

CODE

Impex



30 Wychwood Road, Livingston NJ 07039
Phone: 973-337-2323 Fax: 973-338-0131
info@codeimpex.com www.codeimpex.com
Toll-free:888-CODE044(263-3044)

PHYSICAL, OR CHEMICAL PROPERTIES, ABSENCE OF MINOR, USUAL OR ORDINARY DEFECTS, OR VARIATION IN THICKNESS OR FINISH OF THE PRODUCTS OR PERCENTAGE, SIZE AND SHAPE OF MARKINGS.

- b. Product samples and the statements in Seller's brochures and advertising materials are for informational purposes only. The color of natural stone and wood products and the percentage, size, and shape of markings on such products will vary. The pattern and shade of man-made products will also vary. All Product sizes are nominal, not actual.
- c. Natural and man-made products of the type sold by Seller inevitably contain irregularities and defects. Products containing irregularities or defects (x) that are beyond the control of Seller, (y) that Seller cannot prevent by the exercise of reasonable care, or (z) that are natural to or inherent in any particular product shall not be deemed to be defective. Buyer shall have no recourse to Seller for such irregularities or defects in such Products.
- d. BUYER HEREBY ASSUMES FULL RESPONSIBILITY FOR SELECTING PRODUCTS THAT MEET BUYER'S REQUIREMENTS AND INSPECTING SUCH PRODUCTS.
- e. Seller may cure any Discrepancy consisting of a shortage in quantity of any Products by delivering a conforming quantity of Products to Buyer, by a common carrier selected by Seller or other means of transport selected and provided by Seller or Seller's supplier, as soon as reasonably practicable after Buyer notifies Seller in writing of such shortage pursuant to Section 8a. or b., as applicable, in which case Buyer shall have no further recourse to Seller.
- f. Buyer's sole remedy for any Discrepancies other than a shortage in quantity of Products shall be to return the affected Products to Seller at Buyer's expense, subject to receiving a return authorization from Seller. FOR CUT-TO-SIZE AND SPECIAL ORDERED PRODUCTS THE SELLER WILL NOT ACCEPT ANY RETURN OF PRODUCT. Upon its receipt of returned Products, Seller will determine the extent to which Discrepancies exist in such returned Products, including by performing any Product tests deemed required by Seller, in its discretion. To the extent that Seller determines that Discrepancies exist in any returned Products, Seller, in its discretion, will either (i) refund the purchase price and any Related Charges paid to Seller for such Products and, only if Buyer complied with any shipping instructions in Seller's return authorization, reimburse Buyer for the shipping charges incurred by Buyer to return such Products to Seller in accordance with such shipping instructions or (ii) deliver conforming Products to Buyer at Seller's expense within 45 days after Seller's receipt of such returned Products, or such longer period as Seller reasonably requires to obtain and deliver conforming Products, and in each case Buyer shall have no further recourse to Seller. To the extent that Seller determines that no Discrepancies exist in any returned Products, Buyer (x) shall remain liable to Seller for the purchase price of such Products and shall not be entitled to any refund or reimbursement for return shipping charges, (y) shall pay to Seller, on demand, Seller's fully burdened cost of inspection and any testing and (z) shall arrange for such Products to be removed from Seller's facility at Buyer's sole expense within 20 days after Seller notifies Buyer of such determination or pay to Seller, on demand, a restocking fee of 25% of the purchase price for such Products.
- g. Buyer shall not have any right to return any Products to Seller unless Discrepancies exist in such Products. Buyer shall not return any Products to Seller without first obtaining written return authorization from a duly authorized representative of Seller. Buyer shall ship the returned Products to Seller in accordance with any shipping instructions contained in such written return authorization. Seller shall not unreasonably withhold or delay providing such a return authorization. The buyer shall include a copy of such written return authorization with the returned Products.

10. Returns of Products not Under Warranty.

Seller may, at its discretion, but shall have no obligation to, accept returns of conforming Products and Products that are not under warranty. Buyer shall not return any such Products to Seller without first obtaining written return authorization from a duly authorized representative of Seller. Buyer shall return any such Products to Seller at Buyer's sole expense F.O.B. the facility designated by Seller in such written return authorization. Within 45 days after Seller's receipt of such Products, Seller will refund to Buyer the purchase price paid to Seller for such Products (not including any Related Charges), less (i) a restocking fee of 25% of the purchase price for such Products and (ii) any decrease in the value of such Products since Seller supplied such Products to Buyer, whether as a result of damage to such Products or otherwise, as determined by Seller in its discretion.

11. Limitation of Liability.

a. NOTWITHSTANDING ANYTHING IN THE TERMS TO THE CONTRARY, SELLER SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO BUYER FOR ANTICIPATED PROFITS, LOST PROFITS OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY CLAIM ARISING OUT OF THE TERMS, OR OTHERWISE RELATED TO THE PRODUCTS, REGARDLESS OF WHETHER SUCH CLAIM



30 Wychwood Road, Livingston NJ 07039
Phone: 973-337-2323 Fax: 973-338-0131
info@codeimpex.com www.codeimpex.com
Toll-free:888-CODE044(263-3044)

SOUNDS IN TORT, CONTRACT, BREACH OF WARRANTY OR ANY OTHER THEORY. THE REMEDIES GRANTED TO BUYER IN SECTION 9 ARE SOLE AND EXCLUSIVE. BUYER ACKNOWLEDGES THAT SUCH REMEDIES ALLOCATE RISKS BETWEEN BUYER AND SELLER FAIRLY AND IN A MANNER WHICH UNDER NO CIRCUMSTANCES WILL CAUSE SUCH REMEDIES TO FAIL OF THEIR ESSENTIAL PURPOSE.

b. Seller's aggregate liability to Buyer related to any Products shall in all circumstances be limited to the purchase price of such Products.

12. Force Majeure.

Seller shall not be liable for delays or defaults in delivery to the extent that an act of God, accident, strike, lockout, fire, vendor delay in delivery, transportation delays and any other cause beyond Seller's control that causes such delays or defaults. Seller's time for delivery under the Terms shall be extended by the total of all such delays, and if any such delay exceeds 45 days, Seller may cancel affected deliveries in whole or in part without liability.

13. Compliance with Laws.

Buyer shall comply with all Laws applicable to Buyer's possession, use, resale or disposal of, or other activities related to, the Products.

14. Insurance.

Buyer shall at all times maintain adequate insurance for Buyer's activities.

15. Buyer Indemnity.

a. Buyer shall indemnify Seller and its members, managers, directors, officers, employees, agents, and affiliates (collectively, the "Seller Indemnified Persons") against and hold the Seller Indemnified Persons harmless from any and all Losses arising from or related to (i) any claims by or on behalf of any third Person that relate to any Products and arise from or relate to events occurring after delivery of such Products to Buyer or (ii) any breach of this Proposal and the Terms by Buyer.

b. "Losses" means any and all losses, including lost profits and consequential and incidental losses, claims, shortages, damages, Liabilities, fees, expenses and costs (including reasonable fees of attorneys and other professionals), assessments, taxes, and insurance premium increases, including such items incurred in investigating, defending or asserting any claim.

c. "Liability" means any liability or obligation, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or un-accrued, liquidated or un-liquidated and whether due or to become due, regardless of when asserted.

16. Governing Law; Jurisdiction; Venue.

a. These Terms and Conditions of Sale and any dispute arising out of or in connection with them shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to its conflict of laws principles.

b. Any dispute arising out of or in connection with these Terms and Conditions of Sale, including any question regarding their existence, validity, or termination, shall be subject to the exclusive jurisdiction of the state and federal courts located within the county of Essex, State of New Jersey. The Parties agree not to raise, and hereby waive, any objections or defenses based upon venue or forum non-conveniens.

c. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms and Conditions of Sale or to any contracts relating to goods or services purchased hereunder.