



INNOVATIVE

TILE SYSTEMS

ISB[™] TERMS OF SALE

1. SOLE TERMS OF SALE; ORDER ACCEPTANCE. THESE TERMS OF SALE APPLY EXCLUSIVELY TO AND WILL CONTROL OVER ALL QUOTATIONS MADE OR PURCHASE ORDERS ACCEPTED BY INNOVATIVE TILES SYSTEMS, INC. ("ITS"), OR ANY OTHER COMMUNICATIONS REGARDING THE PURCHASE AND SALE OF ISB[™] PRODUCTS ("PRODUCTS").

ACCEPTANCE OF CUSTOMER'S PRODUCT ORDERS WILL ONLY BE MADE PURSUANT TO THESE TERMS OF SALES, AND CUSTOMER ACKNOWLEDGES THAT ANY CONFLICTING OR INCONSISTENT TERMS IN ANY CUSTOMER PURCHASE ORDER OR OTHER COMMUNICATION ARE AUTOMATICALLY REJECTED, UNLESS AN AUTHORIZED ITS OFFICER HAS AGREED TO ANY WAIVER, MODIFICATION OR OTHER CHANGES IN THESE TERMS. ALL ORDERS ARE SUBJECT TO ACCEPTANCE OR REJECTION (IN WHOLE OR PART) BY ITS, AND ARE NONCANCELABLE ON ACCEPTANCE.

2. PRODUCT ORDERS AND PRICING. All Product orders must be made by written purchase order, and transmitted to ITS by email, fax, overnight courier or US mail. ITS's purchase order form is available online at www.innovativetile.com. ITS reserves the rights to establish and modify minimum Product purchase quantities.

Although ITS attempts to provide sufficient notice of pending price increases, all base prices and volume discounts are subject to change without advance notice. Customer will also pay all Product shipping costs, including without limitation, freight charges, Customer-requested shipping insurance, and/or special packing or handling. All prices are also exclusive of applicable excise, sales, use or other taxes for which ITS may be liable or which ITS is required by law to collect, unless Customer provides ITS with all required evidence of tax exemption.

Standard stock Products in original packaging which have not been used, damaged or modified may be returned at Customer's expense and within 30 days of purchase, subject to ITS's issuance of a Return Merchandise Authorization number (RMA), and a 25% restocking fee.

3. PAYMENT TERMS. All invoices are due within three business days of receipt, unless Customer has applied for and ITS has agreed to extend credit, which will generally allow payment within Net 30 days of invoice. ITS reserves the rights at any time to modify or revoke credit terms at any time. All unpaid balances will bear interest at the rate of 1.5% per month or the highest lawful rate, whichever is less, and will be calculated from the original invoice date if not paid by the due date.

Each shipment shall be considered a separate and independent transaction, and ITS reserves a purchase money security interest in all Products delivered until all amounts due ITS have been paid in full. Customer authorizes ITS as its attorney-in-fact to file security interests and take other actions to perfect or evidence the security interest granted herein.

4. DELIVERY. Delivery will be F.O.B. ITS's location, and will occur when the Products are tendered for pickup by the carrier. In the absence of specific instructions, ITS will select a carrier. ITS does not assume any liability for loss or damage to any shipment, which should be documented and reported directly to the carrier and as specified by the carrier's policies. Although ITS will use its best efforts to deliver in accordance with estimated delivery dates, ITS will not be responsible for failure to deliver by the

estimated ore requested delivery dates. Unless otherwise agreed, Customer shall be solely responsible for all export compliance for shipments outside the United States.

5. INSPECTION. Customer will have 10 days from delivery to inspect the Products and give written rejection notice to ITS of any deficiencies, and detailing the basis for such claim(s). After receiving an RMA and shipping instructions from ITS, Customer may return such rejected Products within 10 days of RMA issuance for credit or replacement by ITS. No Product returns will be accepted without RMA authorization. Inspection and resolution of shipping damage claims must be directed to the carrier, as noted above.

6. LIMITED WARRANTY. ITS warrants that the Products will be free from defects in material and workmanship for a one year period, all as further specified in the then-current form of Innovative Tile Systems, Inc. Manufacturer's Limited Warranty, which is incorporated fully by reference herein. A copy of the current Limited Warranty is attached, and is available online at www.innovativetile.com.

7. LIMITATION OF LIABILITY. ITS's liability for defective or nonconforming Products, whether based on breach of warranty, negligent manufacture, product liability or otherwise, is exclusively limited to Product replacement or refund, at ITS's sole election. If a defect in the product is claimed by the Customer or any third party who purchased Products from Customer, the Customer shall allow ITS a reasonable time to investigate and attempt to remedy the defect, and shall cooperate with ITS's investigation and testing of the alleged defective Product, returning it to ITS and providing all relevant information and assistance. ITS assumes no risk and shall be subject to no liability for any damages or loss resulting from the specific use or application made of the Products. ITS's liability for any other claim, whether based on breach on contract, negligence or product liability, relating to the Products shall not exceed the price paid for Customer for such Products. In no event will ITS be liable for any special, incidental or consequential damages (including installation, removal, replacement or other labor, loss of use, loss of profit, loss of goodwill, claims of third parties or other claims of any kind) however caused, whether by the negligence of ITS or otherwise, and whether or not ITS has been advised of the possibility of such damages. Customer assumes all liability for any and all damages arising from or in connection with, the use or misuse of the Products by Customer, its employees, customers or other third parties.

8. COMPLIANCE AND INSTALLATION INSTRUCTIONS. Since applicable laws, building codes, ordinances and other legal requirements vary greatly from area to area, Customer should advise each purchaser of Products that ITS cannot and does not determine whether there are any specific legal restrictions or requirements on the use of any Product. ITS MAKES NO REPRESENTATION OR WARRANTY REGARDING, AND HEREBY EXPRESSLY DISCLAIMS AND IS NOT RESPONSIBLE OR LIAIBLE FOR ANY COMPLIANCE ISSUES ASSOCIATED WITH THE PRODUCTS.

All Products must be installed in accordance with the then-current **ISB™** Installation Instructions, which are available online at www.innovativetile.com.

9. COLLECTIONS. In addition to any remedies otherwise provided by law, Customer by placing any Product order with ITS agrees to pay all reasonable attorneys fees and collection costs of ITS in enforcing any payment claim or other dispute under these Terms of Sale.

10. RELATIONSHIP. The relationship between ITS and Customer is that of buyer and seller of commercial goods for resale on an open contract basis for an indefinite term extending as long as the parties agree to do business with each other. No other relationship is created or implied, and neither party will hold itself out as authorized to or will attempt to bind the other party to any contract, covenant, obligation or other liability of any kind. Any proposed reproduction or use of the **ISB™** or **Integral Slant Base™** trademarks, or any other ITS intellectual property, other than pre-printed or template materials provided by ITS, will require ITS's prior written authorization.

11. GENERAL. These Terms of Sale are intended to and will control any sale of Products by ITS to Customer. Neither this agreement nor any individual transactions under it may be assigned by Customer without ITS's prior written consent. These Terms of Sale and all transactions under it shall be governed by the internal laws of the State of Minnesota. The United Nations Convention on Contracts for the

International Sale of Goods will not apply to any transactions with international Customers, and Customer irrevocably consents to the jurisdiction and venue of the applicable courts located in Hennepin County, Minnesota, which will be the sole and exclusive venues for any disputes hereunder. Any waiver, modification or other amendment of these Terms of Sale will only be effective if identified in a writing signed by an authorized ITS officer. Clerical errors or obvious errors or omissions are subject to correction by ITS at any time and without prior notice. If any term(s) of sale are held to be unenforceable by a court of competent jurisdiction, such finding will not affect the remaining terms, which will remain in full force and effect.