

TERMS AND CONDITIONS OF SALE – CEMENTITIOUS PRODUCTS - ST. MARYS CEMENT INC. (U.S.) (“SMC”)

CONDITIONS OF SALE: This document contains the terms and conditions of the agreement between the Buyer and SMC for the purchase and sale of SMC’s cementitious product or products (“Product”) specified on the delivery ticket. The agreement includes any written sales or purchase agreement, the quotation (if applicable), the delivery ticket, the Credit Application, these Terms and Conditions, and the invoice or invoices (the “**Agreement**”). Except for prices, there are no other terms, conditions or representations other than those expressed in the Agreement documents. Products will be deemed accepted by the Purchaser on these terms and conditions unless rejected and returned at the time of delivery.

PRICES: The Buyer agrees to pay the prices as quoted by SMC or its agents or as announced by SMC from time to time, together with other applicable fees, tolls or surcharges and any sales or applicable taxes. SMC reserves the right to change Product pricing. Prices include freight and delivery to the stated point of destination specified on the delivery ticket (the “**Point of Delivery**”) during regular business hours of SMC for deliveries. All taxes, tolls and surcharges, and delivery outside of regular business hours of SMC shall be in addition to quoted prices. Any increase in taxes, new taxes and other governmental charges hereafter imposed on the production, sale or transportation of Product which SMC may be required to pay shall be added to the quoted price and shall be payable by the Buyer. Any increase in freight rates and fuel surcharges in effect on the date of shipment shall be added to the invoice. Buyer shall be liable for all costs, including extra fuel costs, and all expenses for failure to take deliveries within a reasonable time.

TERMS OF PAYMENT: For Buyers whose credit has been approved in advance by SMC, SMC shall issue invoices for shipments delivered and, unless expressly agreed otherwise, the Purchaser agrees to pay the invoices within thirty (30) days after the date of the invoice. Buyer shall pay the full amount owing on the invoice and agrees there is no right of set-off or entitlement to make deductions from amounts payable, for any reason whatsoever, including alleged damages. If the financial responsibility of Buyer becomes impaired or is unsatisfactory to SMC, or Buyer is in default under this or any other contract with SMC, SMC shall have the right to require advance cash payment or satisfactory security from Buyer, and SMC reserves the right, in addition to all other rights hereunder, to cancel any unfulfilled orders under the Agreement without notice and without liability. Shipments may either be withheld until payment or security is received, or SMC may cancel any unfulfilled portion of an order. In such event, Buyer shall remain liable for all unpaid amounts for Product delivered. Interest will be charged on all overdue amounts at the rate of 1.5% per month, or at the maximum rate allowed by law, whichever is less. SMC shall be entitled to avail itself of any and all mechanic’s, materialman’s or supplier’s lien rights that exist in any applicable jurisdiction in which the Product is delivered. Further, Buyer hereby grants SMC a security interest in Product delivered to Buyer as security for the full payment of the Product.

DELIVERY: Delivery of the Product shall be to the Point of Delivery. SMC reserves the right to determine the route and method of transportation. SMC Reserves the right, but shall not be obligated, to ship from any plant other than the facility closest to the Point of Delivery. Buyer agrees to unload and release all transportation vehicles and equipment promptly and agrees to comply with such instructions, if any, as SMC may give for return of the equipment. SMC reserves the right to charge Buyer for expenses and losses resulting from delay in loading, unloading and/or releasing delivery vehicles. All expenses for return movement, diversion or demurrage charges incurred by reason of any refusal to accept delivery shall be paid by Buyer. SMC reserves the right to add other charges including but not limited to cancellation, evening and/or weekend charges. If, in SMC’s opinion, suitable roadways or approaches are not available, all Product shall be returned to SMC and Buyer agrees to pick up the Product at SMC within three (3) business days. Buyer shall be responsible for the original shipping charges in any event. For sites beyond the curb line, SMC assumes no liability for damage to sidewalks, driveways, roadways or other property and Buyer agrees to indemnify and save harmless SMC, its directors, officers, employees, shareholders, successors and assigns against all claims, liability, loss or expense including legal fees and expenses incurred as a result of any damage.

RISK: From the time of delivery of the Product at the Point of Delivery, all risk of loss, damage or deterioration of Product from whatever cause shall be borne by the Buyer. Buyer assumes all risk and liability for loss, damage and/or injury to persons and/or property of Buyer or others arising out of the use or possession of the Product.

CLAIMS: Buyer agrees to make any claims for shortage, loss or damage of Product within ten (10) days of Delivery. Any claims must be accompanied by original freight expense bill or delivery ticket with a notation thereon by the carrier as to such shortage, loss or damage. Any objections to the character or quality of Product must be made to SMC in writing before such Product is used (except for reasonable test and inspection quantities). The Purchaser’s rights with respect to Product rightfully rejected are limited to the rights set forth below. The sole and exclusive remedy of the Buyer or any other party against SMC for all claims of any kind, whether based on 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, or, at SMC’s option, refund of the purchase price paid for the Product(s).

LIMITED WARRANTY AND LIMITATION OF LIABILITY: At time of shipment of Product from SMC’s plant, Product will conform to the present standard specifications or the American Society for Testing and Materials, and the Federal Board, then in effect. **SMC expressly disclaims all other representations and warranties, including any express or implied warranty of merchantability of the Product, or fitness of the Product for any particular purpose, and none shall be implied by law, regardless of any information, statements or assistance whatsoever provided by SMC about the Product.** SMC, having no control over the handling or use of the Product, shall not be responsible for the condition of Product after release to the Buyer at the Point of Delivery, and shall not be responsible for any finished work in which Product is used, nor for the suitability of the Product for any particular use. **THE SOLE AND EXCLUSIVE REMEDY OF BUYER OR ANY OTHER PARTY AGAINST SMC FOR ALL CLAIMS OF ANY KIND FOR WHICH PROPER NOTICE IS GIVEN TO SELLER, 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).**

WEIGHTS: The standard unit of measure of Product shall be the U.S. ton, unless otherwise specified in the Agreement. SMC scales will be used to determine the weight of bulk truck shipments. In the case of rail shipments, the carrier’s scales located nearest to the point of origin shall conclusively determine the weight of shipments.

FORCE MAJEURE: SMC shall not be liable for any expense, loss or damage relating to delays in manufacturing, availability or delivery of Product caused by acts of God, governmental action, regulations, orders or rulings, acts of war, terrorism, strikes, lockouts, other labour disputes, breakdowns, accidents, or acts or omissions of Buyer, or any other reason outside of SMC’s reasonable control, and SMC may cancel the unfulfilled portion of any order or prorate among its customers such Product as it may be able to manufacture and ship, in accordance with the provisions of Section 2-615 of the Uniform Commercial Code.

WAIVER: The failure by SMC to exercise any of its rights under this Agreement at any time or times shall not operate as a waiver of such rights.

ENTIRE AGREEMENT AND GOVERNING LAW: This Agreement supersedes all other agreements, written or oral, regarding the Product, 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 SMC. The laws of the State in which the Product is produced shall govern this Agreement.