

HC&D, LLC GENERAL TERMS AND CONDITIONS OF AGGREGATE AND SAND SALES

1. THIS OFFER AND ITS ACCEPTANCE: "Seller" is that entity identified in the quotation, invoice, or other document originated by the Seller of the goods (or products) and services referred to herein. This document is Seller's offer to Buyer. Buyer's acceptance is expressly limited to the terms and conditions of this offer and Seller hereby objects to and rejects any additional or different terms or conditions in Buyer's acceptance, Buyer's purchase order, or other documentation purporting to order the same or equivalent goods contained in this document. Buyer accepts this offer as made and all its provisions by transmitting in oral or written form a Buyer purchase order number, an authorization to proceed, or other request; by issuing any document which orders the same or equivalent goods referred to herein; by accepting, or making any payment for, any goods or services furnished hereunder; or by any Buyer conduct recognizing the existence of a contract between Buyer and Seller and services referred to herein. Any additional or different terms or attempts by Buyer to vary in any degree any of the terms herein shall be deemed material, but shall not operate as a rejection of this offer unless they contain variances in the terms of the description, quantity, price, or delivery schedule of the goods offered herein which are unacceptable to Seller. No modification of this offer and the contract resulting (including Seller expressly agrees or conditions in Buyer's acceptance) shall be binding on Seller unless Seller expressly agrees in writing to change this offer.

2. PRICE: The price for each item covered by this contract shall be the price shown for such items on the face hereof. Prices do not include any Federal, State or Local taxes, duties, or fees which may be imposed upon the sale, use, transfer, importation, or transportation of materials or services and all such costs shall be paid by Buyer.

3. LIMITED WARRANTY: Seller warrants the goods delivered hereunder to be free from defects in material and workmanship for a period of one (1) year from the date of Seller's shipment. Seller's sole obligation and Buyer's exclusive remedy for defects in the goods shall be limited, at Seller's option, to either repair or replacement of goods determined to be defective. Repair or replacement of defective goods shall be FOB Seller's factory. Any claim by Buyer must be made by Buyer to Seller in writing within five (5) days of the discovery of the claimed defect but in no event after the expiration of one (1) year from the date of Seller's shipment, whichever is less. Buyer's failure to so notify Seller of such defects within the above time periods shall bar Buyer from any remedy under this Warranty, or for any recovery of damages or losses due to defects in the products. If any of the goods delivered hereunder have or have components with a shelf life less than one (1) year, then the warranty period stated herein shall not exceed the shelf life for such goods.

THIS WARRANTY IS THE SOLE WARRANTY COVERING THE PRODUCTS AND SELLER MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THIS WARRANTY. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, COMPENSATORY, PUNITIVE OR INCIDENTAL DAMAGES HOWSOEVER ARISING FROM SELLER'S PERFORMANCE OF THIS CONTRACT OR THE PERFORMANCE OF THE GOODS.

This warranty shall not apply to goods or products which have been repaired or altered by other than authorized representatives of Seller or to damage or defects caused by accident, vandalism, Acts of God, erosion, normal wear and tear, improper selection by Buyer or others, and other causes beyond Seller's control. This warranty shall not apply to the misapplication, improper installation, or misuse of the goods caused by variations in environment, the inappropriate extrapolation of data provided, the failure of Buyer or others to adhere to pertinent specifications or industry practices, or otherwise.

4. ACCEPTANCE: Rejection of the goods supplied under this contract for defects or defective delivery shall occur within a reasonable time after their delivery or tender at the delivery point, but in any event no later than five (5) days thereafter. If the goods are not accepted or rejected by Buyer or Buyer's agent in writing to Seller within said five (5) day period, they shall be deemed accepted by Buyer. In the event of Buyer's rightful rejection of the goods, Seller's liability shall be limited to replacing the rejected goods within a reasonable time, or to allow credit to the extent of the invoice value of the goods, at Seller's option. Seller shall not be liable for any loss, damage, or expense of any kind arising from delays due to transportation, installation, Buyer's rejection of goods, or any other cause whatsoever.

5. LIMITATION OF SELLER'S LIABILITY: Seller's liability on any claim of any kind, including claims based upon Seller's negligence, breach of contract, or strict liability in tort, for any loss or damage arising out of, connected with, or resulting from the use of the products furnished hereunder or Seller's performance of this contract, shall in no case exceed the purchase price allocable to the goods or part thereof which give rise to the claim. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES HOWSOEVER ARISING OUT OF SELLERS PERFORMANCE OF THIS CONTRACT AND NOTWITHSTANDING WHETHER SELLER MAY HAVE BEEN ADVISED OR IS ADVISED OF THE POSSIBILITY OF SPECIAL (OR LIQUIDATED) DAMAGES.

6. PAYMENT TERMS: Payment for all purchases is due no later than thirty (30) days following the last day of the month in which the purchase was made. All balances not paid as above shall bear interest at the rate of 1-1/2% per month from the due date, or at the highest rate allowed by the usury laws of Hawaii, whichever is less. A prompt payment cash discount of 1% of the purchase price will be allowed for purchase price payments made with ten (10) days after the statement date provided that purchaser has no outstanding prior balances. All sales are subject to Seller's approval of Buyer's credit. Seller reserves a security interest in the goods pursuant to the Uniform Commercial Code and in all proceeds thereof until payment in full of the purchase price. Buyer shall execute and deliver to Seller such UCC financing statements and other documents as may be requested by Seller for the purpose of perfecting Seller's security interest in the product and proceeds. In no event shall Buyer make any set off or reduction to amounts owed to Seller hereunder.

7. BUYER'S DEFAULT: If Buyer fails to make any payment to Seller when due, if Buyer's financial responsibility becomes impaired or unsatisfactory in Seller's sole judgment, or if Buyer commits a material breach of this contract or inhibits or frustrates Seller's performance of this Contract by any act or failure to act, Seller may, without breach of contract and without prior notice or demand, suspend or cancel further performance or deliveries due hereunder. Buyer shall be liable to Seller for any losses or damages of Seller arising from such Buyer defaults and failures, as well as any resulting delays to Seller's performance. Seller may, at its sole option and in its discretion, resume performance of this contract upon Buyer's performance of its obligations, Buyer's payment of all accrued amounts due Seller, Buyer's removal of any inhibiting cause, and upon Buyer's providing sufficient assurance or security for its performance as Seller in its sole judgment may determine to be required.

8. WAIVER: The failure of Seller in any one or more instances to enforce one or more of the terms or conditions of this contract, to exercise any right or privilege hereunder, or the waiver by Seller of any breach of this contract, shall not be construed as thereafter waiving any terms, conditions, rights or privileges of this contract, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

9. FORCE MAJEURE: Seller shall not be liable for non-performance or delay in performance resulting from any governmental law or regulation, now or hereafter in effect, or for delays caused by Seller's suppliers, or caused by Acts of God, fire, flood, wind, sabotage, strikes or other labor troubles, accidents, necessary repairs to machinery, adverse weather conditions, or any cause beyond Seller's reasonable control. In the event of any of the foregoing, Seller shall have the right to allocate and reschedule production and delivery of products to Buyer as Seller, in its sole discretion, shall deem fair and practical, without liability to Seller.

10. DELIVERY AND PICK UP TIMES: Regular delivery and pick up times are from 7:00 a.m. through 3:00 p.m. weekdays. Deliveries and pick ups made outside regular hours on weekdays and on Saturday, Sunday and holidays will be charged an overtime rate. Prices for these off-hour accommodations will be made upon request. Costs for delays in delivery or unloading caused by the purchaser shall be for his account. Free unloading time is 15 minutes.

11. DELIVERY CONDITIONS: Delivery when so designated as "jobsite" shall mean fulltrucksloads, unloaded to ground. Access to jobsite must be clear of all obstructions providing free and easy access for trucks and trailers. The Buyer assumes responsibility or damage to curbs, sidewalks, driveways or other property the Seller is required to travel over to make deliveries. Upon jobsite delivery, or upon delivery to a specified carrier for shipment to the Buyer, the Buyer assumes all risks and liabilities whatsoever connected with the work and the material and holds the seller free and harmless therefrom. The Seller will make every effort to deliver materials at the time requested by the Buyer, however, shipments cannot be scheduled on less than 48 hours notice to the Seller by the Buyer. Twenty-four hour notice shall be given prior to any pickup sales. Products requiring special hauling equipment need longer notice. Seller reserves title to material until it has been paid in full by buyer, provided, however, that all risk of loss passes to Buyer on delivery of material to jobsite, or specified carrier for shipment to the Buyer.

12. PRODUCT AVAILABILITY: This proposal is subject to product availability at the time of purchase and is subject to any allocations, priorities, restrictions or regulations now or hereafter imposed upon Seller directly or by Seller's material suppliers. Seller is not responsible for delays occasioned by fire, flood, strikes, lockouts or other labor troubles, accidents, necessary repairs to machinery, adverse weather conditions or other causes beyond Seller's control. In case of any such delay, Seller shall have the right to schedule production and shipment of the materials.

13. SCHEDULING: The purchaser shall notify Seller of his job requirement time sufficient lead time schedule with sufficient lead time to allow for manufacturing and delivery.

14. PRODUCT STANDARDS: Unless otherwise required by the project plans and specifications. Seller will manufacture to the applicable ASTM specification. Seller does not assume responsibility for suitability of material for use intended.

15. DELAY, TERMINATION, OR CANCELLATION BY BUYER: Seller shall be entitled to recover all costs, expenses, and damages suffered as a result of Buyer's cancellation, or termination of this contract, or Buyer's delay of Seller's performance under this contract.

16. PATENTS: To the extent the items covered by this Sales Order are manufactured pursuant to designs provided by Buyer, Buyer shall indemnify and save harmless Seller, its agents and subcontractors, from any expense, cost, loss, damage or liability for infringement of any patents with respect to such items and their process of manufacture and Buyer agrees at its own expense to defend or assist, at Seller's option, in the defense of any action in which such infringement is alleged with respect to the manufacture, sale or use of such items, delivered hereunder.

17. ASSISTANCE BY SELLER: No recommendation or statement made or assistance given by Seller, its representatives, or agents, in connection with the installation, application, storage, transportation, or use of the goods or products furnished hereunder shall constitute a waiver by Seller of any of the provisions herein, or enlarge Seller's liability, as herein defined, or be deemed to provide any warranty in excess of those Seller warranties set forth hereinabove.

18. ATTORNEY FEES AND EXPENSES: If Seller is required to file suit or take other legal action to enforce any of its rights hereunder, including without limitation, proceedings to collect amounts due Seller hereunder, Buyer shall pay the reasonable attorney fees and expenses incurred by Seller.

19. SALES: All sales are final. Any return of goods shall be subject to the prior written approval of Seller.

20. PRICE DURATION: Prices are firm for the duration of the project providing our proposal is accepted within 60 days of proposal date, general contract work begins within 90 days of proposal date, continuing uninterrupted, and all materials are accepted and paid for within the time period of the specifications for completion of the portion of the project utilizing our materials. Extension of the time period may be cause for renegotiating the prices.

21. SPECIFICATIONS, APPLICATION, AND USE OF PRODUCTS: Products furnished hereunder are sold pursuant to Seller's specifications and are subject to standard manufacturing variations. Seller may change specifications at any time without incurring liability for products previously or subsequently sold. Buyer shall be responsible for the performance of goods or products produced to Buyer's specifications. Buyer shall be responsible for determining the appropriate use or application of Seller's products for Buyer's requirements, notwithstanding Buyer's solicitation of, or Seller's providing advice or recommendations to Buyer. Buyer waives any claim against Seller, and Seller's agents or employees, arising out of Buyer's selection, application, or use of the products furnished hereunder. Buyer shall indemnify and defend Seller from any claim or suit for personal injury (including death), property damage, or other liability arising out of the improper selection, improper application, or any misuse of Seller's products, or failure to follow Seller's application, installation, or safety instructions, or proper industry standards.

22. INTERPRETATION: The laws of the State of Seller's location, as set forth in Seller's address on the most head or quotation, shall govern the interpretation and enforcement of this contract, excluding only the law of conflicts. If security interest filings are made by Seller, pursuant to the Payment paragraph hereof, the Uniform Commercial Code as enacted in the State wherein the filings are made shall govern that security interest and those filings.

23. FINAL AGREEMENT: There are no understandings or agreements between Buyer and Seller relating to this contract which are not fully expressed herein, and no change shall be made to this contract unless it is made in writing and signed by duly authorized officers of Seller and Buyer. No part of Buyer's contract(s) with Buyer's customer is included in this contract except as may be specifically and expressly incorporated in Seller's written quotation to Buyer. Buyer may not assign or otherwise delegate Buyer's obligations under this offer and any resulting contract without Seller's express written consent.