

**TERMS AND CONDITIONS OF SALE - CONCRETE**

1. **Agreement.** These terms and conditions govern every purchase of concrete or concrete products from VCNA United Materials LLC (“Supplier”) by any individual or entity (each, a “Customer”) and, together with any quotation, delivery ticket, mix design submittal and credit agreement issued by Supplier, and any other document specifically referenced herein, form an agreement between Supplier and Customer to provide concrete or concrete products (“Product”) (collectively the “Agreement”). Any proposal or attempt to vary the terms of this Agreement is expressly rejected by Supplier, unless signed by an authorized representative. Customer’s signature on any part of the Agreement, request for Product or acceptance of Product each constitute Customer’s acknowledgement that it accepted and is bound by the Agreement.
2. **Prices and Payment Terms.** Unless specifically noted, the quoted price only includes the manufacture and delivery of Product. It does not include any costs of inspection, tests, cost recovery items (including charges or fees relating to fuel or other surcharges, environmental matters, plant opening, tickets or fines, restricted loads, extra stops or diversions, minimum loads, weekend work, wait time, clean-up, cancellation, overtime, winter handling, summer cooling, returns, dumps or disposals) or charges due to Customer’s delays, actions or inactions, nor does it include taxes, bonds or other government levies, tariffs or duties, all of which, if applicable, are payable by the Customer. If a Customer is tax-exempt, it must present satisfactory proof of its tax exemption certificate prior to the time the Product is shipped. Customer will pay all invoices within 30 days of the date of the invoice. Late payments will accrue interest at the rate of 1.5% per month (18% per annum) and Customer shall be responsible for all of Supplier’s expenses (including legal fees) incurred in collecting any unpaid amounts. Notwithstanding any grant of credit to Customer by Supplier, if at any time the financial responsibility of the Customer becomes unsatisfactory to Supplier or the Customer is in default to Supplier or its affiliates under this or any other agreement, Supplier reserves the right to withhold further Product or require advance cash payment or satisfactory security prior to supplying any further Product. The Supplier 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 to secure payment for Product. The Customer may not make any set-offs or deductions (including those for alleged damages or delays) from payments due hereunder. Any charges or fees imposed, including for fuel or environmental matters, are not represented to be a direct offset or pass through of the Supplier’s actual costs to service any individual account, but are intended to address its overall costs. Once accepted by Customer, the price under the Agreement is subject to change by Supplier, at its sole discretion, upon sixty (60) days’ notice to Customer
3. **Delivery and Cancellation.** Requests for deliveries of Product must be made at least 24 hours in advance. Supplier cannot guarantee delivery times, pour rates, slump or Product, vehicle, or equipment availability. Under no circumstances will Supplier be liable for any back charges or other charges due to alleged delivery delays. Supplier reserves the right to supply Product from any plant of its choosing and to determine the delivery route. Fees may apply to order cancellations. Customer shall provide reasonable and safe access to the point of sale, and facilities to allow Supplier or its agents to stage trucks prior to unloading and to clean delivery vehicles after Product delivery. If Customer or its agent does not sign the delivery ticket for the Product or otherwise receive the Product in the manner agreed to by the parties, the Product will, at Customer’s expense, be returned to Supplier or, at Supplier’s option, Customer’s failure or refusal to do so shall constitute its agreement with all matters set forth in the relevant delivery ticket furnished by Supplier. If Supplier, in its sole discretion, determines that such access or facilities are not reasonable or safe, then it may remove its equipment or stop deliveries until such access or facilities are provided, at Customer’s expense. Supplier will not be liable for any cold joints. All deliveries of Product shall be to the curbside nearest the delivery address, and Supplier shall have no liability for any damage or injury caused during deliveries that are beyond the curbside.
4. **Point of Sale.** “Point of sale” means the time and place at which the Product (i) exits the end of the chute from any delivery vehicle owned or operated by Supplier or its subcontractor to the specified location; or (ii) is loaded from Supplier’s plant onto any vehicle or equipment owned or operated by Customer or its agent or subcontractor. “Delivery” occurs at the point of sale. Title to and risk of loss of Product shall transfer to Customer at the point of sale.
5. **Supplier’s Site.** Customer acknowledges that Supplier’s sites may include heavy industrial activity or other hazardous conditions. Customer and any agent must, when on the Supplier’s site or when handling the Product, comply with all applicable laws, ordinances, by-laws, rules and regulations, including those regarding safety, and, to the extent they are more restrictive, all of Supplier’s rules, policies and instructions. Customer will ensure that all of its employees and agents entering Supplier’s site are properly qualified and wear all required safety apparel. Supplier reserves the right to refuse entry to its site of any vehicle or person it deems unsafe.
6. **Volume.** The standard measurement unit of Product shall be the one indicated on the quotation or as otherwise communicated by Supplier in writing. Customer is responsible for taking delivery of Product supplied pursuant to its order. The minimum load sizes for Product delivery differs depending on the mix. Any claim for shortage of Product must be made to Supplier within 24 hours after receipt of Product by Customer, and, in such instance, the quantity of loaded or delivered Product that is shown on Supplier’s delivery ticket shall be conclusive evidence of the quantity of Product delivered.
7. **Warranty.** Supplier warrants that, at the point of sale, Products will conform to applicable specifications for compressive strength, durability and workability in the current American Society for Testing and Materials (“ASTM”) C94/C94M Standard Specification for Ready-Mixed Concrete (“ASTM Standards”) or other alternative specifications that are agreed upon in writing. The Product is otherwise sold on an as is, where is basis. This warranty is not assignable by the Customer. THE FOREGOING WARRANTY IS EXCLUSIVE. SUPPLIER DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, REPRESENTATIONS OR GUARANTEES, INCLUDING OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Warranty claims that are based on the strength of the Product must be made in writing within 60 days of the date of delivery of the Product. Warranty claims that arise out of any other issue must be made in writing within one year from the date of delivery of the Product. Regardless of the basis of the claim, Customer must provide Supplier with written notice of its warranty claim within five business days of the date Customer discovered or should have discovered such claim, and the claim must be accompanied by the Agreement and all evidence in Customer’s possession which supports its claim, including proof of nonadherence to the applicable specification by performance of a Petrographic examination in accordance with the applicable ASTM procedures (at Customer’s expense). Claims will be determined based on Supplier’s quality assurance test results for samples of the Product, if any. This warranty does not apply to Products that are concrete blocks or that have been manufactured by any third party, all of which are sold as-is, where-is.
8. **Warranty Does Not Include:** For clarity, Customer acknowledges that Supplier makes no warranty with respect to (i) the Product after the point of sale, including placing, finishing or curing of the Product; (ii) any finished work in which the Product is used; or (iii) the suitability of the Product for any particular use. Furthermore, the warranty set out in Section 7 shall not apply and Supplier has no liability hereunder if:

- a. Sampling and testing of Product is not in strict accordance with the ASTM Standards or if results are not interpreted in strict accordance with ASTM Standards;
  - b. Addition of water by Customer or at Customer's request results in the slump exceeding the maximum specified slump and/or water/cementitious ratio (if applicable);
  - c. Customer or any other party on Customer's request adds or mixes any materials or admixtures unless authorized in writing by the Supplier;
  - d. Customer specifies any of the proportions of the Product mixed, regardless of acceptance of mix submittal by Supplier, beyond the responsibility assumed by the Supplier for mix performance as specified in ASTM C94 6.4 - 6.7;
  - e. Placement of Product is not completed within the timeframe specified for delivery and placing, for any reason other than Supplier's breach of this Agreement;
  - f. Customer fails to supply any applicable project specification, supplies an incorrect project specification or orders Product that does not meet applicable ASTM Standards; or
  - g. Installed Product is exposed to any non-traditional or alternative chemical de-icing materials (including calcium chloride, calcium magnesium acetate (CMA), potassium chloride, magnesium chloride or urea), application techniques or application rates.
9. **Limitation of Remedies.** The exclusive remedy of Customer or any third party against Supplier for all claims related to warranty or Product quality (whether the claims arise in tort, contract, or any other theory of liability), or for any loss or damages arising out of, connected with or resulting from the Product or this Agreement, is, at Supplier's discretion, (i) replacement of the Product or (ii) credit for the purchase price paid for the Product, and shall in no event cost Supplier more than the amount paid to Supplier for the Product. Without waiving the foregoing limitations, each of the Supplier and Customer shall defend, indemnify and hold the other harmless from any third-party claims, causes of action, liabilities, losses, costs, taxes, penalties, attorneys' fees, expenses or otherwise, resulting from property damage, personal injury or death, to the extent caused by its breach of this Agreement, negligence, gross negligence or willful misconduct. Notwithstanding anything else herein, including the Supplier's indemnification obligations, Supplier shall not be liable to Customer or any third party for any lost profits, indirect, consequential, liquidated, punitive or similar types of damages, nor will Supplier accept any back charges for any construction delays experienced by Customer or any third party, regardless of whether the alleged liability, loss or damage arises in tort, contract or any other theory of liability.
10. **Technical Information and Assistance.** Any technical or other information or assistance provided by Supplier or its agents, or oral statements made by Supplier or its agents, about the Product, is given without warranty or specification, and accepted at the Customer's risk. Customer acknowledges that it is sufficiently knowledgeable regarding the Product and its intended use by Customer, and that Customer selected the Product for such use and decided to enter into this Agreement without any reliance upon any representations or statements of Supplier or its agents not expressly set forth in the Agreement.
11. **Project Information.** Customer shall furnish to Supplier, upon oral or written request, copies of all payment bonds, notices of commencements, job addresses and other information Supplier deems necessary to protect Supplier's interest in the Product. Supplier shall have the absolute right to provide any notices to third parties or otherwise, required to secure lien and bond rights available to Supplier.
12. **Force Majeure.** Supplier may delay performance occasioned by events beyond its control without incurring liability for such delay when such delay is caused by a) acts of God or the public enemy, fire, explosion, epidemics, pandemics, public health crises, acts of war or terrorism, perils of the sea, flood, drought, war, riot, sabotage, vandalism, accident, breakdown, strike, labor dispute, protest, civil unrest, embargo or other casualty; b) compliance with any order, action, direction or request of any government authority; c) shortage of labor or materials; d) supply chain disruption; or e) any other circumstance that is beyond its reasonable control, including Customer's acts or omissions. Further, and without limiting the foregoing and irrespective of any preexisting supply commitment to Customer, Supplier may, during periods of shortages or disruptions in labor, material or supply chains, allocate Product to Customer in accordance with similarly-situated customers.
13. **Confidentiality.** This Agreement is intended for Customer's use only. The contents of the Agreement are confidential and, unless compelled by law or judicial process, shall not be shared with third parties without Supplier's written consent.
14. **Miscellaneous.** Failure by Supplier to exercise any of its rights hereunder shall not operate as a waiver of such rights. This Agreement supersedes 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 this Agreement is binding on Supplier. All references to ASTM documents in these Terms and Conditions are to those in effect as of the effective date of these Terms and Conditions. This Agreement is not assignable by the Customer. Customer has read and agrees to abide by the Supplier's Anti-Corruption Commitment which is available upon request and at [http://www.stmaryscement.com/Documents/Customer\\_AntiCorruption\\_Commitments.pdf](http://www.stmaryscement.com/Documents/Customer_AntiCorruption_Commitments.pdf). This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard for its choice of law or conflict of law principles, and, in the event of any disputes arising out of this Agreement, such disputes shall be brought exclusively in the United States District Court for the Western District of New York or the New York state court having jurisdiction over Erie County, New York, and the parties consent to jurisdiction in such fora for any such disputes. Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.

Please contact us at [\(716\) 231-5832](tel:7162315832) with any complaints or questions.