

TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS & APPLICABILITY:** In addition to terms defined elsewhere, in these Terms of Sale (these "**Terms**"), the following terms shall have the following meaning, unless the context otherwise requires: (a) "**Buyer**" means the person(s), firm, organization, partnership or corporation to whom the Quote is issued; "**Product**" means cement products; "**Seller**" means the firm, entity, organization, partnership, or corporation selling the Product under Seller's Quote; "**Quote**" means the quote, as may have been issued by Seller comprised of two parts as provided below, and all referenced and Seller's attached documents thereof, which, by this reference, are incorporated herein. The two parts of this Quote are (a) the commercial section (the "**Commercial Section**"), containing the description of the Product, quantity, price, delivery date and location and other business terms, and (b) these Terms and Conditions of Sale. The Quote comprises the entire agreement between the parties and replaces and supersedes any prior or contemporaneous written or oral understandings, agreements, negotiations, representations and warranties, and communications between the Parties regarding its subject matter. This Quote contains the only terms which govern the sale of the Product by Seller to Buyer. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Product covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with this Quote. **No Conflicting Terms:** The Parties agree that the terms of this Quote shall prevail over any conflicting or terms and conditions in any purchase order or any other instrument or document provided by Buyer to Seller ("**Purchase Order**"). Any additional or different terms or conditions in any Purchase Order or other instrument or submission from Buyer or trade custom at variance shall be deemed objected to by Seller without the need of any further or additional notice of objection, and such additional or different term(s) shall be of no effect or in any way binding upon Seller. **Acceptance of Purchase Order by Seller:** Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. Any of the following acts by Buyer shall constitute acceptance of the Terms and Conditions contained herein: signing and returning a copy of the Quote or Quotation, ordering, or accepting delivery of Product after Buyer's receipt of the Terms and Conditions. All of the terms and conditions of purchase and sale are embodied in this writing. The execution, delivery, and performance of this Quote are within Buyer's powers and do not violate any of the terms and conditions in its governing documents or any agreements to which it is a party or any law applicable to it.

2. **DELIVERY & RISK OF LOSS.** Delivery dates are estimates, and time is not of the essence. The failure to meet any indicated delivery date shall not constitute a breach of this Quote. In no event shall Seller be responsible to Buyer for any damages, whether direct or indirect, arising out of or relating to any failure of the Product to be delivered by any specified delivery date. **ACCEPTANCE OF THE PRODUCT BY BUYER UPON DELIVERY SHALL CONSTITUTE A WAIVER BY BUYER OF ANY CLAIM FOR DAMAGES ON ACCOUNT OF DELAY IN DELIVERY OR PERFORMANCE.** Title to and risk of loss of the Product shall pass to Buyer upon delivery at Seller's designated facility to Buyer or carrier.

3. **WEIGHT, SHIPMENT AND TRANSPORTATION.** Unless Buyer provides transportation or indicates shipping instructions at the time of placing its order, Seller shall, without liability, select the route and carrier by which shipment will be forwarded. Except as otherwise agreed herein, quotations and sales are F.O.B. point of shipment, and, weight as determined by Seller's scales and methods of measurement shall govern. Shipments via rail shall be invoiced and collected on the basis of scale weights at point of origin or on railroad track scales' nearest point of origin, while in route. Freight expense, standby or detention charges, fleetling, local switching, demurrage, car service or destination, terminal or cleaning charges shall be borne by Buyer. If shipment is made by truck, Buyer agrees to supply, at its own expense, sufficient and suitable labor and equipment for immediate unloading of each truck or truck trailer. One (1) hour of free time will be allowed for unloading each delivery. Unloading time will begin at such time as the truck or truck trailer is offered for unloading. Delay in unloading when due to no fault of carrier will be charged for each truck detained at a rate of \$15.00 for each quarter hour (\$60.00 per hour), or fraction thereof. When carrier is requested to perform transportation service on Weekend or Holiday, such service will be charged at 150% of the applicable charges. "**Weekend**" means the hours between Friday 3:00 PM EST to midnight on Sunday. "**Holiday**" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

4. **PRICE.** Buyer shall purchase the Product from Seller at the price set forth in the applicable Quote issued by Seller (the "**Price**") and shall be subject to and contingent upon Buyer purchasing the entire quantity set forth therein. If Buyer purchases less than the entire quantity of the Product set forth in this Quote, then the Price may vary. Where no price has been quoted (or a quoted price is no longer in effect), the Price of any Product sold to Buyer shall equal the Product price then in effect. Seller reserves the right to correct any obvious clerical or computational errors in this Quote to be effective upon written notification to Buyer; provided that all other terms contained therein shall remain in effect.

5. **PRICE ESCALATION.** Any increase in Seller's cost of supplying the Product caused by any level of governmental law, regulation, tax, freight, tariffs, allocation, shortages or other burden imposed after the date of this Quote on the ownership, storage, processing, production, transportation, distribution, use or sale of the Product covered by this quote will be added to the price under this quote.

6. **TERMS OF PAYMENT.** Upon approval of Buyer's credit (which will be issued by Seller in its sole discretion), Buyer shall pay to Seller the entire invoiced amount within thirty (30) days of the latter of: (i) the invoice date or (ii) the delivery of the Product,

unless otherwise indicated in the Commercial Section. A FINANCE CHARGE of 1½% per month, or at the maximum rate allowed by law, whichever is less, will be added to any overdue amounts, calculated daily and compounded monthly. In addition to the interest, upon any breach or default, Seller shall be entitled to all rights under the Uniform Commercial Code, all rights at law and in equity, court costs, collection agency and attorneys' fees and expenses. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach of quote, bankruptcy or otherwise. Each shipment shall be considered a separate and independent transaction and payment therefor shall be made accordingly. Prompt payment discounts may be offered for certain sales. In these instances, the discount listed on the invoice may be deducted from the total amount of the invoice, provided the invoice is paid in full within ten (10) days of the invoice date or date of shipment and provided no previous items remain unpaid.

Buyer's obligation to pay for Product received is in no way dependent or conditioned upon Buyer's ability to obtain financing, approval of governmental or regulatory agencies, Buyer's payment from its upstream contractor/owner, or Seller's ability to fill future orders. If at any time financial responsibility of the Buyer becomes impaired or unsatisfactory to Seller, cash payment or security satisfactory to Seller may be required in advance of shipment. In the event of Buyer's failure to pay any amount due, or in the event of Buyer's breach of this Quote, Seller shall have the right, in addition to all other rights hereunder and at law, to demand immediate payment of the entire amount owed under this Quote or any other agreement between the parties and terminate any unfulfilled orders without liability.

7. **PURCHASE MONEY SECURITY INTEREST ("PMSI").** To secure Buyer's full and prompt payment of the Price, Buyer hereby grants, and Seller hereby retains, a first priority PMSI in and to all the Product set forth in this Quote and all products or proceeds therefrom (collectively, the "**Collateral**"). Buyer authorizes Seller to file a UCC financing statement and any other documents deemed necessary to perfect this security interest at any time, and Buyer shall take all reasonable steps to cooperate with Seller in perfecting this security interest. Buyer shall keep all the Collateral subject to this security interest fully insured against damage due to fire, theft, accident and the elements under a policy in form satisfactory to Seller, which names Seller as loss payee. Buyer shall pay, before delinquency, all taxes and other charges assessed against the Collateral referenced herein and keep said Collateral free from all liens and security interest other than that created hereby.

8. **LIMITED WARRANTY.** The Product shall conform to applicable specifications of the American Society for Testing and Product, and such other specifications as may be set forth in the Quote. Seller, having no control over the use of the Product, does not guarantee finished work, nor shall Seller be responsible for the condition of the Product after delivery to Buyer. Charges incident to inspection or testing made by or on behalf of Buyer to determine compliance with specifications shall be paid for by Buyer. **THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER ORAL OR WRITTEN WARRANTIES, GUARANTEES, AFFIRMATION OR REPRESENTATIONS OF WHATEVER NATURE RELATING TO THE PRODUCT, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED**

Any technical information, assistance, or oral statements made by Seller or its affiliates about the Product are given at Buyer's risk, do not constitute warranties or specifications, shall not be relied upon by Buyer, and are not part of the contract for sale.

9. **CLAIMS.** Buyer shall have the right to inspect the Product upon receipt. Buyer shall notify Seller in writing with respect to any shortages, damaged alleged to have occurred or existed at or prior to delivery to the carrier, or non-conformance to the limited warranty no later than ten (10) days from the date the Product is delivered to Buyer. All claims must be made for substantial cause, must be in writing, and must specify the reason(s) for the claim. A deviation in quantity shall only give rise to a claim if the weight determined by Buyer differs by more than ten percent (10%) from the quantity specified in the bill of lading. Product will be deemed accepted by Buyer unless Seller is notified in writing of non-acceptance within ten (10) days after receipt by Buyer. Any claim with respect to the Product sold hereunder, including claims based on shortages of goods, will be waived if not brought in writing within ten (10) days of receipt of that shipment or delivery. Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgment on freight bill (for rail shipments), or driver's notation on truck delivery receipt (for truck shipments). Buyer's rights with respect to Product rightfully rejected will be limited to the rights set forth in Paragraph 8 below. **THE FAILURE TO NOTIFY SELLER OF ANY SUCH CLAIM WITHIN THE TIME SPECIFIED IN THIS SECTION SHALL CONSTITUTE A WAIVER OF BUYER'S RIGHT TO ASSERT A CLAIM FOR SHORTAGES, DAMAGE ALLEGED TO HAVE OCCURRED OR EXISTED AT OR PRIOR TO DELIVERY, OR NON-CONFORMANCE AND SHALL BE EQUIVALENT TO AN IRREVOCABLE ACCEPTANCE OF THE PRODUCT BY BUYER. SELLER SHALL INCUR NO LIABILITY FOR SHORTAGE, DAMAGE ALLEGED TO HAVE OCCURRED OR EXISTED AT OR PRIOR TO DELIVERY TO THE CARRIER, OR NON-CONFORMANCE UNLESS BUYER SHALL HAVE ENTERED FULL DETAILS THEREOF IN CARRIER'S DELIVERY RECEIPT WHICH MUST BE SIGNED BY THE CARRIER'S AGENT. SELLER MUST BE GIVEN AN OPPORTUNITY TO INVESTIGATE THE CLAIMS BEFORE BUYER DISPOSES OF THE PRODUCT. ANY PRODUCT SHALL NOT BE RETURNED, REPAIRED OR DISCARDED WITHOUT PRIOR WRITTEN ACCEPTANCE BY AN AUTHORIZED REPRESENTATIVE OF SELLER. THE FAILURE TO NOTIFY SELLER OF ANY SUCH CLAIM WITHIN THE TIME SPECIFIED IN THIS SECTION SHALL CONSTITUTE A WAIVER OF BUYER'S RIGHT TO INSPECT AND/OR REJECT THE PRODUCT FOR NON-CONFORMITY AND SHALL CONSTITUTE AN IRREVOCABLE ACCEPTANCE OF THE PRODUCT BY BUYER. SELLER SHALL HAVE THE RIGHT TO TEST, INSPECT, OR TAKE SAMPLES OF THE PRODUCT CLAIMED BY BUYER TO BE NON-CONFORMING AND IF, UPON SUCH TEST OR INSPECTION, THE PRODUCT IS FOUND TO BE CONFORMING, ALL**

COST EXPENDED BY SELLER IN CONNECTION WITH SUCH INSPECTION, TESTING, AND SAMPLING SHALL BE CHARGED TO AND BORNE BY BUYER.

10. **EXCLUSIVE REMEDY.** THE SOLE AND EXCLUSIVE REMEDY OF BUYER OR ANY OTHER PARTY AGAINST SELLER FOR ALL CLAIMS OF ANY KIND FOR WHICH PROPER NOTICE IS GIVEN TO SELLER, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE, FRAUD, AND STRICT LIABILITY), BREACH OF WARRANTY OR ANY OTHER THEORY AT LAW OR IN EQUITY, FOR ANY LOSS OR DAMAGES ARISING OUT OF, CONNECTED WITH OR RESULTING FROM, THE SALE OR FAILURE TO SELL, SHALL BE REPLACEMENT OF THE PRODUCT, F.O.B. SELLER'S PLANT OR TERMINAL OR UTILITY OR, AT SELLER'S OPTION, REFUND OF THE PURCHASE PRICE PAID FOR THE PRODUCT.

11. **NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES.** EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS QUOTE, NEITHER SELLER NOR ITS REPRESENTATIVES SHALL BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, INJURY TO PERSONS OR PROPERTY, PUNITIVE DAMAGES OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL LOSS ARISING OUT OF OR RELATING TO ANY BREACH OF THIS QUOTE, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12. **TECHNICAL INFORMATION; HAZARDS AND PRECAUTIONARY PROCEDURES; INDEMNITY.** Buyer agrees that it will familiarize itself with all hazards and precautionary procedures with respect to the handling, transportation or use of the Product and will manage the Product accordingly. Buyer will provide or make available any product safety information provided by Seller or its affiliates to Buyer's employees, to all others who handle the Product, and to its customers. BUYER AGREES TO INDEMNIFY SELLER FOR ANY CLAIMS MADE AGAINST SELLER OR ITS AFFILIATES, AND FOR ASSOCIATED DAMAGES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), TO THE EXTENT CAUSED BY BUYER'S FAILURE TO FAMILIARIZE ITSELF WITH SUCH HAZARDS AND PRECAUTIONARY PROCEDURES, TO MANAGE ACCORDINGLY, OR TO PROVIDE SUCH INFORMATION AS SET FORTH ABOVE.

13. **DUTIES AND TAXES.** Each party shall be responsible for payment of its own duties and tax obligations of any governmental authority payable in respect to the purchase and sale and/or the delivery of the Product to the point of delivery.

14. **FORCE MAJEURE AND ALLOCATION.** Seller shall not be liable or responsible for any expense, loss or damage resulting from or arising from any delay or failure in manufacturing, shipping or delivering Product, which is caused by or resulting from government actions, regulations, orders or rulings; national emergency, epidemic, health crisis; acts of God, war, or public enemy; fire, flood, earthquake, explosion; strikes; lockouts; breakdowns; accidents; differences with workmen; inability to secure rail cars, trucks, barges, electric power, coal, or other materials; inability or delay in obtaining supplies of adequate or suitable materials, delays in transportation; acts or omissions of Buyer; or any other events or other conditions beyond Seller's control, whether similar or dissimilar to the above-mentioned acts or occurrences. During times of shortage, Seller shall have the right to prorate among its customers in accordance with the provisions of Section 2-615 of the Uniform Commercial Code. Seller shall have the right, but shall not be obligated, to ship from any plant other than the one normally supplying the delivery point specified herein.

15. **CONFIDENTIALITY.** Unless otherwise agreed to in writing by the parties, and unless otherwise required by law or court order or to collect debts owed, all information pertaining to a party's business or the parties' business relationship under this Quote, including, but not limited to, information concerning finances, products, services, customers and suppliers, whether tangible or intangible, provided: (i) by or on behalf of Supplier to Buyer; and/or (ii) by or on behalf of Buyer to Supplier, shall be treated as confidential ("Confidential Information") and, unless required by law, neither Supplier nor Buyer shall disclose any such Confidential Information of the other party to any third parties for the Term and for a period of five (5) years thereafter. The parties shall inform their employees who have access to such Confidential Information of the restrictions on the use of the same. Upon the termination or expiration of this Quote for any reason, or upon the disclosing party's earlier request, the receiving party shall deliver to the disclosing party all of the disclosing party's property or Confidential Information in tangible form that the receiving party may have in its possession or control. The receiving party may retain one copy of the Confidential Information in its legal files.

16. **TERMINATION.** Unless otherwise agreed to in writing, either party may terminate upon thirty (30) days' written notice in the event of a substantial failure by the other party to perform in accordance with these Terms through no fault of the terminating party. In the event of termination, Seller shall be paid for all Product rendered to the date of termination. For the purposes of this section, failure of Buyer to make timely payment of this Quote or any other quote shall be considered a substantial failure, unless alternative payment terms have been mutually agreed beforehand, and Buyer agrees to waive any claim against Seller and to indemnify, defend and hold Seller harmless from and against any claims arising from Seller's suspension or termination due to Buyer's failure to provide timely payment. In the event of a substantial failure on the part of Buyer, Seller, in addition to the right to terminate set forth in this Paragraph, may also elect to suspend sales under this Quote and any other quote until the default in question has been cured.

17. **ASSIGNMENT.** Buyer shall not assign, transfer, delegate or subcontract any of its rights or obligations hereunder without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Buyer of any of its obligations hereunder. Seller may, at any time, assign or transfer any or all its rights or obligations hereunder to any affiliate or to any person acquiring all or substantially all Seller's assets without Buyer's prior written consent.

18. **RELATIONSHIP OF THE PARTIES.** The relationship between the Parties is that of independent contractors. Nothing contained in this Quote shall be construed as

creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

19. **WAIVER.** No waiver of any term or right in this Quote shall be effective unless in writing, signed by an authorized representative of the waiving Party. The failure of either Party to enforce any provision of this Quote shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision or any other provision of this Quote thereafter.

20. **SEVERABILITY.** If any term or provision of this Quote is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Quote or invalidate or render unenforceable such term or provision in any other jurisdiction.

21. **AMENDMENT AND MODIFICATION.** This Quote and these Terms may only be amended or modified in written document stating specifically that it amends this Quote and these Terms and is signed by an authorized representative of each Party.

22. **GOVERNING LAW.** All matters arising out of or related to this Quote are governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Texas. THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING FROM THE TERMS OF THIS QUOTE.

23. **NOTICES.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth in the Commercial Section or to such other address that may be designated by the receiving Party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, e-mail or other means of electronic transmission (with confirmation of such transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Quote, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

24. **SURVIVAL.** Each term and provision of this Quote that should by its sense and context survive any termination or expiration of this Quote, shall so survive regardless of the cause and even if resulting from the material breach of either Party to this Quote.

25. **DISPUTE RESOLUTION.** The parties agree to attempt to resolve between them in the normal course of business any claim, controversy, dispute or question arising out of or relating to this Quote or the performance, interpretation or breach thereof (a "Dispute"); however, if the parties fail or are unable to do so, except for any and all Disputes for non-payment or breach of confidentiality, the parties will resolve the Dispute solely by submitting the Dispute to binding arbitration administered by the American Arbitration Association ("AAA"), and judgment on the arbitration award rendered by the arbitrator may be entered in a court having competent jurisdiction. This agreement to arbitrate is intended to and shall be broadly interpreted and covers all controversies, disputes, and claims arising out of or relating to a Product purchase including, but not limited to contract claims, tort claims and statutory claims, or any combination of claims. The arbitration proceedings will be conducted and governed as follows: (i) the arbitration will be held in Harris County, Texas; (ii) the arbitration will be held in the English language; (iii) a single arbitrator will be selected in accordance with the rules of the AAA, to hear the arbitration; (iv) each party will bear its own expenses and an equal share of the expenses of the arbitration and the fees of the AAA; (v) in no case will the arbitrator have the authority to award punitive or exemplary damages except as may be specifically required by law; and (vi) the decision of the arbitrator will be given in writing, and will include specific findings of fact and law, and the reasons for the award. The parties, their representatives, other participants and the arbitrator will hold the existence, content and result of the arbitration in confidence. If such Dispute is not resolved by such arbitration, the parties will have the right to resort to any remedies permitted by law. All defenses based on the passage of time will be tolled pending the termination of the arbitration. Nothing in this clause will be construed to preclude any party from seeking injunctive relief in order to protect its rights pending arbitration. A request by a party to a court for such injunctive relief will not be deemed a waiver of the obligation to arbitrate. For any and all controversies, disputes or claims pertaining to non-payment or confidentiality, the Parties agree to venue in the state or federal courts in Harris County, Texas and agree to waive and do hereby waive any defenses and/or arguments based on improper venue and/or lack of personal jurisdiction. By entering into this Agreement, the Parties agree to personal jurisdiction in the state and federal courts in Harris County, Texas.

26. **SELLER'S OBLIGATIONS.** The obligations of Seller under this Quote are obligations of the Seller only, and no recourse shall be available against any employee, officer, director, shareholder, member, partner, or affiliate of Seller, unless specifically provided for in a separate agreement.