

TERMS AND CONDITIONS OF SUPPLY OF CONCRETE AND RELATED SURFACING MATERIALS

1. Governing Terms. Buyer acknowledges that any written or verbal order for concrete materials is expressly limited to the terms and the Contract for Materials on Account, if applicable, and in the event that the purchase order from the Buyer states terms additional to or different from those set forth herein or in the Contract for Materials on Account, if applicable, this shall be deemed a notice of objection to such additional or different terms and rejection thereof. Any acknowledgment sent by the Seller to the Buyer subsequent to the Seller's receipt of a purchase order from the Buyer shall not be deemed to be an acceptance by the Seller of any offer by the Buyer, and shall not alter these terms and conditions or the Contract for Materials on Account. 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 and the terms and conditions of the Contract for Materials on Account, as applicable, 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 (employee of the seller) with notations of date and time or 3) Other written instructions as agreed upon to by both buyer and seller prior to delivery. Upon discharging any portion of the delivered load of concrete the buyer accepts these terms and conditions. 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 upon delivery. Any claim for shortage of product(s) must be made to seller within 24 hours after delivery. The Buyer's right with respect to product(s) rightfully rejected are limited to the rights set forth in paragraph 12 below. 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. The Buyer agrees to provide suitable roadways and entrances to point of delivery for Seller vehicles if other than on paved streets. If in Seller opinion, such suitable roadways or approaches are not provided or available, Seller reserves the right to stop deliveries until conditions are remedied and suitable roadways or approaches are available. In the event the Buyer orders delivery beyond curb line, Seller assumes no liability for any damage to sidewalk, driveways, roadways or other property and the Buyer hereby agrees to indemnify and Seller, its directors, officers, employees, shareholders, successors and assigns harmless against all claims, liability, loss or expense incurred as a result of such damage that may occur. The Buyer agrees to provide suitable facilities to allow for washing of the Seller's truck mixer.

4. No Added Materials. The Buyer shall not add or instruct driver to add any materials into the Product(s). Doing so voids the Seller's limited warranty and any liability seller may have for defects in the product. Concrete shall be batched in accordance with recognized industry acceptable standards such as ACI and ASTM specifications. Seller will provide batch weights reflecting tolerances and constituents and all available water to meet design water cement ratio. Additional water added by the purchaser that exceeds the water cement ratio for this load can result in lower strengths and overall quality of concrete.

5. Uniformity of Finish or Color. Concrete is produced from naturally occurring materials: natural variations- color, efflorescence, lignite and other variations may occur. Because there are too many variables during both the manufacture of raw materials, concrete production, and those encountered during 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.

6. Limited Warranty: Products supplied hereunder shall conform to applicable specifications for compressive strength, durability and workability 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. It is the Buyer's responsibility to provide any alternative applicable specification(s) to Seller. The Buyer acknowledges that Seller has no responsibility for the Product(s) after the Product {s} leave(s) Seller custody and control; and, in particular, that Seller has no control over placing, finishing or curing of Product(s). Seller does not guarantee the finished results obtained from this load of concrete. Seller will repair or replace any goods supplied by Seller that fail to meet this limited warranty, subject to the Limitation of Liability below.

7. Concrete Strength. When strength, quality or character of material is to be determined, the current edition of ASTM C94 shall govern all quality control, testing, measuring and acceptance of materials. 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 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 expressly disclaims any responsibility for the finished work in

which it is used. Buyer is responsible to prevent unloaded concrete from coming into contact with any material, which may adversely impact concrete strength.

8. 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.

9. Exclusions from Agreement. The agreement shall not apply and Seller has no liability under this Agreement if: a) Sampling and testing of Products is not in strict accordance with the above-noted ACI Standards or if results are not interpreted in strict accordance with current ASTM test methods. b) Placing, finishing and curing of Products or Addition of water, results in the slump exceeding the maximum specified slump; c) The Buyer adds any materials to the Product(s); d) The Buyer specifies any of the proportions of the Product mixed. In order for the limited warranty to apply, the proportions of the consistent materials comprising the Product(s), must be within Seller control; e) Placement of Product(s) must be completed within the timeframe specified for delivery and placing in the applicable specifications; f) The Buyer must supply correct project specifications or orders Product(s) that are within applicable project specifications; g) Product is concrete Blocks produced from bin block form or construction method.

In addition, with respect to any use of Seller ready-mixed concrete products in sidewalks, curbs, gutters or other exterior exposed flatwork applications. Product durability is not warranted where the installed concrete is exposed to any non-traditional or alternative chemical de-icing materials, or expressly stated on the de-icing product warning as stated on product data sheet or packaging label, without limiting the foregoing, calcium chloride, calcium magnesium acetate (CMA), potassium chloride, magnesium chloride, and all and any combination thereof.

10. Buyer's Responsibilities Respecting Delivery: Buyer agrees to provide suitable roadways or approaches to Points of delivery other than on public roadways and alleyways. If such suitable roadways are not provided, Seller reserves the right to stop deliveries until conditions are remedied. Buyer is responsible for and agrees to indemnify the Seller' against all liability, loss and expense incurred as a result of deliveries beyond public roadways or alleyways.

11. Delays: All agreements made and orders taken are subject to the contingencies of and delays in production and delivery. 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 contingencies beyond Seller's control. In the event of inability to perform fully, Seller shall have the right to allocate shipments in any manner it deems fair and reasonable. Seller reserves the right to refuse to make delivery where he believes delivery unsafe or impracticable by reason of any existing or threatened strike, picketing or other labor dispute.

12. Defects/Limitation of Liability: Notice of any defect in materials or nonconformity to specifications shall be made in writing within 15 days from receipt of such materials, after which any such claim for such defect or nonconformity shall be deemed waived, except that yield complaints must be made in writing no later than 24 hours after receipt of materials. Seller's liability for such defective or nonconforming materials shall be limited, under any theory of law, to their replacement or refund of the purchase price. Seller shall have the right to inspect and satisfy itself as to the validity of any such claims. Seller shall have no responsibility for damage or shortage of any materials unless such damage or shortage is noted on the delivery ticket and materials claimed to be damaged are held and made available for Seller's inspection. IN THE CASE OF ALL CLAIMS MADE AGAINST SELLER, INCLUDING BUT NOT LIMITED TO CLAIMS FOR FAILURE OR DELAY IN DELIVERY, SELLER SHALL IN NO EVENT BE LIABLE FOR ANY LOSS PROFITS, SPECIAL OR CONSEQUENTIAL DAMAGES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY BUYER MORE THAN ONE YEAR AFTER THE MATERIALS SUPPLIED PURSUANT TO ANY ORDER UNDER THIS AGREEMENT HAVE 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 TICKET. 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 THESE TERMS AND CONDITIONS WILL CONSTITUTE THE SOLE REMEDY OF BUYER UNDER THE LIMITED WARRANTY PROVIDED HEREIN. EXCEPT AS OTHERWISE PROVIDED UNLESS MADE SPECIFICALLY IN WRITING, SIGNED BY THE PRESIDENT, AND ATTACHED TO AND MADE PART OF THIS CONTRACT.

SELLER SHALL NOT BE RESPONSIBLE FOR ANY DELAYS, POSTPONEMENTS OR FAILURES TO DELIVER RESULTING FROM WEATHER, FIRES, NATURAL DISASTERS, FAILURE OF TRANSPORTATION EQUIPMENT OR FACILITIES, STRIKES, ACCIDENTS, OTHER PARTIES' NEGLIGENCE OR ERROR, OR ANY REASON OR CAUSE BEYOND THE CONTROL OF SELLER. BUYER AGREES TO PROTECT SELLER AND HOLD SELLER HARMLESS FROM ANY LOSS OR CLAIM ARISING OUT OF THE NEGLIGENCE OF BUYER, BUYER'S AGENTS, EMPLOYEES OR REPRESENTATIVES IN THE INSTALLATION OF ANY OF SELLER'S MATERIALS.

13. 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.

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

15. No Third Party Beneficiary. This Agreement is not intended to confer in or on behalf of any person or entity not a Party to this Agreement (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 this Agreement 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 this supply agreement 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.

16. Construction with Terms on Contract for Materials on Account. The parties agree that the terms and conditions contained on this delivery ticket shall govern the sales and supply of concrete reflected on the front side of this delivery ticket. In the event, however, that the Buyer is a credit customer of Seller and subject to the Contract for Materials on Account then the parties agree that the terms of this Delivery Ticket shall be read together, harmonized and construed to supplement whenever possible the terms and conditions set forth in the Contract for Materials on Account or in any quotation submitted by Seller to Buyer: provided, however, in the event of a conflict between the terms on this delivery ticket and the terms on the Contract for Materials on Account, the provisions contained in the Contract for Materials on Account shall prevail.

17. 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 (Charges apply if before 6:00AM or after 2:00PM)
- 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 05/01 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

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

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

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	\$50.00
• [0XYP-C500BS]	XYPEX C-500 Biosans Waterproofing	\$250.00

QC Aggregate Testing

- Rates for QC aggregate testing are per service and as requested. Weekly testing charges are performed as needed. They may be up to 1 per week per project. On Site Service charges are per occurrence.

<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. 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.

<u>Billing Code</u>	<u>Description</u>	<u>Rate</u>
• [CC]	Credit Card Charge	3.2% of Invoice
• [OC]	Order Cancellation (Not due to Weather)	\$100.00/ Order
• [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

18. Entire Agreement. These terms and conditions and any terms and conditions set forth on the Seller's quotations, if applicable, the Contract for Materials on Open Account, if applicable or otherwise provided by a supplementary written agreement between the Parties executed by both Seller and the Buyer, comprise the entire agreement between the parties respecting the Seller's sale and delivery of concrete materials to the 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.