



## **Terms and Conditions for Purchase and Sale of Materials**

The following forms the Terms and Conditions for the Purchase and Sale of Materials ("Terms and Conditions"), as applicable to the Buyer and/or Buyer's Authorized Representative ("Buyer").

### **Article 1 – Application of Terms and Conditions of Sale**

- a) Placing an order through Chadwick's Surfaces International, Inc. (Chadwick's) implies the complete and unreserved consent by the Buyer to be bound by the following Terms and Conditions. No other documents such as brochures, advertisements, or catalogs distributed by Chadwick's have any indicative value. No conditions contrary to those stated in these Terms and Conditions may prevail over the Terms and Conditions unless evidenced by a formal written acceptance by a party with the authority to bind Chadwick's in such a manner.
- b) Terms and Conditions regardless of the timing of such enforcement. If a Chadwick's representative does not accurately represent any one of the Terms and Conditions at any time that representation, with regard to the inaccuracy, will not be interpreted as an invalidation of any of the Terms or Conditions and the Terms and Conditions contained below will remain in effect.
- c) Chadwick's extends no warranties beyond the manufacturer's warranty. Conditions of Sale included here supersede any terms provided by the customer via purchase order or other agreements.

### **Article 2 – Placing and Modifying Orders**

- a) **Placing Orders.** Chadwick's is only bound to fulfill orders that have been obtained by an authorized Chadwick's employee acting within the scope of their employment. Orders must be obtained through authorized channels as designated by Chadwick's. The channels are subject to the discretion of Chadwick's.
  - i. **Rush Orders.** Orders that are placed by the Buyer that the Buyer wishes to have completed in less than the ten (10) business day completion time will be considered a "Rush Order". Rush Orders are subject to a rush fee of either \$100.00 or 15% of the total order cost, whichever is greater. Chadwick's reserves the right to change this fee from time to time at the discretion of Chadwick's without notice to the Buyer.
  - ii. **Orders for "Discontinued" Materials.** Discontinued materials constitute any and all material that is not considered part of the "running line" inventory of Chadwick's. This determination is made by Chadwick's on a case-by-case basis and may, at times, be represented by a categorical determination such as "specials", "overstock" or any other name/title deemed applicable by Chadwick's. Orders for discontinued materials are subject to different restrictions.
    - a) Returns will not be accepted for orders of discontinued material. All sales are final, no exceptions will be made.
    - b) Discontinued materials are not available to be exchanged for other material after purchase.
    - c) Financing will not be extended to orders for discontinued items.
    - d) Discontinued items are sold in an "as-is" state.



- e) Holds and/or reservations of discontinued material will not be accepted by Chadwick's. All material is deemed available for sale, until a sales transaction is completed.
- f) Quantities for discontinued material are rough estimates, not actual quantities. Due to the discontinued nature of the material, any quantities represented by Chadwick's as available for sale are subject to fluctuation due to the discontinued nature of the material. Quantities may be confirmed upon request of the Buyer once an order has been placed.
1. There is no implied guarantee, contract or assurance that any quantity of discontinued material represented for sale is accurate and insufficient quantities discovered after the placement of an order will not be a breach of any guarantee, contract or assurance as no guarantee, contract or assurance was created in regard to the quantities of the discontinued materials offered for sale.
- b) **Modifying Orders.** Any and all modifications by Buyer to placed orders shall be subject to the approval of Chadwick's and its employees. If, for any reason, Chadwick's does not accept the modification the sums paid by Buyer, which may be regarded as down payments, may not be refunded, subject to the discretion of Chadwick's.
- c) It should be noted that no exchange or return will be accepted concerning second-hand materials which, by their very nature, do not have any sort of guarantee.
- d) **Returns.** All running line material that is kept in a saleable condition may be returned within 30 days of the date of the Sales Order. Material that is returned in a saleable conditions is subject to a restocking fee equal to at least 25% of the total order price.
- i. Slab sales are final and no returns will be accepted.
  - ii. A determination of saleable condition is left to the discretion of Chadwick's and is subject to analysis on a case by case basis.
  - iii. There must be existing available stock of the same dye lot for the return to be considered.
- e) **Reservation of Slabs.** Slabs that have been requested to be reserved by the Buyer are subject to a 15 day reservation period in which time the reserved slab will not be offered for sale to another Buyer looking to purchase slabs from Chadwick's. In order for the aforementioned 15 day reservation period to apply to the requested material, the Buyer must make a **non-refundable** deposit of at least 50% of the total order cost for the reserved slab material.
- f) **Special Orders.** A Special Order is defined as any size, material or any other identifiable variations that is not included in Chadwick's running line. Special Orders are subject to the following:
- i. Any quote provided by Chadwick's regarding a Special Order remains valid for the 7 days immediately following the date of the quote.
  - ii. Any Special Orders made by the Buyer, including Special Orders resulting from a provided quote or Special Orders in which no quote has been provided, are indicative of Buyer's express consent to be bound by the following Special Order Terms and Conditions.
  - iii. A signed Purchase Order and payment in full are both required before Special Orders will be processed.



- iv. All Prices provided in the quote are F.O.B. Chadwick's Lake Forest, IL Warehouse.
  - v. Delivery is not included in the quoted price and Buyer is ultimately responsible for arranging for and financing the delivery method.
  - vi. All special orders are non-returnable / non-refundable.
  - vii. Estimated Time of Arrival (ETA) will vary based on order quantity and specification. Full payment of Purchase Order is required to place order. 120 days is an average estimate, but not guaranteed ETA.
  - viii. Responsibility for all quantities purchased is retained by the Buyer.
    - a) For general representations of natural variations in the materials see Article 9 §§ (g) & (g)(i).
  - ix. Buyer is ultimately responsible for determining the suitability of any material for the Buyer's intended use.
  - x. The Buyer agrees to all terms and conditions effective as of the date and time of Buyer's purchase by placing a Special Order.
- g) **Bottega- Fabrication of Cut-to-Size.** Bottega is any in-house fabrication/cut-to-size from Chadwick's stock or special ordered field tile.
- i. Any quote provided by Chadwick's regarding a Bottega item remains valid for the 7 days immediately following the date of the quote. Quote is only good for current stock available at the time of order confirmation.
  - ii. Payment is required at time of order confirmation.
  - iii. Typical completion time is 15 business days. This may vary according to specification. Rush orders incur an additional \$100 set-up/ production charge.
  - iv. There are no returns, no exchanges on cut to size products. Please verify your quantities and include a waste factor when ordering.
  - v. Minimum of 30 sqft on all cut-to-size.
  - vi. \$75 set up fee for all orders.
  - vii. Delivery is not included.
- h) **Stock Orders.** A Stock Order is defined as any size, material or any other identifiable variations that is included in Chadwick's running line currently available for sale in the Lake Forest, IL warehouse. Stock Orders are subject to the following:
- i. Any quote provided by Chadwick's regarding a Stock Order remains valid for the 7 days immediately following the date of the quote.



- ii. A signed Purchase Order and payment in full, unless previously agreed B2B terms are in place and are in good standing, are both required before Stock Orders will be processed.
- iii. All Prices provided in the quote are F.O.B. Chadwick's Lake Forest, IL Warehouse.
- iv. Delivery is not included in the quoted price and Buyer is ultimately responsible for arranging for and financing the delivery method.
- v. All material that is kept in a saleable condition may be returned within 30 days of the date of the Sales Order. Material that is returned in a saleable condition is subject to a restocking fee equal to at least 25% of the total order price.
  - a) A determination of saleable condition is left to the discretion of Chadwick's and is subject to analysis on a case-by-case basis.
- vi. Responsibility for all quantities purchased is retained by the Buyer.
  - a) For general representations of natural variations in the materials see Article 9 §§ (g) & (g)(i).
- vii. Buyer is ultimately responsible for determining the suitability of any material for the Buyer's intended use.
- viii. The Buyer agrees to all terms and conditions effective as of the date and time of Buyer's purchase by placing a Stock Order.

### **Article 3 – Shipping and Handling**

- a) **Delivery.** Chadwick's makes every effort to secure and make a reasonable delivery date, time of delivery shall not be of the essence and Chadwick's shall not be liable for any losses, costs, damages or expenses incurred by the Buyer or any other person or Company arising directly or indirectly out of any failure to meet any estimated delivery date.
  - i. Delivery of the Materials is the responsibility of the Buyer, However, Chadwick's will assist within reason in securing a delivery quote with information provided by Buyer.
  - ii. It is Buyer's responsibility to inspect the quality and quantity of the Materials delivered at the time of delivery. If there is a discrepancy at the time of delivery, Buyer must contact Chadwick's, document the damage or quantity discrepancy and notify the freight carrier immediately.
    - a) Slab delivery is not arranged or guaranteed by Chadwick's.
      - i. Slabs that are being shipped out-of-state must be paid in full prior to shipping.
    - iii. Failure of orders to meet an estimated delivery date due to circumstances that are beyond the control of Chadwick's do not result in an assignment of liability on Chadwick's.
- b) **Additional Charges.** Orders that require shipping and delivery may be subject to additional charges that are necessary in order to ship the materials.
  - i. Materials that require UPS or FedEx packaging are subject to a \$10.00 packaging and handling charge per carton. This charge will be added to the Invoice.

- ii. Materials that require a pallet to ship are subject to a \$25.00 charge per pallet, per 250 square feet. A \$55.00 charge per pallet are subject to any orders less than 250 square feet. This charge will be added to the Invoice.
  - iii. Materials that require pallet breakdowns are subject to a \$45.00 charge for the pallet breakdown. This charge will be added to the Invoice.
  - iv. Materials that are subject to Less Than Truckload (LTL) shipment may be subject to extra charges when the Materials require an A-Frame or crate.
  - v. Chadwick's will store paid-in-full orders of merchandise free of charge until pick-up is scheduled for up to 90 days after the complete order is available. After 90 days, storage fees of \$100 per pallet/per slab per month will be incurred. At the time of completed order Chadwick's will not be liable to replace or refund any materials that are damaged or lost during storage, movement, or delivery of items.
- c) **Taxes.** All taxes, duties or legal formalities that must be paid pursuant to Illinois regulations or those of an importing country or a transit country are the responsibility of the Buyer.

#### **Article 4 – Transfer of Risk**

- a) Any and all risk associated with the Material transfer to the Buyer at the time the Material leaves the control of Chadwick's. The Material, when in transit, becomes the responsibility of the Buyer at the time Chadwick's ceases control of the Material and the Buyer's only claim for loss or damage is with the transporter.
- b) The Buyer assumes all risk associated with the material after the material has left the absolute control of Chadwick's. This includes any liability regarding the alterations of material or alterations of any identifying information regarding the material, including but not limited to labels, photos, etc. In the event that the Buyer makes any alterations after gaining control of the material, Buyer and not Chadwick's incurs absolute liability regarding any and all post-sale alterations. Chadwick's does not consent nor grant the authority to any third party to bind Chadwick's to any specific performance regarding any alteration, promise made by third party, warranties or representations made by the third party or in any other regard.

#### **Article 5 – Guarantees**

- a) Notwithstanding any other contrary stipulation, Chadwick's is bound towards the Buyer concerning the legal guarantee in the event of any fault or hidden defect in the Material sold. In the case of non-conformity, faults, or hidden defects concerning the delivered materials, duly noted by Chadwick's under the conditions envisioned hereafter, the Buyer can obtain either the free replacement of the Material, or a refund as Chadwick's decides, but no compensation or damages will be paid except in the event of serious negligence. If any action described above is taken by the Buyer, the action is without prejudice to any claim of the Buyer against the transportation services arranged by the Buyer. Claims made by the Buyer concerning defects or non-conformity of the delivered material to the order, must be made in writing as soon as the material arrives and within eight (8) business days at the latest. It is the responsibility of the Buyer to present justification concerning the existence of any claimed defects or anomalies. Buyer must give to Chadwick's the opportunity to inspect the Material in question, if necessary, using a consultant, and to remedy the problem. If Buyer attempts to repair the materials or authorizes a third party to repair the Material, without the prior agreement of Chadwick's, any guarantee will be invalidated. This guarantee does not apply to apparent defects, nor to damage and deterioration caused through the natural wear and tear or due to external causes

(e.g. erroneous assembly/installation, defective maintenance, abnormal use), through a modification of the material that is neither foreseen nor specified by Chadwick's. Any second-hand materials sold are not covered by any guarantee.

#### **Article 6 - Billing and Payment**

- a) For each individual sale of Material a bill will be made, naming the Buyer as the party financially responsible for payment. In cases that involve deferred payment or payment as a specific date, what constitutes a payment within the meaning of this Article is not the handing over of a bill of exchange, or of a check implying an obligation to pay, but actual settlement on the agreed upon date. In the event of a failure or delay in payment, Chadwick's may suspend all pending orders, without prejudicing any other available course of action. All amounts and sums unpaid on the date stated on the bill will involve the application of penalties of an amount equal to two and half times the legal rate of interest, by way of a non-reducible penalty clause. These penalties will be due for payment at the request of Chadwick's.
- b) In the event of a default in payment, forty-eight (48) hours after formal demand has not had a result, the sale will be resolved automatically through the legal process if it is deemed necessary by Chadwick's, who may request summary proceedings, including the return of the products, without affecting any other claims for compensation. The resolution will not only affect the order concerned but all other unpaid orders which remain, for which payment is outstanding.
- c) The Buyer may be held responsible for all the expenses involved in the contentious recovery of the sums due, including the fees of legal officers and lawyers. In no event can the payments be suspended or be the subject of any other compensation claim without the written and prior agreement of Chadwick's. Any partial payment will be credited initially to the non-privileged part of the claim, then to the sums which are most overdue.
- d) Credits offered to customers can only be used by the person or company named in the original payment of material. Credits must be used within 12 months from the date said credit is applied to the customer's account. After 12 months, the credit will expire, will no longer be reflected on the customer's account, and can no longer be used towards a future purchase. Credits can only be used on material that is currently in stock or "on the water".

#### **Article 7 – Reservation of Title to Materials**

- a) Delivered materials remain the property of Chadwick's until their complete payment and until this time, the Buyer may not dispose of the Materials through any sale, or change the delivered Materials in any way. However the risks as indicated above are the responsibility of the Buyer from the time of delivery or collection. Credit notes of any kind do not constitute payment. In the event of the seizure of the Material by a third party, the Buyer is responsible for informing Chadwick's.

#### **Article 8 – Settlement of Disputes**

- a) **Mediation / Arbitration Agreement.** Buyer agrees to waive its right to a trial by jury in all matters relating to and arising under this Agreement, including torts. By signing this agreement, Buyer has read this provision and makes the waiver knowingly, intentionally and voluntarily.
  - i. **Mediation.** The parties agree that any claim or dispute relating to this agreement, or any other matters, disputes, or claims between Buyer and Chadwick's, shall be subject to non-binding mediation if agreed to by Buyer and Chadwick's within 30 days of Buyer or Chadwick's making a



request to the other by letter. Any such mediation will be held in the federal judicial district in which Chadwick's is located, and shall be conducted according to the mediation rules of the National Arbitration Forum.

- ii. **Arbitration.** Whether or not mediation is requested by any party, any claim, dispute or controversy between Buyer and Chadwick's or arising from or relating to these Terms and Conditions or the relationships which result from this Agreement, including the validity of this arbitration clause or the entire agreement, including any that remain unresolved 120 days after an agreement for mediation, shall be resolved by binding arbitration by the National Arbitration Forum, under the Code of Procedure then in effect. Any award of the arbitrator(s) may be entered as a judgment in any court having jurisdiction. In the event a court having jurisdiction finds any portion of this agreement unenforceable, that portion shall not be effective and the remainder of the agreement shall remain effective. Information may be obtained and claims may be filed at any office of the National Arbitration Forum, [www.arbitration-forum.com](http://www.arbitration-forum.com), or by mail at P.O. Box 50191, Minneapolis, MN 55405. This agreement shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. Sections 1-16.

#### **Article 9 – General Provisions**

- a) **Assignment and Delegation.** Neither party may assign its right or delegate its obligations under this Agreement without the consent of the other party, which shall not unreasonably withhold its consent.
- b) **Assigns.** This Agreement binds and benefits the parties and their respective permitted assigns.
- c) **Severability.** If any provision of this Agreement is illegal or unenforceable, that provision is severed from the Agreement and the other provisions remain in effect only if the essential business and legal provisions are legal and enforceable.
- d) **Governing Law.** The laws of the state of Illinois, without regard to its conflict of laws principle, govern all matters arising under or relating to this Agreement, including torts.
- e) **Intellectual Property Rights.** Unless otherwise provided by this Agreement, all copyright, trademarks, design rights, patents and other intellectual property rights (registered and unregistered) in and on Chadwick's website content and any description, process, or other identifying characteristic of the Material belongs to Chadwick's and/or third parties. Chadwick's reserves all of its rights in Chadwick's website content and any description, process, or other identifying characteristic regarding Chadwick's material. Nothing contained in these Terms and Conditions grants Buyer a right or license to use any trademark, design right or copyright owned or controlled by Chadwick's or any other third party except as expressly provided in these Terms and Conditions.
- f) **Business Day** means the working hours of 8:00 a.m. to 5:00 p.m. Central Standard Time, Monday through Friday excepting national holidays / days of observance.
- g) **Variation of Material.** Variations regarding the individual attributes for any material may include but are not limited to, size, color and texture. All sizes and dimensions are considered nominal. Chadwick's does not guarantee absolute consistency with any sample and will not be held liable for any claims regarding the above mentioned attributes.
  - i. **Individual Viewing Settings.** Variation in material due to the individual viewing settings selected by Buyer on Buyer's, computer, tablet, smartphone, or any other device in which individual viewing settings are possible is not the responsibility of Chadwick's due to Chadwick's inability to control and



maintain consistency in regard to the representation of variations on Buyer's individual viewing devices.

- h) **Materials.** Materials means any and all products made available for sale by Chadwick's including identifying characteristics and/or other product identifiers such as labels, stickers, screen prints, etc.
- i) **Buyer Review.** Buyers are encouraged to review to the Chadwick's Terms and Conditions from time to time to afford themselves the most up to date knowledge regarding these binding Terms and Conditions and the effect these Terms and Conditions have upon Buyer's rights relating to and arising from the contemplated transaction.
- j) **Fee Schedule.** Certain actions taken by the Buyer subject the Buyer to the assessment a certain fee based on the attached fee schedule marked as Appendix I.
- k) **Disclaimers.** Any disclaimer, references or other mentions of Terms and Conditions refer to these Terms and Conditions as changed from time to time by Chadwick's. Any information to the contrary, no matter how expressed, shall be deemed as insufficient, inaccurate and non-applicable, regardless of context or method of delivery.

**Appendix I – Fee Schedule**

	<b><u>Fee Calculation</u></b>
<b><u>Returns</u></b> {Art. II § d}	At least 25% of total amount billed
<b><u>Rush Orders</u></b> {Art. II § a(i)}	Greater of \$100 or 15% of total amount billed
<b><u>Slab Reservations</u></b> {Art. II § e}	At least 50% of total amount billed
<b><u>Pallet</u></b> {Art. III § b(ii)}	\$25.00 per pallet for orders exceeding 250 square feet \$55.00 per pallet for orders less than 250 square feet
<b><u>Modification / Add-On</u></b> {Art. II § b(i)}	At least \$75.00
<b><u>Shipping &amp; Handling</u></b> {Art. III § b(i)}	\$10.00
<b><u>Shipping &amp; Handling</u></b> {Art. III § b(v)}	\$100 per pallet/crate or slab