



## *Manufacturer's Limited Warranty*

Zoho Stone Architectural Products LLC or "Zoho Stone" makes every effort to ensure that its products are free from defects. Through quality inspections carried out from manufacturing to shipping, Zoho Stone strives to provide its customers with the highest quality and most reliable product available.

Zoho Stone warrants that its product is free of any defects in material or workmanship which may have occurred in the manufacturing process, or blemishes and discoloration when viewed under normal lighting from a distance of 25 feet, for a period of one (1) year from the original shipping date of the product provided that the purchaser complies with the following terms subject to the following conditions and limitations. To make a claim under this warranty, the purchaser shall, within one (1) year from the shipping date, contact Zoho Stone with a written statement of the particular manufacturing defect and proof of its purchase. If the product does in fact have a manufacturing defect and it is within the warranty time period, Zoho Stone will replace it with a comparable product or repair the manufacturing defect. Removal and reinstallation of the defective material is the responsibility of the purchaser. Zoho Stone will not be responsible to cover those costs. Except as expressly set forth and limited herein, Zoho Stone excludes and negates any and all warranties, express or implied, including, but not limited to, any warranties of merchantability or fitness for a particular purpose. Zoho Stone's liability responsibility pursuant to this manufacturer's limited warranty shall be limited to the repair or replacement with FOB point of original shipment the repaired or replaced product to purchaser. **The repair or replacement of the defective product(s) shall be the sole and exclusive remedy and recourse of purchaser. Since all products are custom made, no refunds will be offered once, engineering mock ups and/or production cycle has begun.**

Purchaser hereby releases Zoho Stone and its agents, partners, employees and representatives from any liability relating to or arising from the product and its installation, use and maintenance, including but not limited to, any liability for consequential, punitive or incidental damages. This warranty may be void if in the sole opinion of Zoho Stone, the product has been found to have been altered, misused, improperly maintained, or installed in an inappropriate environment or manner. Purchaser may have other rights and remedies available pursuant to the laws of purchaser's jurisdiction. The limitations and exclusions of the manufacturer's warranty set forth herein are made and given to the fullest extent allowed by applicable law and, if applicable law prohibits limitations or exclusions of rights or remedies, the remainder of such exclusions and limitations shall be enforced to the fullest extent allowed by such applicable law. Purchaser acknowledges receipt of the following disclosures and agrees to accept the product subject thereto:

It is impossible to duplicate the exact characteristics of the product by pictures, brochures, print or electronic media. Colors, textures and other characteristics of the product may vary from what is shown in any print or electronic media. Such slight variation does not constitute a manufacturer's defect and purchaser agrees to accept the product with such slight variations.

Zoho Stone shall not be responsible or liable to any party for the failure of the product to comply with local, state or national codes, regulations, laws, statutes and ordinances, including, but not limited to, applicable building and fire codes. It is the responsibility of the purchaser to purchase the correct size and dimensions of the product and to comply with such building and fire codes and other applicable laws, regulations and ordinances. Purchaser is advised to review applicable building and fire codes and other applicable laws regarding the size, dimensions, composition and other characteristics of the product prior to purchasing the product. Purchaser hereby releases and discharges Zoho Stone and its partners, agents, employees and representatives from any liability associated with the failure of the product to comply with such building and fire codes and applicable law. Zoho Stone shall not be responsible for any incidental, indirect or consequential loss or damages such as loss of profits or revenue, downtime costs, or costs associated with the removal or re-installation of its products, or claims of third parties against the purchaser. This warranty is conditional on Zoho Stone receiving full payment for all products and services.



## FULL GENERAL TERMS AND CONDITIONS OF SALE

Unless otherwise agreed in a separate written agreement signed by Purchaser and Zoho Stone Architectural Products LLC ("Zoho Stone"), Zoho Stone offers to sell products ("Products") and/or provide services ("Services") solely on these terms and conditions ("Terms") and any acceptance is expressly limited to these Terms. The specific terms of the quote take precedence over these Terms, but any conditions not expressly covered in the quote shall be governed by the following Terms:

**1. Credit Terms:** Unless otherwise noted, Purchaser's order is solely a material supply contract. The purchaser's obligation to make payment under this contract is absolute and is not conditional on the purchaser's receipt of payment from a third party. The purchaser will not apply any holdbacks and retainage fees. All invoices are due within 15 days of invoice date. Any outstanding balance after this time frame will be charged interest at the rate of 18% per year (0.0493 per day) and will be due immediately. Any payment received will be applied to the oldest invoice first if no invoice number is provided. Should the undersigned fail to complete payment after a period of three (3) months, he/she agrees to pay all costs of collection including reasonable attorney's fees whether suit be brought or not. Unless otherwise agreed upon in writing, all cost of materials must be paid in full before any shipment is scheduled.

**2. Priced Materials:** Prices quoted DO NOT include materials necessary for installation of the goods (eg. fasteners, hardware not built into goods at Zoho Stone's factory, calking, adhesives, joint fill compounds, sealers, etc). Unless expressly included in the quote, any mock ups, prototypes, custom samples, and similar items required by the purchaser are extra to the quoted price and will be provided only if expressly ordered by purchaser at an extra charge to Purchaser. All quotes exclude insurance. Should the Purchaser require insurance, it may be purchased by the Purchaser or by Zoho Stone as an extra to the quoted price.

**3. Manufacturing, and Design Rights:** The Purchaser warrants for Zoho Stone's benefit that they own or have rights for Purchaser's Design (defined as the copyright and moral rights for all concepts, look, feel, shape, contour and similar features of surfaces in the product design), and Zoho Stone will receive a royalty-free license to include Purchaser's Design in the goods ordered by the Purchaser. Zoho Stone has sole and exclusive ownership (and Purchaser has no rights nor interest in) all physical embodiments (e.g. molds, patterns, plugs, and similar items) created or used under all orders, even if they contain the Purchaser's Design; and Zoho Stone will own all copyrights, moral rights, industrial designs, and all other intellectual property included in, used, or developed with these embodiments (except for the Purchaser's design); whether or not the Purchaser has paid Zoho Stone a fee or service charge for the design, manufacturing, or use of these embodiments. If Purchaser or a third party makes a claim of copyright infringement or other claim against Zoho Stone which is directly or indirectly related to Purchaser's Design, the Purchaser will apply its best efforts to assist Zoho Stone's defense, will promptly indemnify Zoho Stone for the cost of Zoho Stone's defense, but Zoho Stone will control and make all decisions for Zoho Stone's defense.

Zoho Stone's also works in co-operation and supplies other architectural products such as GFRC, FRP, GFRG and Forton MG as well as fireplace accessories from other manufacturers throughout the United States. As such Zoho Stone does not take any responsibility or is liable for any product failure or for defective fabrication and design supplied to it by other manufacturers. This disclaimer of liability applies to any damages or injury caused by any failure of performance or design by any of the material that is supplied to you by Zoho Stone. You agree that all claims against product failure, design, marketing and/or poor workmanship will be directed at the responsible manufacturer. Further you hereby indemnify, defend and hold Zoho Stone completely harmless from and against any and all liability and costs (including reasonable attorney's fees) incurred by Zoho Stone in connection with any claim arising out of any breach by you of this Agreement or claims arising from the use of our supplied material, from now until the end of time.

**4. Offset Agreement:** We agree and/or authorize any funds due to our company as vendor, supplier, labor or contractor to be paid to Zoho Stone, in case of bankruptcy, default or non-payment.

**5. Ownership Rights:** Title to goods sold shall transfer to the Purchaser only upon a) receipt of FULL payment by Zoho Stone and then b) upon receipt of goods by a freight carrier, or the Purchaser, or the Purchaser's agent. However, Zoho Stone shall retain title and a lien on all goods manufactured until full payment is received by Zoho Stone.



**6. Delivery:** Purchaser must provide detailed easy to understand directions for all deliveries. Zoho Stone's responsibility for delivery ceases at the curbside or street frontage of the address for delivery. Should the purchaser require Zoho Stone (or its shipper) to enter upon private property to make delivery, the purchaser shall be responsible to provide safe and adequate access and such delivery shall be at the risk of the purchaser and in consideration of Zoho Stone providing on-site delivery, the purchaser agrees to indemnify Zoho Stone for all liability in respect of any damage to public on private property and even injury or wrong whatsoever which may result there from.

**7. Delivery Site Conditions:** Zoho Stone reserves the right to determine whether the site for delivery requested by the purchaser is suitable for such delivery and Zoho Stone may refuse to deliver to a site if Zoho Stone deems it unsafe or unsuitable. The purchaser shall be responsible for all costs and damages incurred where adequate access for delivery cannot be obtained.

**8. Unattended Delivery Site:** Where delivery of products is to be to an unattended site, Zoho Stone will not be liable for any loss or damage to products or property. Absence of purchaser's agent at time and site of delivery relieves Zoho Stone of any liability for theft, vandalism or other loss to delivered goods.

**9. Delay:** Zoho Stone shall not be liable for any delay in delivery or non-delivery resulting from any cause beyond its control including, but not limited to: plant and equipment breakdowns, industrial stoppages, raw material shortages or Acts of God. If Zoho Stone is unable to complete delivery of any part of an order, the purchaser shall accept such part of the order as Zoho Stone is able to deliver and the purchaser shall pay for the parts ready to be delivered pro-rata at the same rates as the whole of the order agreed to be sold and on the same terms of payment.

**10. Quantities:** The type, specifications and quantity of products delivered and detailed on the invoice must be checked by the buyer at the time of delivery for compliance with the purchaser's order. Variations between actual quantities delivered and those shown on the invoice must be noted on all copies of the invoice and signed by the purchaser. Upon receipt of a shipment, the purchaser shall inspect for any damages, defects or shortages; and within five (5) working days notify Zoho Stone in writing of any request of claim; and failure to do so shall constitute waiver of Purchaser's right to make any claims. Any claim for damage occurring in transit must be noted on the Bill of Lading at time of receipt, and purchaser must immediately notify Zoho Stone in writing; and failure to promptly do both these steps will constitute Purchaser's waiver of any claim.

**11. Work Stoppage Request:** If Purchaser requests Zoho Stone to stop work, or delay the shipment of the goods, Zoho Stone will store the finished goods and/or work-in-process at Purchaser's risk and expense, and will immediately invoice the Purchaser for the full amount of the contract and the Purchaser will promptly pay Zoho Stone's invoice in full. If required, insurance certificates and other verification of goods can be provided by Zoho Stone at Purchaser's cost. Should the Purchaser cancel all or part of an accepted order, the cancellation shall be effective only upon terms satisfactory to Zoho Stone, and which reasonably compensate Zoho Stone for all damages directly and indirectly suffered by reason of such cancellation. That will include Zoho Stone to retain all monies that it has been paid up to the point of cancellation by Purchaser. The purchaser further agrees to release all its right to receive any refund for all amounts paid to Zoho Stone up to that point in time. Zoho Stone reserves the right to limit the duration, quantity, or value of all items stored, or can terminate any storage. Zoho Stone can invoice for the anticipated storage costs in advance, and the Purchaser will promptly pay these storage costs.

**12. Indemnification:** If the Purchaser believes the goods do not meet contract specifications, the scrapping, repair or modification of the goods is allowed only after scrap/repair/modification costs have been approved by Zoho Stone in writing *and prior to installation of products. Use and installation of material as it was delivered constitutes material acceptance.* Zoho Stone is not liable for claims arising from the use of damaged, defective and/or modified material; and the Purchaser will indemnify and hold Zoho Stone harmless from all such claims by third parties.



**13. Technical Assistance:** Zoho Stone accepts no responsibility for claims arising from technical advice or assistance provided to the purchaser. Advice and assistance provided by Zoho Stone is for purchaser's guidance only and purchaser agrees to rely solely on its own technical expertise on any installation, painting, etc. unless purchaser has sought formal installation service from Zoho Stone. Installation of goods, and/or application of any work to the goods (including, but not limited to sanding, painting, drilling, cutting, gluing, etc) constitutes Purchaser's full and final acceptance of the goods and ratification of Zoho Stone having met all of its contractual obligations.

**14. Modification of Terms:** Any changes to this signed agreement must be in writing and signed by both purchaser and a lawful agent of Zoho Stone.

**15. Severability:** If any terms, provisions, covenants or conditions of this agreement are held by a court of competent jurisdiction to be invalid, void, unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**16. Applicability:** This agreement is made between Purchaser and Zoho Stone. All terms and conditions herein apply to all purchases from this date forward made by Purchaser from Zoho Stone.

**17. Assignability:** The contract cannot be assigned to third parties without the written agreement of Zoho Stone and the Purchaser. All alleged verbal contracts, warranties, assurances, and reliances (whether before, contemporaneous or subsequent to any order) are null and void, or superseded by these terms.

**18. Price Escalation:** The Contract Price is based upon construction material prices as of the execution of this Agreement. Any significant price increases in our raw material or labor that occurs during the period of time between contract execution and substantial completion of the Project, shall cause the contract price to be equitably adjusted by an amount reasonably necessary to cover any increase. As used herein, a significant price increase shall mean any increase in price equal to or exceeding 8 percent (8%) experienced by the contractor from the date of signing.

**19. Dispute resolution through binding arbitration:**

**Please read this carefully. It affects your rights.**

**Summary:**

Most customer concerns can be resolved quickly and to the customer's satisfaction by calling our offices. **In the unlikely event that Zoho Stone is unable to resolve a complaint, you may have to your satisfaction (or if Zoho Stone has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.** Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted.** Moreover, in arbitration you are entitled to recover attorneys' fees from Zoho Stone to at least the same extent as you would be in court.



## ARBITRATION AGREEMENT

(1) Zoho Stone and you agree to arbitrate **all disputes and claims** between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising); claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and claims that may arise after the termination of this Agreement.

References to “Zoho Stone,” “you,” and “us” include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or Devices under this or prior Agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on your behalf. **You agree that, by entering into this Agreement, you and Zoho Stone are each waiving the right to a trial by jury or to participate in a class action.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

(2) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute (“Notice”). The Notice to Zoho Stone should be addressed to: Jamie Austrich ESQ, ZOHO STONE ARCHITECTURAL PRODUCTS LLC, SHUMAKER, LOOP & KENDRICK, LLP 101 East Kennedy Boulevard, Suite 2800, Tampa, FL 33602 (“Notice Address”). The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“Demand”). If Zoho Stone and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or Zoho Stone may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Zoho Stone or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Zoho Stone is entitled. You may download or copy a form Notice and a form to initiate arbitration at [att.com/arbitration-forms](http://att.com/arbitration-forms).

(3) After Zoho Stone receives notice at the Notice Address that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than \$50,000. (The filing fee currently is \$125 for claims under \$10,000 but is subject to change by the arbitration provider. The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. (You may obtain information that is designed for non-lawyers about the arbitration process at <http://att.com/arbitration-information>). The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless Zoho Stone and you agree otherwise, any arbitration hearings will take place in the county of Hillsborough, FL. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules.

Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, Zoho Stone will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or



brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse Zoho Stone for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

**(4) Attorneys' Fees:** The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing this Agreement. You may not recover duplicative awards of attorneys' fees or costs. Under some laws Zoho Stone has a right to an award of attorneys' fees and expenses if it prevails in an arbitration and Zoho Stone agrees that it will seek such an award.

**(5)** The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND ZOHO STONE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and Zoho Stone agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

**(6)** Notwithstanding any provision in this Agreement to the contrary, we agree that if Zoho Stone makes any future change to this arbitration provision (other than a change to the Notice Address) during your Service Commitment, you may reject any such change by sending us written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any such future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.

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