

TERMS AND CONDITIONS OF SUPPLY OF CONCRETE ("PRODUCT")

1. Governing Terms. Buyer acknowledges that any written or verbal order for concrete materials is expressly limited to these Terms and Conditions. In the event that the purchase order ("Order") from Buyer states terms additional to or different from those set forth herein, those Order terms are hereby rejected by Seller. Any acknowledgment sent by Seller to Buyer subsequent to Seller's receipt of an Order from Buyer shall not be deemed to be an acceptance by Seller of any offer by Buyer, and shall not alter these Terms and Conditions. Buyer further agrees that all of Buyer's orders will state specific quantities desired and Buyer agrees to pay Seller's current established unit price for the materials supplied as indicated on the Seller's invoice for such materials. Buyer has read and understands these Terms and Conditions and agrees that Seller's shipment of any goods or performance of any service under this order shall constitute Buyer's acceptance of these Terms and Conditions only.

2. Proof of Delivery. Proof of delivery shall be verified by: (1) the signing of the delivery ticket by any person at the delivery site representing the Buyer, (2) the signing of the delivery ticket by the driver of the concrete truck with notations of date and time, or (3) other written instructions as agreed upon to by both Buyer and Seller prior to delivery. Buyer accepts these Terms and Conditions upon discharging any portion of the delivered load of concrete. Seller's printed delivery tickets shall constitute prima facie evidence of the product and quantity delivered, and the date and time of delivery.

3. Volume and Delivery. No cancellation of an order will be accepted after the Product has been loaded at Seller's facility for delivery to Buyer. Orders must be cancelled 24 hours previous to pouring (unless due to weather), otherwise Buyer is subject to charges listed below. Any claim for shortage of Product must be made to seller within 24 hours after delivery or is waived. Delivery charges based on load size may apply. Seller reserves the right to add other charges, including but not limited to cancellation or evening or weekend delivery charges. If Buyer's order requires any custom or specialty materials and Buyer terminates the order for its convenience, Buyer shall be liable for the costs of such material. Buyer agrees to provide suitable roadways and entrances to point of delivery for Seller's vehicles if other than on paved streets. In the event that Buyer orders delivery beyond a curb line, Seller assumes no liability for any damage to sidewalks, driveways, roadways or other property, and Buyer hereby agrees to indemnify and hold harmless Seller, its directors, officers, employees, shareholders, successors, affiliates, and assigns against any and all claims for damage, losses, or expenses incurred as a result of such damage. Buyer agrees to provide suitable facilities to allow for washing of the Seller's truck mixer.

4. Limited Warranty.

(a) **Limited Warranty.** Products supplied hereunder shall conform to applicable specifications for compressive strength in the ACI and ASTM specifications or such other alternative specifications as may be required for a particular order, all as may be amended from time to time and approved by Seller in writing. It is Buyer's responsibility to provide any alternative applicable specification(s) to Seller. The foregoing limited warranty applies for thirty-five (35) days from the date that the concrete is delivered, after which time Buyer waives all warranty claims arising from or relating to the delivery of the Product.

(b) **Exclusive Remedy.** Buyer's sole and exclusive remedy under this limited warranty shall be a proportional refund of the sale price of the Product supplied based on the compressive strength of the Product as established by testing in strict compliance with current ASTM test methods. For example, if the Product meets 90% of the applicable specifications for compressive strength, Buyer shall be entitled to a 10% refund of the Product price. If the Product meets 80% of the applicable specifications for compressive strength, Buyer shall be entitled to a 20% refund of the Product price. This proportional refund is Buyer's sole remedy under this limited warranty and shall apply unless the compressive strength of the product is less than 50% of the applicable specification. In that case, the Seller will supply to Buyer at no further cost an amount of Product equivalent to the amount of Product that had a compressive strength of less than 50% of the applicable specification as Buyer's sole and exclusive remedy. Under no circumstances will Seller be liable for any related re-work, removal, or other replacement materials with regard to the delivery of Product delivered or to be delivered under this limited warranty.

(c) **Applicability.** For this limited warranty to apply, the following conditions must be met: (1) the proportions of the materials comprising the Product must be within Seller control, (2) Buyer must not add any additional materials to the Product, (3) placement of Product must be completed within the timeframe specified for delivery and must be strictly in compliance with applicable specifications, ACI guidelines, and best industry standards, (4) the Buyer must supply correct project specifications and order correct Product that are within applicable project specifications, and

(5) the Product must not be exposed to any deicing products, including but not limited to, calcium chloride, calcium magnesium acetate, potassium chloride, magnesium chloride, and all and any combination thereof. Buyer acknowledges That seller has no responsibility for the Product after the Product leaves Seller's custody and control; and, in particular, that Seller has no control over placing, finishing, or curing of Product.

(d) **Exclusions.** Seller does not guarantee the finished results obtained from any load of concrete. There is no warranty for Product consisting of concrete blocks produced from bin block forms cast by returned concrete product. Concrete is produced from naturally occurring materials. Natural variations (color, efflorescence, lignite and other variations) may occur. Because there are too many variables during the manufacturing of raw materials, concrete production, and placement and finishing, Seller hereby disclaims any responsibility or liability whatsoever for any alleged lack of uniformity in the color or efflorescence of the concrete. SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES AND REMEDIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. Concrete Temperature. 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.

6. Delays: All agreements made and orders taken are subject to the contingencies of and delays in production and delivery. Seller shall not be liable to Buyer for, and Buyer expressly waives, any claims against Seller on account of any damages, costs or expenses of any nature which the Buyer may incur as a result of any delay, regardless of its cause. Seller shall not be responsible, nor will allowances be made, for delays resulting from fire, strikes or other labor troubles, accidents, delays in transportation, equipment failure, shortage of trucks, fuel or material, governmental interference or regulation, weather conditions or any other circumstances beyond Seller's control. In the event of inability to perform fully due to material shortages, Seller shall have the right to allocate shipments in a fair and reasonable manner. Seller reserves the right to refuse to make delivery where it reasonably believes delivery unsafe or impracticable.

7. Limitation of Liability: If Buyer fails to make a warranty claim within 35 days of product delivery as required in paragraph six, then Buyer waives and shall have no claim for breach of warranty. If Buyer does make a warranty claim within 35 days of product delivery as required in paragraph six, then Buyer shall have one year from the date of making the warranty claim to take legal action or file a lawsuit; otherwise, the warranty claim will be time barred. In all other circumstances, no legal action or lawsuit arising out of or relating to the Order may be brought more than one (1) year after the Product supplied pursuant to any Order under this agreement has been delivered.

SELLER WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, ANY 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 DELIVERED PURSUANT TO THIS ORDER.

Buyer agrees to protect Seller and hold Seller harmless from any loss or claim arising out of the negligence of Buyer, Buyer's agents, contractors, subcontractors, affiliates, directors, employees, or representatives in the installation of any of Seller's materials.

8. Indemnification: Buyer agrees to indemnify, defend and hold harmless Seller, including its affiliates, subsidiaries, employees, officers, directors and agents, from and against any and all claims, lawsuits, judgments, losses, civil penalties, actions (administrative or judicial), liabilities, damages, fines, costs (including environmental remediation), and expenses (including reasonable attorney's fees) incurred or to be incurred, and which may be made or are brought against the Seller by any individual, person (including, but not limited to Buyer's employees or agents), corporation, government, governmental agency, class, or any other entity whatsoever arising out of or alleged to have arisen out of this Order or in any relating to this Order, except to the extent that such claims are caused by Seller's gross negligence or willful misconduct.

9. Seller is Supplier: Buyer acknowledges and agrees that Seller is a supplier of materials within the meaning of applicable laws and regulations and is not to be deemed a subcontractor. Seller provides no concrete installation services.

10. Waiver: No waiver of the Seller's rights shall be valid unless in writing and signed by Seller's president.

11. No Third-Party Beneficiary. These Terms and Conditions are not intended to confer in or on behalf of any person or entity not a Party hereto (and their successors and assigns) any rights, benefits, causes of action, or remedies with respect to the subject matter or any provision of this Agreement. No provision of these Terms and Conditions shall in any way inure to the benefit of any such third person (including the public at large) so as to constitute any such person a third-party beneficiary of these Terms and Conditions or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

12. Accessorial Tariff. This section summarizes the current prices for the products and services that are offered by Hercules Materials Holdings, Inc. Prices are not all inclusive, additional rates may apply.

Plant Opening Fees:

Additional charges apply if a plant is required to open outside of normal operational hours. Normal operational hours are:

- Monday through Friday: 6:00 AM to 6:00 PM (Charges apply if before 6:00AM or after 6:00PM)
- Saturdays: 6:00 AM to 2:00 PM (Per order charges applied before 6:00AM or after 2:00PM, Per CY charges are applied all day)
(Sat charge not applied 4/15 through 10/31)
- Sundays/Holidays: Closed (Charges apply service at any time of the day)

<u>Billing Code</u>	<u>Invoice Description</u>	<u>Price</u>
• [MFC]	Monday through Friday (Per CY)	\$15.00 / CY
• [MFI]	Monday through Friday (Per Order)*	\$3,000.00/ Order
• [SATC]	Saturdays (Per CY)	\$8.00 / CY
• [SATI]	Saturdays (Per Order)*	\$3,000.00 / Order
• [SUNC]	Sundays & Holidays (Per CY)	\$25.00 / CY
• [SUNC]	Sundays & Holidays (Per Order)*	\$7,500.00 / Order

** Per Order plant opening charges may be split between several customers if on the same day.*

Winter Service:

<u>Billing Code</u>	<u>Invoice Description</u>	<u>Price/CY</u>
• [WIN]	Winter Service (11/01 through 4/15 following year)	\$10.00
• [2NS-GBMH]	Heated Sand	\$8.00

Fuel Surcharges:

Surcharge is based on the Department of Energy (DOE) Midwest (PADD2) weekly Diesel Index. The fuel surcharge will take effect the Wednesday following the DOE release to the next week Tuesday:

<https://www.eia.gov/petroleum/gasdiesel/>

<u>Billing Code</u>	<u>Invoice Description</u>	<u>Price/Ticket</u>
• [FS20]	Between \$0.00-\$2.50	\$25.00
• [FS25]	Between \$2.51-\$3.00	\$30.00
• [FS30]	Between \$3.01-\$3.50	\$35.00
• [FS35]	Between \$3.51-\$4.00	\$40.00
• [FS40]	Between \$4.01-\$4.50	\$45.00
• [FS45]	Between \$4.51-\$5.00	\$50.00
• [FS50]	Between \$5.01-\$5.50	\$55.00
• [FS55]	Between \$5.51-\$6.00	\$60.00
• [FS60]	Between \$6.01-\$6.50	\$65.00
• [FS65]	Between \$6.51-\$7.00	\$70.00
• [FS70]	Between \$7.01 and Greater	\$75.00

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Minimum Load Charges:

<u>Billing Code</u>	<u>Invoice Description</u>	<u>Price/Ticket</u>
• [MLC2]	2.00-2.99 (CY)	\$300.00
• [MLC3]	3.00 – 3.99 (CY)	\$200.00
• [MLC4]	4.00 – 4.99 (CY)	\$150.00
• [MLC5]	5.00 – 5.99 (CY)	\$100.00

Annual Price Increase:

Subject to annual price increase following escalation active date.

Admixtures & Added Products

Accelerators

<u>Billing Code</u>	<u>Description</u>	<u>Price/CY</u>
• [0N025-PCA]	Non Chloride Accelerator (0.25%)	\$1.50
• [0N050-PCA]	Non Chloride Accelerator (0.50%)	\$3.00
• [0N075-PCA]	Non Chloride Accelerator (0.75%)	\$4.50
• [0N10-PCA]	Non Chloride Accelerator (1.00%)	\$6.00
• [0N15-PCA]	Non Chloride Accelerator (1.50%)	\$9.00
• [0N20-PCA]	Non Chloride Accelerator (2.00%)	\$12.00
• [0N25-PCA]	Non Chloride Accelerator (2.50%)	\$15.00
• [0N30-PCA]	Non Chloride Accelerator (3.00%)	\$18.00
• [0N40-PCA]	Non Chloride Accelerator (4.00%)	\$24.00
• [0CC05-SDC]	Calcium Chloride Accelerator 0.5%	\$1.50
• [0CC10-SDC]	Calcium Chloride Accelerator 1.0%	\$3.00
• [0CC15-SDC]	Calcium Chloride Accelerator 1.5%	\$4.50
• [0CC20-SDC]	Calcium Chloride Accelerator 2.0%	\$6.00

Blocks

<u>Billing Code</u>	<u>Description</u>	<u>Price/CY</u>
• [Bin Block 3']	3 Foot Blocks	\$60.00
• [Bin Block 6']	6 foot Blocks	\$90.00

Fibers

<u>Billing Code</u>	<u>Description</u>	<u>Price/lb.</u>
• [FM-F10]	Commercial Fiber	\$6.00
• [FM-M10]	Residential Fiber	\$6.00
• [MAC-FORTA-00]	Fibers: Forta	\$6.00
• [MAC-TUF-00]	Fibers: Tuff Strand	\$6.00
• [SF3D-00]	Fibers: Dramix	\$2.00
• [SFHELIX-00]	Steel Fibers: Helix	\$4.00

Retarders

<u>Billing Code</u>	<u>Description</u>	<u>Price/CY</u>
• [0ST30-PCA]	.50 Hour slump retention/retarder.	\$2.50
• [0ST35-PCA]	.75 Hour slump retention/retarder.	\$3.00
• [0ST40-PCA]	1.0 Hour slump retention/retarder.	\$3.50
• [0ST45-PCA]	1.5 Hour slump retention/retarder.	\$4.00
• [0ST50-PCA]	2.0 Hour slump retention/retarder.	\$4.50
• [0ST60-PCA]	3.0 Hour slump retention/retarder.	\$5.50
• [0ST70-PCA]	4.0 Hour slump retention/retarder.	\$6.50
• [0ST80-PCA]	5.0 Hour slump retention/retarder.	\$7.50

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Vapor Lock Waterproofing

<u>Billing Code</u>	<u>Description</u>	<u>Price/CY</u>
• [0VAP10-SPG]	SPG Vapor Lock	\$50.00
• [0XYP-C500]	XYPEX C-500 Waterproofing – 2% dosage	\$50.00
• [0XYP-C500BS]	XYPEX C-500 Biosans Waterproofing	\$250.00

QC Aggregate Testing

Buyer may request QC aggregate testing up to one time per week on each project. Rates are listed below and are charged on a weekly basis per project per mix.

<u>Billing Code</u>	<u>Description</u>	<u>Rate</u>
• [MDOT AGG]	MDOT QC Aggregate Weekly Testing	\$750.00
• [MDOT BEAM]	MDOT QC Aggregate Beam Testing	\$75.00
• [MDOT CYL]	MDOT QC Aggregate Cylinder Testing	\$25.00
• [MDOT QC 1/2 DAY]	MDOT QC Aggregate Testing services per ½ day.	\$525.00
• [MDOT QC DAY]	MDOT QC Aggregate Testing Services per 1 day.	\$950.00
• [MDOT QC HOUR]	MDOT QC Aggregate Testing Services per Hour.	\$150.00

Miscellaneous Charges

- Detention charges are 5 minute per CY unloading time free of charge. Allotted unload time is 55 minutes per 11 CY truck (unless otherwise specified previous to pouring.) Additional unloading time per minute billed at the rate below. Dispatch can recall a truck for slow unloading, buyer assumes cost.
- If towing is required due to truck being stuck off road, below charges + cost of tow applied.
- Hercules is committed to meeting the highest environmental standards. Therefore, fees are associated with production or reclamation process.
- Rates on this tariff are not all inclusive. Other fees and charges may be applied.
- Additional charges may be applied as needed when there is a materials shortage.
- Prices are subject to change with or without notice.

<u>Billing Code</u>	<u>Description</u>	<u>Rate</u>
• [CC]	Credit Card Charge	3.2% of Invoice
• [OC]	Order Cancellation (Less Than 24 hr. Notice & Not due to Weather)	\$15.00/ CY
• [REC]	Towing Charges	\$500.00/ Ticket
• [CW]	Color Washout	\$200.00/ Ticket
• [EC]	Environmental Charges	\$4.00/CY
• [UNL]	Detention Charges	\$2.50 / Minute (When >5Min/CY)

Payment Terms

- Accounts with past due balances are subject to credit hold until they are brought up to good standing. If payment is received after the invoice date + Net Days, the customer will be subject to finance charge. If payment is received after the invoice date plus the day non discount, the customer will be charged the full non discounted rates for all mixtures and accessories. In addition to any other rights or remedies that Seller has herein, Seller may apply payments received from Buyer in any manner it deems appropriate against amounts owed from Buyer to Seller, including but not limited to applying such payment received against older invoices on the same or other projects.
 - Invoice Payment Terms 30 Days
 - Financing Charge 1.5%
 - Days No Discount 90 Days

13. Entire Agreement. These Terms and Conditions and any terms and conditions set forth on the Seller's quotations, if applicable, or otherwise provided by a supplementary written agreement between the Parties executed by both Seller and Buyer, comprise the entire agreement between the parties respecting the Seller's sale and delivery of concrete materials to Buyer and supersede all other agreements, written or oral, regarding the subject matter of this agreement, and no prior or subsequent understanding, agreement, term, condition or trade custom that conflicts with or is supplementary to these terms and conditions is binding on Seller, all of which are specifically rejected by Seller and delivery of the Product hereunder constitutes Buyer's acknowledgement of such rejection.

14. Hercules Materials Holdings, LLC ("HMH") Not A Party. HMH is an authorized sales agent for the Pricing Plant identified in the project bid or on the delivery ticket for the Product. HMH does not manufacture or ship Product and makes no representation or warranty regarding the Product. HMH is not liable to the Buyer or any third parties for any damages of any kind that may arise out of relate to orders for the Product shipped or supplied by its affiliates or otherwise.