

Additional Terms and Conditions

YOU WILL BE BOUND BY THE TERMS AND CONDITIONS BELOW AND ON THE FRONT OF THIS SALES ORDER, REGARDLESS OF WHETHER YOU SIGN IT.

DEFINITIONS: Wherever used herein, the term "Opustone" shall mean Opustone, L.L.C. and the term "Customer" or "you" shall mean the party named on the reverse side in the block captioned "Sold To". The term "Products" shall mean all products listed for purchase in the column headed "Item No. /Description" on the reverse side.

MATERIAL SELECTION: You acknowledge that you have been provided an opportunity to select and inspect the Products prior to purchase and agree that you are not relying on Opustone to determine quality, color, grade or quantity of Products purchased. You acknowledge that all material is subject to quality, density, grade, texture, color, shade and hue variations from piece to piece, stone to stone, crate to crate, and lot to lot.

WARRANTY AND DISCLAIMER: Opustone is not responsible for any risk of loss of Products at any time from purchase to delivery nor has Opustone provided you with any guaranteed delivery date. **ALL MATERIAL IS SOLD AND DELIVERED "AS IS" WITH "ALL FAULTS."** THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. OPUSTONE WILL NOT BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. ANY CLAIM AGAINST OPUSTONE OR ITS AGENTS, OFFICERS, AND EMPLOYEES SHALL BE LIMITED TO THE REPLACEMENT VALUE OF THE MATERIAL AND ONLY IF SUCH MATERIAL IS FOUND TO BE DEFECTIVE. Samples supplied by Opustone, if any, are not made part of the basis for this Sales Order and no sample furnished by Opustone shall form any part or provide any basis for any warranty or other claim by Customer hereunder. Customer understands that all material is subject to wear and abrasion in high traffic areas. Customer further acknowledges that Opustone has made no recommendation as to any installer of the Products and Customer shall look solely to such installer for any damage that results to the Products during installation.

STORAGE AND DELIVERY: Customer, at all times, agrees to fully insure, guard, protect and maintain, at Customer's sole expense, all Products. All Products are stored and shipped without insurance unless Customer requests such insurance in writing and pays for same in full, all prior to storage and/or delivery of the Products. Payment of a delivery charge or storage charge does not provide for delivery and/or storage insurance. Unless Customer has been advised that the Products are not in stock, Customer agrees to pick up or authorize Opustone to deliver the Products within ten (10) business days of the date of this Sales Order. If Customer has been advised that the Products are not in stock, Customer agrees to pick up the Products or authorize their delivery no later than 10 days after notice that they are available. Customer agrees to pay to Opustone the greater of \$0.50 per square foot per day or \$25.00 per day for any Products not picked up after the applicable 10 day period and will have no right to retrieve the Products until any storage charge is paid in full. If the incurred storage charge exceeds the purchase price of the Products stored, Customer shall immediately pay to Opustone liquidated damages equal to twenty percent of the full purchase price of the Products plus any and all storage, delivery, and convenience charges. If Customer has failed to pick up the Products within 90 days after the expiration of the applicable 10 day period, Opustone shall be entitled to sell any such material and apply to proceeds from such sale in the following order: outstanding balance due on any unpaid invoice(s), unpaid interest charges on any unpaid invoice(s), collection costs, and storage fees. Customer agrees that any and all claims related to delayed delivery and/or damage during delivery shall be brought solely against shipper, whether shipper was selected by Customer or Opustone; provided, however, that any delivery by Opustone shall be at Customer's risk. Customer shall personally inspect and accept delivery/pick-up of the Products or shall authorize an agent to inspect and accept delivery/pick-up of the Products.

CANCELLATION; NO RETURN, NO EXCHANGES; ALL SALES ARE FINAL. Customer has no right to cancel this Sales Order. Opustone may, in its sole and absolute discretion, accept the return of some or all of the Products upon request made no later than five calendar days after the date of this Sales Order if the Products are in stock or five calendar days after receipt by Customer of notice that the special order Products are available, together with a written and detailed basis for the return. All authorized returns (a) must be shipped back to Opustone on an expedited basis at Customer's sole expense within ten (10) calendar days of Opustone written return authorization, (b) must be accompanied by a copy of Opustone's return authorization letter, and (c) must be accompanied by a bank or cashier's check in an amount equal to twenty percent of the purchase price of the authorized returned material as liquidated damages (plus any and all delivery, storage, and convenience charges). All unauthorized returns shall be rejected/refused by Opustone at Customer's risk. All authorized returns which are not accompanied by the necessary check and letter shall be rejected/refused by Opustone at Customer's risk. All requests for return authorization which are not responded to by Opustone in writing shall be deemed denied. The return of damaged material shall be rejected/refused by Opustone at Customer's risk. All authorized returns received after the tenth day shall be rejected/refused at Customer's risk. Customer shall fully insure all returns. Customer is solely responsible and liable for all rejected/refused returns.

Customer shall be in default hereunder upon the occurrence of any one or more of the following events: (a) failure to pay any sum due; (b) any representation, warranty or statement made or delivered to Opustone by Customer in connection herewith proves false, incorrect or misleading; (c) if Customer shall make an assignment for the benefit of creditors, file a petition in bankruptcy, apply to or petition any tribunal for the appointment of a custodian, receiver, intervenor or trustee for Customer or a substantial part of its assets or if Customer commences any proceeding under any bankruptcy, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction; or if any such petition or application shall have been filed or proceeding commenced against Customer or if any such custodian, receiver, intervenor or trustee shall have been appointed. In such event, all outstanding payments due and payable by Customer to Opustone shall, at Opustone's option, become immediately due and payable and Opustone shall have the right to consider the agreement contemplated hereby, or that part of it not yet performed, as having been canceled by Customer, and to recover damages arising from such cancellation (including liquidated damages equal to twenty percent of each

entry in the column headed "Amount" on the reverse hereof), and shall further have all rights and remedies, including those of a secured party, provided by applicable law. All costs incurred by Opustone as a result of non-payment or delay in payment by Customer, including, without limitation collection costs, storage costs and reasonable attorneys' fees and related costs, shall be paid by Customer upon Opustone's demand, and at Opustone's option, or bear interest from the date when incurred until paid in full at the rate of 1½ percent per month or part thereof.

PAYMENT: As a condition to Opustone processing this Sales Order, Customer shall have paid Opustone not less than fifty percent of each entry in the column headed "Amount" on the reverse hereof. Customer agrees to pay Opustone any remaining balance in immediately available United States dollars prior to pickup or delivery of the Products. Any amounts not paid will bear interest at the rate of 1½ percent per month or part thereof from the date due.

DISHONORED CHECKS: Pursuant to Florida Statutes §68.065, if any check is dishonored by Customer's bank as a result of Non-Sufficient Funds, Opustone may file an action against the Customer for the full amount of the check, plus three times the face amount of the check, court costs and attorneys' fees.

DIFFERING TERMS: Any terms or conditions additional to or different from those in these Terms and Conditions, which may appear in any communication from Customer or Opustone (including any printed in any Customer form) are hereby expressly objected to and shall not be effective or binding unless expressly agreed to in writing by Opustone.

LIMITATION OF LIABILITY, WAIVER AND INDEMNIFICATION: Opustone's liability in any action related to this Sales Order or the Products shall in no event exceed the total Balance Due and such liability may be fully discharged by a reimbursement of any payments received by Opustone hereunder. If any claim is made for damage or injury including death, Customer agrees to indemnify and hold Opustone harmless from and against such claim and all loss, damage, injury and expense (including reasonable attorneys' fees and costs) that Opustone may sustain when such claim is directly or indirectly based or related to Customer's or Customer's agents', contractors', or employees' negligent, intentional or wrongful acts or omissions. This limitation of liability is expressly intended to apply to all types of claims, including but not limited to claims for the negligence (either in whole or in part) of Opustone. The parties agree that, for the purposes of Florida Statutes §725.06, the indemnification obligation for that portion of the damages which are caused by the act, omission or default by Opustone shall be limited to \$1,500,000 which the parties agree bears a reasonable commercial relationship to this Sales Order and is hereby deemed to be a part of the project specification bid documents, if any.

FORCE MAJEURE: Opustone shall have no liability or responsibility for any losses or damages caused by others, including the unavailability of the Products from Opustone's customary suppliers at costs not materially greater than those normally paid by Opustone or for losses or damages either caused by strikes, war, Acts of God, rain, wind, hurricanes or any event beyond its reasonable immediate control. If the Products become unavailable, Opustone may substitute material reasonably equivalent to the Products and Customer will be responsible for one hundred sixty percent of the increased cost to Opustone.

ASSIGNMENT: Neither party may assign the rights or delegate their duties hereunder without the written consent of the other party.

SEVERABILITY: If any term or other provision hereof is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions shall nevertheless remain in full force and effect.

NO WAIVER: The failure of Opustone to enforce these Terms and Conditions shall not be interpreted as a waiver of the continuing effect thereof.

VENUE: Venue for any litigation which may arise from this Sales Order shall be a court of competent jurisdiction in Miami-Dade County, Florida. All disputes arising under this Sales Order shall be governed by Florida law including Chapter 672 - Uniform Commercial Code-Sales, regardless of any conflict of laws statutes. TO THE EXTENT PERMITTED BY LAW, EACH PARTY HERETO HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION.

SECTION HEADINGS: Section headings are for convenience only and shall not act as material terms or limitations of any kind.

NOTICE: ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

NOTICE: ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENTS, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.