

TERMS AND CONDITIONS

THE TERMS AND CONDITIONS UNDER WHICH GOODS WILL BE PROVIDED ARE SET OUT BELOW. BY RECEIVING DELIVERED GOODS, PURCHASER AGREES TO THESE TERMS AND CONDITIONS JUST AS IF IT SIGNED A CONTRACT CONTAINING THEM.

1. **ACCEPTANCE:** All Purchase Orders are subject to acceptance or rejection by Seller and are not binding on Seller unless and until accepted by a titled Officer of the Seller in writing through a Purchase Order acknowledgment issued by Seller. Acceptance is always subject to availability for delivery of the Goods covered by each Purchase Order and to Seller's prices for the Goods which are in effect at the time of shipment, unless otherwise agreed in the Purchase Order or a separate agreement signed by Purchaser and an officer of Seller. Buyer accepts these terms upon first receipt of goods.

2. **CHANGE OR CANCELLATION OF ORDERS:** Seller may accept any request of Purchaser for modifications or cancellation to a Purchase Order, but any such modification or cancellation of the Purchase Order shall be subject to the written consent of Seller at its sole discretion.

3. **ORDERS FOR INDEFINITE DELIVERY:** Purchase Orders with indefinite dates may be accepted on the understanding that Seller shall have the right to fill the orders as it sees fit during its manufacturing schedules and to hold the Goods for the Purchaser's account, at the Purchaser's expense and risk, pending receipt of definite shipping instructions.

4. **TITLE AND RISK OF LOSS:** Seller will deliver goods to location specified by Purchaser. Title and risk of loss shall pass to Purchaser upon batching of the load.

5. **TERMS OF PAYMENT:** Terms of payment shall be Net 10 days from the applicable invoice date. Invoices are payable in United States currency only. If Purchaser wishes to dispute any invoice, Purchaser must do so within ten (10) days from the date of the invoice, or any such dispute is irrevocably waived. Invoices paid late will lose any discount and will be assessed a 1.5% per month finance charge, or the maximum amount allowable by law, each late month until paid. Customer will pay Supplier all costs it incurs to secure and recover payment from Customer, including, but not limited to, the cost of preparing notices of furnishing, notices of claim, bond claim forms or proof of claim Rev. March 2022 applications, construction or mechanic's liens, and discharges of lien, as well as litigation or arbitration expenses, and attorney fees. This includes post-judgment collection costs.

6. **HIGHWAY LAWS:** Customer is responsible for compliance with highway load limit laws and releases Supplier from all liabilities related to vehicle weight, regardless of Supplier's participation in the loading of its vehicles.

7. **TAXES:** Any tax or other government charge/restriction now or in the future levied upon the production, sale, use of shipment of Goods ordered or sold may, at Seller's opinion, be added to the purchase price, unless it is satisfied in its sole discretion that by reason of documents delivered to it by Purchaser, that Purchaser is exempt from any such tax or governmental charge.

8. **CONFIDENTIAL INFORMATION:**

a. Seller and Purchaser (as applicable, the "**Receiving Party**") each acknowledge that they may be furnished with, receive, or otherwise have access to confidential or proprietary information of or concerning the other party or its Affiliates ("**Disclosing Party**") which such party considers to be confidential, a trade secret, or otherwise restricted including any pricing information related to the Goods ("**Confidential Information**").

b. Except as expressly set forth herein, the Receiving Party agrees that it will have no proprietary interest in the Confidential Information of the Disclosing Party and the Receiving Party acknowledges and agrees that it will not use the Disclosing Party's Confidential Information for any purpose other than to perform its obligations hereunder and that it will not disclose any such Confidential Information to any third party, except to its and its Affiliates employees, agents, subcontractors, independent contractors and other representatives ("**Representatives**") who have a need to know such Confidential Information to perform their duties under the Agreement, provided that such individuals are bound by confidentiality obligations no less restrictive than those set forth herein. The Receiving Party will be liable for any breach of these confidentiality obligations by its Representatives. In the event the Receiving Party becomes legally compelled to disclose any Confidential Information, to the extent legally permitted, it will provide the Disclosing Party with prompt notice thereof to give the Disclosing Party the opportunity to seek a protective order or other appropriate remedy to curtail the disclosure. If protective actions by the Disclosing Party are unsuccessful, or the Disclosing Party otherwise waives its right to seek those remedies, the Receiving Party will disclose only that portion of the Confidential Information which it is legally required to disclose.

c. All Confidential Information will remain the property of the Disclosing Party. The Receiving Party will return or permanently destroy all of Disclosing Party's Confidential Information promptly upon receipt of the Disclosing Party's request, provided that Receiving Party may retain Confidential Information of the Disclosing Party to ensure compliance and/or to comply with its document retention policies, provided that any retained Confidential Information shall remain subject to the confidentiality obligations herein. The means of media or data destruction must ensure that Confidential Information is permanently destroyed and cannot be subsequently accessed or read based on commercially reasonable standards. In the event Disclosing Party becomes aware of any disclosure, loss of, or unauthorized access to any Confidential Information of the Disclosing Party, the Receiving Party will promptly notify the Disclosing Party and take any actions reasonably requested by, and provide all reasonable cooperation with, the Disclosing Party to minimize the disclosure or loss and mitigate any associated damage.

9. **WARRANTIES:** SELLER'S LIABILITY UNDER THIS AGREEMENT SHALL INURE ONLY TO THE BENEFIT OF PURCHASER AND MAY NOT BE TRANSFERRED TO ANY OTHER PERSON OR LEGAL ENTITY, INCLUDING WITHOUT LIMITATION ANY CUSTOMER OF PURCHASER. SELLER DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE GOOD(S) SOLD HEREUNDER, AND ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS EXPRESSLY DISCLAIMED. SELLER DISCLAIMS ANY AND ALL LIABILITY, WHETHER DIRECTLY OR BY WAY OF INDEMNITY, FOR SPECIAL INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES, WHETHER BASED ON BREACH OF CONTRACT TORT, STRICT OR PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. CUSTOMER IS A KNOWLEDGEABLE BUYER THAT RELIES ON ITS OWN EXPERTISE FOR SELECTION OF THE GOODS IT PROCURES FROM SUPPLIER. SUPPLIER DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND SUPPLIER'S OWN WRITTEN DESCRIPTION OF THE TYPE OF GOODS THEMSELVES. WHILE ACCEPTANCE OF THE GOODS MAY OCCUR IN SEVERAL WAYS, AT A MINIMUM, PLACEMENT OF THE GOODS IN THE FIELD AT THE PROJECT SITE CONSTITUTES ACCEPTANCE. SUPPLIER LACKS CONTROL OVER, AND INFORMATION ABOUT, THE PROJECT FOR WHICH THE GOODS ARE BEING PROVIDED, AND THEREFORE CUSTOMER RELEASES SUPPLIER FROM LIQUIDATED, INCIDENTAL, AND CONSEQUENTIAL DAMAGES. SUPPLIER'S LIABILITY FOR DAMAGES DOES NOT EXCEED THE PRICE OF THE GOODS THEMSELVES.

10. **INDEMNIFICATION.** To the full extent permitted by applicable law and independent of any insurance, Purchaser agrees to indemnify, hold harmless and defend Seller and its Affiliates, and its and their directors, officers, employees,

successors, assigns, agents, and customers from and against any and all damages, losses, claims, liabilities, expenses (including but not limited to court damages, economic loss and loss of profits, warranty sharing and fines and penalties) arising out of or resulting in any way from: (a) Purchaser's unauthorized use of a Good in violation of the applicable Specifications; (b) any injury to any person (including death) or damage to property caused by the Purchaser, its employees, agents, or subcontractors; or (c) any other act or omission of Purchaser and its representatives pursuant to this Agreement. In no event will Seller be responsible for indemnifying, defending or paying any award of damages assessed against Purchaser for any reason.

11. **LIMITATION OF LIABILITY.** Seller's liability for direct damages on any claim of any kind arising under this Agreement, including without limitation, any claims arising from Seller's negligence or with respect to Goods, shall in no case exceed the price of the applicable Goods which gives rise to the claim as set forth in the applicable Purchase Order. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGES IN THE NATURE OF PENALTIES. THE AGGREGATE LIABILITY OF SELLER WITH REGARD TO THIS AGREEMENT WILL IN NO EVENT EXCEED THE AGGREGATE COMPENSATION PAID BY PURCHASER TO SELLER UNDER THE APPLICABLE PURCHASE ORDER UNDER WHICH SUCH CLAIM ARISES.

12. **COMMENCEMENT OF SUIT:** Any action brought by Seller against Purchaser under this Agreement must be commenced within 6 months after the cause of action has accrued.

13. **WAIVER:** Seller's waiver of a breach by Purchaser of any provision of this Agreement shall not constitute a waiver of any other breach by Purchaser or of a subsequent breach of the same provision by Purchaser for the same or any other cause.

14. **CONTINGENCIES; FORCE MAJEURE:** In the event of any circumstance beyond Seller's reasonable control, including without limitation, war, fire, flood, strike, labor troubles breakage of equipment, shortage of materials, accident, riot, act of governmental authority, Acts of God, or other contingencies beyond the reasonable control of Seller interfering with the production, supply, transportation, or consumption of the Goods covered by this Agreement, or in the event of inability to obtain, on terms judged by Seller to be practicable, any raw material (including energy source) used in connection with the Goods, the quantities affected shall be eliminated from this Agreement without liability but the other terms of this Agreement shall remain unaffected. Seller may during any period of shortage due to any of the specified causes, allocate its supply of raw materials among their various uses in any manner which in the opinion of Seller is fair and reasonable.

15. **QUOTATIONS AND PRICE:** Unless otherwise specified, quotations are for information only and are not intended as an offer. Quotations are subject to change without notice in all respects, including prices, delivery dates, terms, quantities, or specifications. Purchase price of goods may be changed upon notice from Seller to Purchaser. Prices in quotations expire after 10 days. However, Customer understands Supplier's price and performance depend on production capacity and the good's component parts' market price and availability, among other things. Therefore, Supplier may revoke a quoted price at any time due to changes in production capacity or changes in a component's market price or availability.

16. **ACCESORIAL FEES:** Buyer will pay accessorial fees according to the fee tariff on Seller's website. These fees do not represent all fees that a Buyer may pay. Buyer reserves the right to change these fees or add to them at its sole discretion, and in no way is limited to charging only for the fees listed.

17. **SUPPLY:** Supplier may, without penalty, reduce a Customer's order or cancel it entirely if a component part of the goods is not reasonably producible or available. Customer's schedule is not binding on Supplier unless specifically accepted in a writing signed by Supplier's authorized manager. Supplier may deliver or tender goods in installments in its reasonable discretion, based on size of order, production capacity, and material availability. In almost all cases, Supplier specially

produces for Customer the goods Customer has ordered. Customer therefore remains responsible for the price of all goods ordered even if Customer does not take delivery of, accept, purchase, or use the entire order. The goods are not returnable.

18. **PURCHASER'S USE.** Purchaser should test and evaluate all Goods with its intended products and manufacturing processes. While Seller may assist Purchaser in identifying various alternatives, the responsibility for selecting the Goods and testing belongs to and is assumed by Purchaser.

19. **APPLICABLE LAW; JURISDICTION:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, excluding its conflict of laws provisions. The parties agree that any litigation in relation to this Agreement shall be initiated and maintained exclusively in the Circuit Court of the County of Wayne, State of Michigan, United States of America, or the U.S. District Court for the Eastern District of Michigan, Southern Division. The parties hereby irrevocably submit to the personal jurisdiction and venue of such courts. The parties agree that these courts are convenient forums for any such litigation.

20. **U.N. CONVENTION:** Seller and Purchaser expressly agree that the U.N. Convention on the International Sale of Goods shall not apply to, nor govern the construction of, the terms of this warranty.

21. **TERMINATION:** Seller may terminate these Terms and Conditions at any time upon notice to Purchaser.

22. **NOTICE:** Any notice or other communication required or permitted in the Agreement must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or in the next business day if the date of the actual receipt is not a business day. Notices shall be sent to Seller at _____.

23. **AMENDMENT TO TERMS.** No exception to, deviation from, or waiver of this Agreement, including any additional terms set forth in a Purchase Order issued by Purchaser, shall be valid or binding on Seller unless otherwise set forth signed writing by an officer of Seller. Any such exceptions, deviations or waivers shall apply only to the specific Purchase Order for which they are granted and shall not constitute a course of dealing. Seller may amend these terms at any time, at its discretion, upon written notice to Purchaser.

24. **RELATIONSHIP OF THE PARTIES.** The relationship of Seller to Purchaser will be that of an independent contractor. Neither party will have any authority to execute contracts or make commitments on behalf of the other party. Nothing contained in the Purchase Order will be deemed to create the relationship of employer and employee, principal and agent, joint venture or partner between Seller and Purchaser.

25. **SEVERABILITY.** A finding that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of any other provision of this Agreement.

26. **ASSIGNMENT AND SUBCONTRACTING.** Purchaser may not assign or subcontract its duties or responsibilities under this Agreement without the prior written consent of Seller. Unless otherwise stated in the consent, any assignment or subcontracting by Purchaser, with or without the required consent, will not relieve Purchaser of its duties or obligations under this Agreement or its responsibility for non-performance or default by its assignee.

27. **DEFINITIONS.** For purposes hereof, the following terms shall have the following definitions:

“Agreement” means these Terms and Conditions, along with any accepted Purchase Order and Purchase Order acknowledgement issued by Seller under which Purchaser purchases and Seller provides Goods to Purchaser.

“Goods” means ready-mix concrete provided by Seller to Purchaser pursuant to an accepted Purchase Order and subject to the terms of the Agreement.

“Purchaser” means the party purchasing Goods from Seller as set forth in a Purchase Order.

“Purchase Order” means any purchase order, invoices or other sales agreement under which Purchaser purchases Goods from Seller. Purchase Orders are for administrative purposes only and are strictly limited to detailing the Goods and quantities to be purchased, their price and terms of shipment. All Purchase Orders will be subject to and exclusively governed by these Terms and Conditions.

“Seller” means Hercules Materials Holdings, LLC

28. **ENTIRE AGREEMENT:** This Agreement represents the entire agreement between Seller and Purchaser with respect to the Goods sold.