

TERMS AND CONDITIONS OF SALE - UNITED STATES

Applicable to all purchases and sales of Seller's materials/products ("Product(s)")

1. **ACCEPTANCE.** The agreement contains the full understanding of Seller and Buyer and supersedes all other agreements, written or oral, regarding its subject matter. Except as otherwise provided by written agreement subsequently executed by both Buyer and Seller, these Terms and Conditions shall supersede the terms and conditions of Buyer's purchase order, and no prior or subsequent understanding, agreement, term, condition, or trade custom at variance with or supplemental to these Terms and Conditions shall be binding on the Seller. Ordering, acceptance or delivery of the Products hereunder shall constitute acceptance of these Terms and Conditions. Products will be deemed accepted by Buyer unless Seller is notified in writing of non-acceptance within ten days after receipt by Buyer. Any claim with respect to Product sold hereunder, including claims based on shortages of goods, will be waived if not brought in writing within ten days of receipt of that shipment or delivery. Buyer's rights with respect to Products rightfully rejected will be limited to the rights set forth in Article 6 below. No Product may be returned without Seller's written consent. Buyer may not cancel or terminate for convenience, or direct suspension of manufacture, except with written consent of Seller and payment of Seller's cancellation charges.
2. **SHIPMENTS; TITLE; RISK OF LOSS.** Buyer may direct Product to be delivered to Buyer at either Seller's facility or Buyer's facility. If Product is delivered to Buyer at Seller's facility, (i) prices are F.O.B. Seller's facility, (ii) title and risk of loss pass to Buyer upon delivery to Buyer or its carrier at Seller's facility and (iii) Buyer must make claims for shipping loss or damage directly to the carrier. If Product is delivered to Buyer at Buyer's facility, (i) prices are F.O.B. Buyer's facility, (ii) title and risk of loss pass to Buyer upon delivery to Buyer's facility, (iii) shipments will be made from points, over routes and by carriers selected by Seller, (iv) Seller's shipping dates are estimates and dates of delivery are not guaranteed, (v) Buyer shall bear destination demurrage and detention charges, and (vi) rail and truck shipments are subject to rates, rules and regulations in carriers' tariffs applicable on date of shipment. Carrier's or Seller's truck scale weights and/or carrier's stenciled tare weights will be used and shall be conclusive. Any of Holcim (US) Inc. ("HUS"), or another affiliate of HUS may supply Products sold hereunder. HUS, via its Shared Service Center, is the collection agent of each of the supplying entities pursuant to service agreements with them.
3. **TERMS OF PAYMENT.** Upon approval of Buyer's credit, all invoices will be due at the gross amount and payable not later than the last day of the month following shipment. Each shipment shall be considered a separate and independent transaction and payment therefor shall be made accordingly. All invoices are payable at the address shown on the invoice. A prompt payment discount in the amount stated on the invoice (if any) will be allowed on payments received by the 10th of the month for shipments made during the previous month, provided no past due balances are outstanding at such time. Invoices not paid in full by the last day of the month following the month of shipment shall be considered past-due and shall bear interest at the rate of 1½% per month or the maximum rate permitted by applicable law, if lower, thereafter until paid. In addition to the interest, upon Buyer's breach or default, Seller shall be entitled to all rights under the Uniform Commercial Code ("UCC") and all rights at law and in equity; Buyer agrees to reimburse Seller for all collection costs, court costs, attorneys' fees and expenses, and other charges incurred by Seller. If at any time financial responsibility of the Buyer becomes impaired or unsatisfactory to Seller, Seller may require payment or satisfactory security or guaranty in advance of shipment. If Buyer fails to deliver such security or guaranty, to make a payment when due, or to comply with any other term of sale, Seller reserves the right to cancel all unfilled orders without notice.
4. **SECURITY INTEREST.** Seller shall have the right to retain a security interest in the Products sold or shipped and to require Buyer to execute a security agreement and authorize filing of financing statements under the applicable provisions of the UCC. Buyer hereby grants such security interest to Seller and authorizes such filing.
5. **LIMITED WARRANTY.** The Product has been manufactured to conform to applicable specifications of the American Society for Testing and Materials ("ASTM") or the American Petroleum Institute ("API") as may be set forth on the bill of lading or invoice for such Product, or such other specifications as may be identified by Seller for non-ASTM or non-API Product. 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 applicable specifications shall be paid for by Buyer.
EXCEPT FOR THE LIMITED WARRANTY MADE ABOVE, SELLER SPECIFICALLY DISCLAIMS ANY OTHER WARRANTY, INCLUDING ANY EXPRESS WARRANTY, ANY IMPLIED WARRANTY OF MERCHANTABILITY OF GOODS, AND ANY IMPLIED WARRANTY OF FITNESS OF GOODS FOR ANY PARTICULAR PURPOSE, ALL OF SUCH WARRANTIES ARE EXCLUDED.
6. **LIMITATION OF REMEDIES.** Seller's total liability arising under or in connection with this agreement shall be limited to the purchase price of Products sold under this agreement or corresponding purchase order. The sole and exclusive remedy of Buyer or any other party against Seller for all claims of any kind, whether based upon contract, tort (including negligence), breach of warranty or otherwise, for any loss or damages arising out of, connected with or resulting from, the sale or failure to sell, shall be replacement of such Product sold hereunder, F.O.B. Seller's plant or terminal or utility or, at Seller's option, refund of the purchase price paid for the Product. No other remedy shall be available to Buyer (including, but not limited to indirect or consequential damages, lost profits, lost sales, punitive damages, injury to persons or property or any other incidental or consequential loss). **BUYER AND SELLER AGREE THAT THE EXCLUSIVE REMEDY SET FORTH HEREIN DOES NOT CAUSE THE CONTRACT TO fail of its essential purpose.**
7. **TECHNICAL INFORMATION; HAZARDS AND PRECAUTIONARY PROCEDURES; INDEMNITY.** Any technical information or assistance Seller or its affiliates provide is given and accepted at Buyer's risk and is not a warranty or a specification. A material Safety Data Sheet ("SDS") with complete safety information is available from Seller. 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 agrees to provide or make available such SDS to all persons who may purchase, use or come into contact with the Product including its employees and 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), due, in whole or in part, to Buyer's failure to familiarize itself with such hazards and precautionary procedures, to manage accordingly or to provide such information as set forth above or required by law.
8. **DUTIES AND TAXES.** All duties and taxes of any governmental authority payable in respect to the purchase and sale of goods and/or the delivery of the goods to the point of delivery are for the account of Buyer, except as otherwise set out herein.
9. **FORCE MAJEURE AND ALLOCATION.** Seller shall not be liable for any expense, loss or damage due to its failure to perform or its delay in manufacturing, shipping or delivering Products caused by acts of God; acts of war; acts of public enemy; epidemics/pandemics; fire; floods; labor disputes, strikes or lockouts; breakdowns or accidents; inability to secure rail cars, trucks or barges or other delays in transportation; inability to procure supplies or other materials; government actions, regulations, orders or rulings; acts or omissions of Buyer; or any other events or other conditions beyond Seller's control, whether similar or dissimilar to the foregoing acts or occurrences. During times of shortage, Seller shall have the right to allocate among its customers in accordance with Section 2-615 of the UCC.
10. **GENERAL.**
 1. Seller's failure to exercise any right hereunder, at law or in equity shall not be deemed a waiver of any of such rights.
 2. Any oral statements made by Seller's representatives about the Product do not constitute warranties, shall not be relied upon by Buyer, and are not part of the contract for sale. All of the terms and conditions of purchase and sale are embodied in this writing.

3. This agreement, and sales hereunder, shall be governed by the laws of the state in which Seller's plant/terminal is located from which delivery or shipment to Buyer is made.