

## TERMS AND CONDITIONS

1. **Notice and Delivery.** Seller will make reasonable efforts to deliver ready mix concrete and grout to the locations at the times and quantities requested by Buyer, provided Buyer schedules with Seller the deliveries during normal working hours and not less than twenty-four hours in advance of the requested deliveries. Seller is authorized to make deliveries requested by Buyer's personnel and agents, including its purchasing managers, project managers, superintendents, foreman, subcontractors and concrete placers and finishers. Seller has no liability whatsoever resulting from delay regardless of the reasons. Buyer will be charged for each delivery request and will not be entitled to a credit unless the delivery is cancelled prior to the batching and loading operations occurring.
2. **Ready Mix Concrete/Grout.** Seller has available certain standardized concrete and grout mixtures. Information on these standardized concrete and grout mixtures is available at the offices of Seller or upon request. If Buyer desires a different concrete or grout mixture, it shall provide in writing the design and proportioning of the concrete or grout mixture to Seller, specifying materials readily available to Seller, and Seller will assign a unique mix code name for such concrete or grout mixture. Seller shall not be responsible for the performance of the concrete or grout mixtures specified by Buyer or others, including the 28-day strength. The ready mix concrete and grout mixtures will be batched, mixed and delivered to Buyer in accordance with ASTM C94. The ready mix concrete and grout are being provided by the cubic yard. Any verification of yield shall be in accordance with ASTM C 94 using fresh concrete unit weight method. Buyer acknowledges that the amount of concrete and grout ordered has been determined by the Buyer, and the Buyer assumes full responsibility therefor and shall hold Seller harmless regarding the adequacy of the amount of ready mix concrete and grout ordered. Buyer further acknowledges that Seller is not responsible and has no control over the placing and handling of the concrete and grout during and after unloading the delivery truck, and Buyer assumes full responsibility therefor and shall hold Seller harmless regarding the placement, curing, and finishing of the concrete and grout.
3. **Inspection.** Buyer shall inspect the ready mix concrete and/or grout at the time of delivery. Failure of Buyer to identify and notify Seller's home office of any and all suspected or known defects and/or nonconformities, in addition to noting such on the delivery ticket, shall be an unqualified acceptance of the concrete and/or grout.
4. **Pricing.** The prices quoted to Buyer are based upon current costs and conditions as of the date of Seller's quotation. Also, pricing is based upon delivery locations being within 25 miles of one of Seller's concrete plants and deliveries occurring during normal operating hours (7 a.m. to 6 p.m.), Monday through Friday, excluding federal and state holidays. Also, a unit price will be set by Seller for any nonstandard concrete and grout mixtures, upon receipt by Seller of the design and proportioning of the concrete or grout mixture provided by Buyer. All sales and use taxes shall be in addition to the prices quoted. The prices quoted do not include cost of inspection or tests.
5. **Warranty and Limitation of Liability.** Seller warrants that its standardized concrete and grout mixtures will meet the 28-day strengths, provided the concrete

mixtures are sampled and tested in accordance with ASTM C172 and ASTM C31 and the grout mixtures are sampled and tested in accordance with ASTM 01019, by a certified American Concrete Institute Grade 1 Concrete Field Testing Technician.

THIS WARRANTY IS GIVEN AND ACCEPTED IN LIEU OF ALL OTHER WARRANTIES ON THE PART OF SELLER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT OR TORT. Seller's liability to Buyer arising out of the manufacturing or delivery of the concrete and/or grout shall not exceed the cost of correcting defects in the concrete and/or grout, but shall, in all events, be limited to the purchase price of the concrete and/or grout. Seller does warrant and shall have no liability for any ready mix concrete or grout that has materials or water added to it by or at the direction or request of Buyer's personnel and agents.

6. **Additional Charges.** Seller may charge Buyer an hourly unloading fee of \$100 should any delivery truck not be unloaded within sixty (60) minutes or ten (10) minutes per cubic yard, after arriving at the place of delivery or jobsite, whichever is the shortest duration. Seller may also charge an additional load charge of \$100 for each ready mix concrete truck hauling less than six (6) cubic yards of ready mix concrete or grout.
7. **Unloading.** Buyer shall provide suitable roadways and approaches to points of

delivery beyond the public roads. Buyer shall provide safe areas for the ready mix concrete trucks to be unloaded as well as provide adequate locations and contained areas where Seller may washout and clear delivery trucks to avoid tracking mud, dirt, rocks, debris or concrete onto public roads. Buyer shall be responsible for complying with all environmental laws regarding the washout of the ready mix concrete and grout delivery trucks and shall indemnify Seller from any and all liabilities arising from such environmental laws. Buyer shall be responsible for all liability for damage to sidewalks, driveways, other property, and persons incurred as a result of deliveries beyond the curb line. Buyer shall pay for any wrecker or similar charges associated with getting the delivery truck into and out of the jobsite or delivery location.

8. **Payment.** Subject to the provisions of Section 11, Buyer shall make payment of each invoice by the 20<sup>th</sup> of the month following the month in which such invoice is rendered. If requested, Seller will provide an applicable lien waiver in exchange for contemporaneous payment.
9. **Interest and Collection.** Any payment not made when due shall be subject to a charge of one percent (1%) finance charge per month or the highest legally permissible finance charge, whichever is less, on the unpaid balance. Buyer shall pay all costs and expenses incurred in collecting sums due or owing, including court fees and costs, attorneys' fees, and expert witness fees, arising before, during, or after trial, including any costs, attorneys' fees, or expenses incurred in any appeal therefrom.
10. **Shipments Subject to Payment.** If Buyer fails to make full and timely payments on any invoice, Seller may defer further deliveries of Materials until such payments are made, or

may, at its option, cancel in whole or part any further deliveries.

whole or part, any unshipped balance of the concrete and/or grout.

11. **Credit Approval**. The sale and delivery of concrete and/or grout shall at all times be subject to the approval of Seller's management, and Seller may at any time decline to make any delivery of such materials except upon receipt of payment or upon terms and conditions or security satisfactory to Seller's management. If Buyer has not been approved for a charge account, it must pay the ready mix concrete or grout truck driver in full at the point of delivery (*i.e.*, C.O.D. – Cash on Delivery).
12. **Indemnification**. To the fullest extent permitted by law, Buyer shall defend, indemnify, and hold Seller and its affiliates, officers, directors, employees and agents wholly harmless from any claims, damages, costs, suits by any person or persons, losses, and expenses, including attorneys' fees, arising out of or resulting from the use of the concrete and/or grout.
13. **Waiver, Alteration or Modification**. No waiver, alteration, or modification of these terms and conditions shall be binding on Seller unless in writing and signed by an officer of Seller
14. **Applicable Laws**. This Agreement shall be governed by the laws of state of Georgia.
15. **Force Majeure**. In the event of war, flood, strike, labor trouble, accident, riot, act of government authority, terrorism, explosion, embargo, civil or military authority, changes in market conditions relating to costs or availability of raw materials, commercial impracticability, or contingencies beyond the control of Seller interfering with or affecting the production or transportation of the concrete and/or grout or with the supply of any raw material used in connection therewith, Seller may, at its option, cancel, in