



ALLIED SALES TERMS AND CONDITIONS

- 1. BINDING AGREEMENT.** These terms and conditions and the applicable terms of all Allied sales documents (collectively "Agreement") shall be binding upon Buyer and shall apply to all sales transactions between Buyer and Allied Concrete Company ("Allied"). This Agreement shall inure to the benefit of the subsidiaries, affiliates, successors and assigns of Allied, shall be binding upon Buyer's heirs, legatees, devisees, personal representatives, successors and assigns and shall apply to all transactions between Allied and Buyer.
- 2. SALES TERMS.** Buyer agrees that all sales by Allied to Buyer shall be pursuant to Allied's Sales Terms and Conditions in effect at the time of each transaction and to other terms for specific transactions contained in Allied's sales documents, notwithstanding any provision to the contrary in Buyer's Purchase Order or any other transactional document. Buyer agrees that Allied's Sales Terms and Conditions and the terms of Allied's proposals, order confirmations, delivery tickets and other sales documents are binding on Buyer and take priority over and supersede all of Buyer's purchase and other document terms, unless specifically agreed to in writing by Allied and signed by a duly authorized officer of Allied.
- 3. ESTIMATE DISCLAIMER.** All estimates provided by Allied are intended to provide Buyer with a rough estimate of the amount of material required for Buyer's needs. Estimates are provided based on information provided by Buyer and typical building techniques. The actual amount of materials required by Buyer may vary from Allied's estimate. Allied makes no warranty with respect to the actual amount of materials required and **DISCLAIMS** any liability for any variance between Allied's estimate and the actual amount of materials required.
- 4. FORCE MAJEURE.** Buyer agrees that Allied's performance will be suspended or excused if production and/or delivery is delayed due to raw material or labor shortage, production shutdown or delay, strike, fire, flood, governmental action or any cause beyond the control of Allied.
- 5. WARRANTY/LIMITATION OF LIABILITY.** Allied warrants that the goods sold and services provided will conform to Allied's written specifications, and conform otherwise as specifically provided on other Allied sales documents for specific transactions. **ALLIED MAKES NO OTHER WARRANTIES AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALLIED DISCLAIMS ALL RESPONSIBILITY FOR THE FINISHED WORK INTO WHICH THE GOODS ARE INCORPORATED OR FOR COMPLIANCE WITH FEDERAL, STATE OR LOCAL LAWS AND REGULATIONS. BUYER'S SOLE REMEDY IN THE EVENT OF A BREACH OF ALLIED'S WARRANTY OR OTHERWISE IS FOR REPLACEMENT OF ANY DEFECTIVE ITEM SOLD. IN NO EVENT SHALL ALLIED BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, INCLUDING LOST PROFITS, LOST BUSINESS, LOSS OF FINANCING, LIQUIDATED DAMAGES, FINES AND PENALTIES, EVEN IF ALLIED HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES AND LOSSES. ALLIED'S LIABILITY SHALL IN NO CASE EXCEED THE AMOUNT FOR WHICH BUYER WAS INVOICED FOR ANY PROVEN DEFECTIVE ITEM SOLD BY ALLIED.**
- 6. PRODUCT CLAIMS.** BUYER AGREES TO NOTIFY ALLIED IN WRITING WITHIN TEN (10) DAYS OF DELIVERY (OR OTHER TIME SPECIFIED ON ALLIED'S SALES DOCUMENTS FOR SPECIFIC TRANSACTIONS) OF ANY CLAIMS THAT THE GOODS AND/OR SERVICES PURCHASED ARE DEFECTIVE OR FAIL TO MEET THE WRITTEN SPECIFICATIONS. FAILURE TO DO SO WITHIN THE REQUIRED TIME CONSTITUTES A WAIVER OF ANY SUCH CLAIM.

7. INDEMNIFICATION. Buyer shall indemnify and hold Allied and its affiliates and their respective owners, officers, directors, employees and agents (“Indemnified Parties”) harmless with respect to all liability, loss or damage the Indemnified Parties may suffer as a result of all claims, judgments, statutory or regulatory compliance, demands, fines, penalties, costs or expenses asserted against the Indemnified Parties by Buyer and Buyer’s employees and agents and by all third parties as a result of or arising out of the use, consumption, storage, handling, modification, sale or resale of the goods after delivery to Buyer. This indemnity shall apply whether such liability is caused by, or arises out of the negligence of the Indemnified Parties or its officers, directors, agents, employees or otherwise. Buyer shall defend the Indemnified Parties against any and all claims brought or actions filed against the Indemnified Parties with respect to the subject of the indemnity contained herein and Buyer shall further indemnify the Indemnified Parties with respect to all costs incurred by the Indemnified Parties in defending against any such claims or actions, including attorneys’ fees and legal costs, wages and fringe benefits for the time spent by the Indemnified Parties’ employees working on the dispute, expert witness fees and costs and all other expenses of litigation, arbitration and alternative dispute resolution.

8. DELIVERY; UNLOADING.

- (a) Delivery will be FOB point of manufacture unless otherwise stated on Allied’s sales documents.
- (b) All claims for goods damaged in transit shall be filed with the carrier (if other than Allied) and noted on the delivery document.
- (c) Allied is not responsible for damage to the cargo areas of Buyer’s vehicles, including damage caused by loading, shifting of the load during transit, unloading, and damage resulting from broken straps (bands).
- (d) For goods other than ready mix concrete, Buyer will be allowed a total of one (1) hour for waiting and unloading after arrival of truck on the job site and agrees to pay a charge for time in excess of one (1) hour at Allied’s then applicable rate.
- (e) For ready mix concrete, Buyer will be allowed ten (10) minutes per yard for unloading after arrival of truck on the job site and agrees to pay a charge for time in excess of ten (10) minutes per yard at Allied’s then applicable rate.
- (f) Delivery trucks and fork lifts are not permitted to drive beyond the curb line except upon authorization by Buyer which will be deemed to include acceptance by Buyer of responsibility for damage or loss suffered by any party.
- (g) Boom unloading of block and building materials onto scaffolding or suspended floors is strictly PROHIBITED.
- (h) Allied is not liable for personal injury or death to person or for damage to property resulting from the presence of Buyer’s employees on vehicles and equipment owned or leased by Allied. Buyer assumes full responsibility for such liability and agrees to indemnify Allied from all related claims and resulting damages and costs, including legal fees.

9. SPECIAL WARNINGS AND PRODUCT INFORMATION NOTICES.

- (a) **SPECIAL WARNING FOR WET (UNHARDENED) CONCRETE, MORTAR, CEMENT OR CEMENT MIXTURES:**

INJURIOUS TO EYES! CAUSES SKIN IRRITATION! READ THIS WARNING BEFORE USING! Contains Portland Cement

Contact with wet (unhardened) concrete, mortar, cement or cement mixtures can cause skin irritation, severe chemical burns or serious eye damage. Avoid contact with eyes and skin. Wear waterproof gloves, a fully buttoned long-sleeved shirt, full-length trousers and tight-fitting eye protection when working with these materials. If you have to stand in wet concrete, use waterproof boots that are tight at

tops and high enough to keep concrete from flowing into them. If you are finishing concrete, wear knee pads to protect knees. Wash wet concrete, mortar, cement or cement mixtures from your skin with fresh, clean water immediately after contact. Indirect contact through clothing can be as serious as direct contact, so promptly rinse out wet concrete, mortar, cement or cement mixtures from clothing. Seek immediate medical attention if you have persistent or severe discomfort. In case of eye contact, flush with plenty of water for at least 15 minutes. Consult a physician immediately. KEEP OUT OF THE REACH OF CHILDREN.

BUYER AGREES TO CONVEY THIS WARNING TO ALL PERSONS WHO MAY PURCHASE, USE OR COME IN CONTACT WITH WET (UNHARDENED) CONCRETE, MORTAR, CEMENT OR CEMENT MIXTURES.

(b) **WARNING:** Some Allied products contain crystalline silica (quartz). Crystalline silica is a common mineral found in natural sand and rock. Breathing silica dust may cause respiratory and other health problems, including lung disease, silicosis and cancer, which may result in permanent injury or death. Risk of injury depends on duration and level of exposure. To reduce risk of injury, limit exposure time and use dust mask or respirator. Before using or handling this product, read the material data safety sheet.

(c) **WARNING:** Sawing or grinding some Allied products may result in release of dust particles which may cause eye irritation. Wear NIOSH approved respirator and goggles when sawing or grinding. If exposed, flush eyes generously with water for fifteen (15) minutes and seek prompt medical attention.

(d) **WARNING:** Buyer is responsible for the failure of ready mix concrete to conform to the specifications and standards of the American Society for Testing Materials (ASTM) and the American Concrete Institute (ACI) as a result of the addition of water in excess of the specified volume, delay in unloading or forming, and other similar factors occurring on the job. Buyer must ensure that all concrete is handled in compliance with the applicable ASTM and ACI specifications and standards.

(e) **NOTICE:** Integrally colored concrete masonry and segmental retaining wall units are produced from natural aggregates and Portland cement utilizing pigments to achieve a relatively uniform color. As with all materials taken from the earth, there will be naturally occurring variation in product shade or tint. As units are placed into use, they should be taken from at least three (3) different cubes to insure uniformity of shade and tint range in the project.

(f) **NOTICE:** Effervescence is a whitish deposit common on concrete products that will occur under certain conditions and normally will disappear over time and weathering. Allied is not responsible for effervescence.

10. MECHANIC'S LIEN INFORMATION; JOINT CHECK AGREEMENT. For each transaction, Buyer agrees to provide to Allied mechanic's lien information for the applicable project including the Owner's full name, address and telephone number; the Mechanic's Lien Agent's name, address and telephone number; and the building permit number. Buyer agrees to obtain a Joint Check Agreement with the party responsible to pay Buyer authorizing such party to issue checks for progress payments to Buyer and Allied jointly, upon request of Allied.

11. PAYMENT TERMS/COLLECTION COSTS. Buyer agrees to pay in full the amount for all purchases from Allied, including, without limitation, all labor, material and equipment charges, promptly when due according to the terms set forth on the sales documents, or if no payment terms are set forth, terms are net thirty (30) days. If such total price is not paid in full by the due date, Buyer agrees to pay a late payment charge on the unpaid delinquent balance calculated at the rate of the lesser of: (a) two percent (2%) per month (APR 24%) unless a different rate is otherwise indicated on a current invoice, in which case such indicated rate would prevail or (b) the highest rate allowed by law. If Buyer should fail to fulfill any of its obligations under this Agreement, or if Allied, in good faith deems itself insecure because the prospect of payment is impaired, or the prospect of performance of any provision of the Agreement is impaired, or if a Default occurs for any other reason provided in this Agreement, then Allied, at its option and without notice, may declare the entire unpaid balance owed by Buyer to be immediately due and payable, terminate the credit privileges of Buyer under this Agreement, exercise its rights as a secured party, exercise any right of setoff, offset, recoupment or the like with respect to any indebtedness or obligation of Allied to

Buyer, or any combination of the foregoing. Buyer agrees to pay all costs and expenses incurred by Allied in collecting the amounts owed by the Buyer under this Agreement and pursuant to any sales transaction with Buyer, including all attorney's fees, court costs, and alternative dispute resolution costs incurred by Allied.

12. CANCELLATIONS; RETURNS; RESTOCKING FEE. No cancellation will be accepted after ready mix concrete has been loaded in trucks at Allied's plant. Returns are subject to inspection and authorization by Allied. No returns are allowed for ready mix concrete, masonry cement, bag products, special orders, or goods that are not in saleable condition. Buyer agrees to pay a thirty percent (30%) restocking charge for returned goods.

13. DEFAULT. The occurrence of any of the following events shall constitute a "Default" under this Agreement (a) Buyer fails to fulfill any obligation of this Agreement or fails to perform, or rectify the breach of, any warranty, agreement, or other promised undertaking by Buyer; (b) Buyer or any guarantor of Buyer's indebtedness under this Agreement dies, terminates existence, abandons its business, becomes insolvent, bankrupt, becomes the subject of bankruptcy, receivership, insolvency, or similar proceedings, or makes an assignment for the benefit of creditors; (c) Allied determines that any information or other representation now or hereafter made or furnished to Allied by Buyer is, or is believed in good faith by Allied to be, inaccurate, incomplete, or false in any material respect; (d) Buyer violates or breaches any provision of this Agreement; (e) any collateral which is security for Buyer's indebtedness under this Agreement is lost, suffers material damages or destruction, is levied upon, becomes subject to a receivership, or cannot be located within five days after Allied demands to inspect the same; (f) any other event which causes Allied, in good faith, to deem itself insecure or to believe that the prospect of performance of any provision of the Agreement by Buyer is impaired. Allied may, at its option, permit Buyer to remedy any Default without waiving the Default or any other subsequent or prior default by Buyer. Upon the occurrence of an event of Default, Allied shall have all rights and remedies provided in this Agreement as well as any other rights or remedies provided by law.

14. ARBITRATION/JUDICIAL PROCEEDING. In the event of a dispute between the parties arising out of or relating to this Agreement, the parties agree to meet and negotiate in good faith with each other in an effort to resolve the dispute. If the parties are unable to resolve such dispute by this method within thirty (30) days of the first written notice of such dispute by one party to the other, then such dispute shall be settled by compulsory and binding arbitration administered and conducted by The McCammon Group, Ltd., based in Richmond, VA in accordance with its rules, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitration proceeding will be held in Charlottesville, VA. This agreement to arbitrate shall not preclude the parties from seeking injunctive or other appropriate judicial relief in furtherance of this Agreement pending arbitration, including the filing of a mechanic's lien and suit to enforce. The fees and expenses of such arbitration and judicial relief (including reasonable attorney's fees) or of any action to enforce an arbitration award shall be paid to the substantially prevailing party by the other party. The arbitrator or trier of fact will determine which party is the substantially prevailing party.

15. TRANSACTION DOCUMENTS IN ELECTRONIC FORMAT. BUYER AND GUARANTOR AGREE THAT ALL TRANSACTION DOCUMENTS MAY BE RETAINED AND USED BY ALLIED EXCLUSIVELY IN AN ELECTRONIC FORMAT. SUCH TRANSACTION DOCUMENTS INCLUDE, BUT ARE NOT LIMITED TO, THIS AGREEMENT, ORDER CONFIRMATIONS, DELIVERY TICKETS, DELIVERY ACKNOWLEDGMENTS, INVOICES AND STATEMENTS. BUYER AND GUARANTOR AGREE THAT ALL TRANSACTION DOCUMENTS RETAINED AND USED IN AN ELECTRONIC FORMAT SHALL BE ADMISSIBLE INTO EVIDENCE IN A COURT OF LAW OR ARBITRATION PROCEEDING TO THE SAME EXTENT AS THE ORIGINAL, NON-ELECTRONIC VERSION OF SUCH TRANSACTION DOCUMENTS WOULD BE ADMISSIBLE.

16. SECURITY INTEREST. Allied retains and Buyer grants to Allied a security interest in all goods sold by Allied to Buyer to secure payment in full to Allied and performance by Buyer of all obligations contained in the Agreement. Buyer appoints Allied as its attorney-in-fact to take all action necessary and file all documents to perfect Allied's security interest in the goods and to exercise all rights and remedies afforded to a Secured Party under the Uniform Commercial Code.

17. NOTICES. All notices required or permitted pursuant to this Agreement shall be in writing and may be provided by any reliable and verifiable means, including electronic means.

18. MISCELLANEOUS. This Agreement constitutes the entire Agreement for the sale and purchase of the goods, and Allied shall not be liable for, or bound in any manner by, any representations, guaranties, commitments, course of prior dealings or usage of trade, except as specifically provided herein. No modification of this Agreement, no waiver of any provision or right to demand performance hereunder and no waiver of the requirements of this sentence shall be of any force or effect unless in writing and signed by the authorized agent of the party claimed to be bound thereby, and no modification or waiver shall result from the acknowledgement or acceptance of Buyer's purchase order forms containing terms different from those herein. A waiver of any right, obligation or Default shall not be construed as a waiver of any subsequent right, obligation or Default. If any provision of this Agreement is determined to be invalid by a court of competent jurisdiction or arbitrator, the remaining terms shall remain in full force and effect. In the event of any conflict between the terms of this Agreement and the terms of Buyer's purchase order or other purchase documents, the terms of this Agreement shall prevail despite such conflict, notwithstanding any provision to the contrary regarding additional terms and acceptance or confirmation contained in the applicable Uniform Commercial Code, or otherwise.

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