible for any less-than-truckload orders and charges involved in placement, if such cannot be included in a carload movement. Seller will make no allowances for shortages 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 plant during Seller's normal business hours before delivery. Based upon Buyer's inspection, examination and testing at Seller's plant, if Buyer determines that the goods, or any portion thereof, fail to conform to specifications, Buyer shall promptly report to Seller in writing its findings in support of its determination that the goods fail to meet specifications.
11. **RETURN OF GOODS.** The goods or any part thereof shall not be returned to Seller unless Seller first consents in writing to their return, regardless of whether such goods fail to meet specifications, exceed the number ordered, or were 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 for the account of Seller. All returned items must have authorization and will be subject to a 25% restocking charge.
12. **DELAY IN DELIVERY.** Seller shall not be liable for damages whether direct, incidental or consequential for loss of profits, or for any other legal or equitable relief because of any delay in delivery (either before or after the approximate delivery date) or for failure to deliver the goods in whole or in part if said delay or failure, whether it affects the Seller or suppliers of the 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 or national emergency, compliance with or operation of any applicable law, ordinance, judgment, order or 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 option, 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 its product literature. Except in the case of events beyond its control, Seller will endeavor to complete all acknowledged purchase orders 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 specification and for the failure of the goods covered by this contract to conform to said plans and specifications.
15. **PATENT INFRINGEMENT.** Buyer agrees to inform Seller promptly in writing of any claims or actions of patent infringement concerning goods covered by these terms and conditions which come to Buyer's attention and further agrees to cooperate fully and promptly with Seller in the handling and disposition of such claim. Buyer agrees to indemnify and hold the Seller harmless from any damages, including interest, expenses and reasonable attorney's fees, resulting from any claims or actions, judgments and liability of patent infringement pertaining to goods manufactured pursuant to designs or specifications furnished to Seller by Buyer.
16. **PAYMENT AND LATE CHARGES.** Payment in full shall be due within 30 days of invoice date. Interest of the rate of 1-1/2% per month of the unpaid balance is payable on any amounts unpaid more than 30 days after the invoice date. 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 doubts exist concerning Buyer's financial responsibilities, Seller in addition to the remedies provided by law may withhold delivery of the remainder of the goods, re-sell the goods, reclaim goods previously delivered, recover damages and cancel the contract.

17. **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, Seller reserves the right to provide that the goods will be sold at Seller's prevailing price on the date of delivery.
18. **TAXES.** Any tax or other governmental charge or duty, including but not limited to any special utility surcharge payable by Seller, which is imposed on the goods or their manufacture, sale, delivery, or use except income taxes of Seller, shall be paid promptly by the Buyer. Any such taxes paid by Seller shall be for the account of Buyer. Any additional or new taxes or other governmental charges, including but not limited to any special utility surcharge hereafter imposed on the sale, manufacture, delivery, use or transportation of goods sold thereunder shall be the responsibility of and paid for by Buyer.
19. **SAMPLES.** The samples are submitted as being representative of the product, but because variations are inherent in all fired ceramic products, the tiles actually delivered may vary from 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. It is Buyer's responsibility to insure that samples shown are of recent manufacture and approximate current production. No claim concerning color, shade, texture or other alleged facial or structural defects for discrepancies in dimensional characteristics, for inconsistencies with prior shipments, or for any other defect capable of discovery by nondestructive means shall be allowed after installation of the goods. Buyer accepts deviations of length and width measurements caused in the manufacturing process in the ceramic industry whereby tolerance of +1% of the length and width dimensions ordered are permitted.
20. **ILLUSTRATIONS.** Color charts, color illustrations, 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. Seller accepts no responsibility and will not be liable for any claim if the goods sold fail to match any color charts, color illustrations, or reproductions.
21. **QUANTITY SURVEYS.** Seller will not make, and the salesmen or other representative 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.
22. **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.
23. **ORDER TERMINATION.** If an acknowledged order for Seller's goods is terminated with the written consent of 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 Seller 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 sum 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 order without impairment of its right to enforce the obligations contained in this paragraph as to subsequent orders.
24. **ADVERTISING.** Seller reserves the right to use photographs of Buyer's projects completed with Seller's goods for advertising purposes.
25. **ATTORNEY'S FEES.** If Buyer refuses to accept the goods, defaults in payment or otherwise defaults and Seller places the matter in the hands of an attorney; Buyer shall pay Seller's attorney fees.
26. **WAIVER.** The failure of Seller to insist, in any one or more instances, upon the performance of any of Seller's terms and conditions or the failure of Seller to exercise any of its rights thereunder shall not be construed as a waiver or relinquishment of any such term, condition, or right thereunder and shall not affect Seller's right to insist on strict performance and compliance with regard to any unexecuted portions of an order or future performance of these terms and conditions.

27. **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 Georgia in effect at the time the contract is made.
28. **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 Buyer and Seller that the remaining provisions remain fully effective.
29. **CAPTIONS.** The captions herein are solely for the convenience of the parties and shall have no legal significance whatsoever.
30. **SECURITY INTEREST.** Buyer grants unto Seller a security interest in and to the goods being purchased as identified and described in this Invoice. Such security interest shall exist and remain in existence until payment in full in good funds has been made to Seller. By virtue of this security interest, Seller will have all rights available to it under the UCC or applicable law, including but not limited to self-help repossession of the goods.