



Additional Terms and Conditions of Sale

1. All sales are subject to these terms and conditions ("Contract") and, if buying on credit, to Buyer's credit application and agreement with Seller, invoices, statements, and quotes, all of which are incorporated herein by reference. All other terms are excluded. Any changes must be in writing and signed by each party. Acceptance or delivery of the products or material hereunder shall constitute acceptance of these terms and conditions. Products or materials will be deemed accepted by Buyer unless Seller is notified in writing of non-acceptance within five (5) business days after receipt by Buyer. Claims for loss or damage are limited as set forth in Section 5 below. For all disputes relating to this Contract, this Contract will be governed by the laws of the state of Nebraska.
2. Payment is due in full on the date stated on the invoice. Interest at the rate of 18% per annum will be imposed on outstanding and delinquent invoices from the payment due date until paid. Buyer will pay to Seller all applicable federal, state, and local sales and use taxes. In cases of sales tax exemption, Buyer must provide Seller with all properly completed forms for each project. Failure to provide these forms prior to material delivery will result in sales tax being assessed.
3. Concrete prices and quantities are based upon the wet volume at the time of discharge from the truck. Yield will be established in strict accordance with applicable ASTM standards. Buyer will pay all charges incident to inspections made by or on behalf of Buyer.
4. DUE TO THE INSTABILITY IN THE OIL MARKET AND THE POTENTIAL FOR ESCALATING FUEL PRICES, SELLER RESERVES THE RIGHT TO IMPOSE A FUEL SURCHARGE ON ALL ORDERS, WHICH MAY RISE, FALL, OR BE REMOVED IN LINE WITH MOVEMENTS IN FUEL PRICES. Seller shall also be entitled to equitable adjustments of its schedule and contract price for: (a) delays, acceleration, out-of-sequence work, schedule changes, and cost changes beyond its reasonable control, including, but not limited to those caused by labor unrest, fires, acts of God, government restrictions (including denial or cancellation of any export or other necessary license), wars, insurrections, or suspensions or delays caused by the customer or others; (b) extra materials it provides in accordance with the subcontract documents; and (c) extra materials it provides pursuant to written or verbal instructions of Buyer.
5. Seller will not be liable under any circumstances for any special, incidental, punitive, or consequential damages related to delay, whether based on statute, tort, contract, or otherwise, and whether or not arising from Seller's negligence, strict liability, or fault. In no event will Seller be responsible for damages due to the actions of others or the failure of Buyer to comply with its obligations. Seller's liability for any claims will be limited to the purchase price of the goods sold under this Contract.
6. Buyer is solely responsible for determining the type and quantity of goods to be purchased. Concrete will be batched and delivered in accordance with ASTM C-94. Seller warrants that its products will meet or exceed applicable American Society for Testing Materials ("ASTM") and American Concrete Institute ("ACI") standards, when tested in accordance with ASTM and evaluated by ACI standards. Seller will repair or replace any goods supplied by Seller that fail to meet this limited warranty, within one year after delivery thereof, subject to the limitation of liability in Section 5 above. All other warranties, express or implied, including without limitation, the warranties of merchantability and fitness for a particular purpose, are hereby expressly excluded. The remedy set forth in this Section 5 will constitute the sole remedy of Buyer under this limited warranty.

7. Seller is not responsible for slump, strength, or quality of any concrete to which water or other material has been added by or on behalf of the Buyer. Buyer is responsible to see that the concrete is handled in accordance with best construction practices. Seller has no control over the placing or handling of concrete after unloading and does not guarantee the finished work in which it is used. Buyer is responsible to prevent unloaded concrete from coming into contact with any material, such as aluminum, which may adversely impact concrete strength.
8. Buyer will furnish any admixtures or ingredients it desires that are not regularly supplied by the Seller in the marketplace. Buyer will be solely responsible for the effect of such admixture or ingredients on the concrete. Any extra product which may be required in excess of the mix design quoted, or which may be required to provide workability, strength, setting time or water/cement ratio, will result in an additional ingredient charge payable by Buyer.
9. Normal weekday delivery hours are 6 a.m. to 6 p.m. For weekday pours outside of these hours, a plant opening charge of \$350.00 for the first hour shall be assessed. Every hour after that will be charged at \$150.00 per hour. If a night pour does not coincide with the end or beginning of a normal workday, a minimum charge of \$500.00 shall be charged. Normal weekend hours are 6 a.m. to 3 p.m. Saturday. For weekend pours from 3 p.m. Saturday to 6 a.m. Monday, a plant opening charge of \$400.00 will be assessed for the first hour. Every hour after that will be charged at \$200.00 per hour. Minimum charge for a weekend opening is \$600.00. Additional charges may also apply for any waiting/unloading times in excess of 20 minutes. Prices are based on full loads; additional charges will apply to short loads. These additional charges are standard, but exceptions can be made in certain circumstances if agreed upon in writing by Buyer and Seller.
10. Buyer should give Seller at least 48 hours prior notice of the time and rate of requested deliveries. Delivery schedules will be mutually agreed upon between Seller and Buyer. Seller reserves the right to reject any order. Agreed-upon deliveries will be made to the best of Seller's ability to dispatch, however, Buyer waives any claims associated with any delays in delivery.
11. Buyer must provide suitable approaches to delivery points beyond paved streets. For delivery beyond curb lines, Buyer assumes all liability for damage to vehicles, sidewalks, driveways, pipes, septic tanks, and/or other property, and Buyer will indemnify and hold Seller harmless from and against any and all liability, loss and expense incurred as a result of such delivery, including but not limited to towing charges, except to the extent caused by Seller's gross negligence or willful misconduct. Buyer waives any right of subrogation against Seller.
12. Buyer must provide an appropriate location and facility (in compliance with applicable law) for truck wash out after discharging concrete. Buyer is responsible for full payment of, including all costs of disposal and Seller's return charge per truck for, (i) orders not canceled at least one hour prior to delivery time; (ii) concrete delivered due to Buyer's mistake or in excess of requirements; (iii) concrete not deliverable due to unsuitable approaches.
13. Concrete temperature will be dictated by the environmental and material conditions at the time of delivery. Any requirement beyond these conditions will require the implementation of controlled measures during production at the expense of Buyer. Buyer is responsible for the requirements of ACI 305R and 306R, except as pertain to production.
14. Buyer must give Seller written notice within 48 hours after delivery of any claim against Seller as a result of any alleged nonconforming materials or any other cause whatsoever (other than failure to meet

compressive strength, in which event the time for notice will be within 48 hours after the specified test age of the test cylinder in accordance with ASTM standards), time being of the essence. Seller will be given reasonable opportunity to investigate all claims. Any failure by Buyer to give written notice within such 48 hour period will be deemed a conclusive waiver by Buyer of all such claims against Seller.

15. Failure of Seller to exercise any of its rights hereunder will not be deemed a waiver of any such right; a waiver of any right or obligation hereunder will not constitute a continuing waiver. The unenforceability of any provision of this Contract will not affect the enforceability of any other provision of this Contract, and each other provision of this Contract will be severable and enforceable to the extent permitted by law.