

TERMS AND CONDITIONS OF SALE

1. These Terms and Conditions of Sale shall be binding upon you and the organization you represent (the, "Purchaser") and shall preclude and exclude any terms and conditions proposed by Purchaser unless such proposed terms are agreed to in writing by Luck Stone Corporation ("Seller"). Should any discrepancy or difference arise between these terms and conditions, including those on the first page of the Seller's quotation (collectively, "the Terms and Conditions"), and any other purported agreement between Seller and Purchaser regarding this transaction, the Terms and Conditions shall govern, and shall be part of the contract between Seller and Purchaser (the "Contract"). Any amendments to this quotation must be in writing and signed by the party against whom the amendment is being enforced.
2. Purchaser shall pay to Seller, in addition to the prices quoted for material and haul, if applicable, all federal, state, and local sales, use, or other taxes arising from transactions contemplated pursuant to the Contract, including without limitation, any taxes imposed on material, ingredients, the sale thereof, or incidental transportation as applicable.
3. Unless otherwise specified, all sales are made FOB point of origin. Sales and deliveries will be made during Seller's regular working hours as noted on quote. An additional charge may be incurred by Purchaser for all deliveries made on Saturday, Sunday, Seller's holidays, or before or after Seller's regular working hours.
4. Purchaser agrees to give Seller reasonable notice of the time and rate of deliveries requested under this Contract. Delivery schedules shall be mutually agreed upon between Seller and Purchaser. Seller will make all reasonable efforts to make requested deliveries. Purchaser waives any claims associated with any delays in deliveries beyond Seller's control.
5. In the event Seller agrees to a specific delivery schedule, Seller shall nonetheless not be responsible for failure to make delivery by inability to procure transportation or an event beyond the control of Seller. Seller reserves the right to refuse to make delivery when it believes delivery to be unsafe or impractical by reason of any existing or threatened causes listed above. Seller shall not be responsible, and in no event shall Purchaser seek to hold Seller responsible for, any delays or defaults caused by the owner, general contractor, subcontractors or other suppliers, architects, engineers, or other persons. Seller reserves the right to ship from a plant other than the one supplying the delivery point specified herein.
6. If Seller is to arrange transportation, Purchaser agrees to provide and maintain suitable roadways and approaches to points of delivery in places other than paved streets. If such suitable roadways and approaches are not provided and maintained, Seller reserves the right to refuse delivery until the condition is remedied. In the event Purchaser orders delivery beyond curb lines, Purchaser assumes all liability for, and Seller will not assume liability nor will it be liable for, any damages caused by such delivery, and Purchaser hereby agrees to indemnify and hold Seller harmless from and against any and all liability, loss and expense incurred as a result of such delivery, and specifically waives any right of subrogation against Seller.
7. Purchaser agrees that Purchaser must give written notice to Seller within five (5) business days after delivery of any claim against Seller as a result of any alleged nonconforming materials, delay or any other cause whatsoever, time being of the essence. Seller shall be given reasonable opportunity to investigate all claims. Any failure by Purchaser to give said written notice within five (5) business days shall be deemed a conclusive waiver by Purchaser of all such claims against Seller.
8. Notice: Any notices required shall be given to Seller in writing at the sales office noted on Seller's quotation.
9. At the plant of origin, Seller warrants material conforms to applicable written specifications as noted under product description of the weigh ticket. Materials shipped to DOT projects will conform to DOT state specific quality assurance program requirements. Materials shipped to non-DOT projects, which specify DOT materials, are not required to conform to DOT state specific quality assurance program requirements. Any charges incident to inspection or tests made by or on behalf of Purchaser to determine compliance with specification(s) shall be paid by Purchaser.
10. PURCHASER ACKNOWLEDGES THAT SELLER IS NOT RESPONSIBLE FOR, AND MAKES NO WARRANTY REGARDING, THE ULTIMATE MIX THAT PURCHASER REQUIRES TO COMPLY WITH SPECIFICATIONS REGARDING ALKALI-SILICA REACTIVITY OR MITIGATION OF ALKALI-SILICA REACTIVITY.
11. DISCLAIMER OF WARRANTIES: EXCEPT AS IS EXPRESSLY SET FORTH HEREIN, THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED. THE PARTIES AGREE THAT IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY TO THE PRODUCTS SOLD HEREUNDER. SELLER'S LIABILITY FOR ANY CLAIMS SHALL BE LIMITED TO, AND IN NO EVENT WILL EXCEED THE PURCHASE PRICE OF THE PRODUCTS SOLD PURSUANT TO THIS CONTRACT IN CONNECTION WITH THE APPLICABLE CLAIM. IN NO

EVENT WILL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, ANY DAMAGES RELATING TO DELAY, LOST PROFITS, OR PUNITIVE DAMAGES.

12. Purchaser agrees to indemnify and save Seller harmless from and against any and all claims, demands, damages, attorney's fees, expenses, loss and liability of every kind and character made or asserted against Seller because of anything done or omitted to be done, or alleged to have been done or omitted to be done, by Purchaser, its subcontractors, or anyone acting on Purchaser's behalf.

13. In the event it becomes necessary for Seller to retain legal counsel to collect any amounts owed to it or to represent Seller in connection with any claims made relating to this Contract, then in addition to Seller's other rights and remedies Seller shall be entitled to recover from Purchaser all costs of collection, litigation, and/or defending any claims against Seller including, but not limited to, Seller's attorney's fees.

14. This Contract between Seller and Purchaser shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, excluding its conflict of laws provisions. Purchaser waives trial by jury and agrees that all issues will be determined by a judge, sitting without a jury.

15. Severability. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract. Each provision of this Contract shall be severable and enforceable to the extent permitted by law.

16. Purchaser agrees it may conduct business with Seller electronically, and that except as otherwise specifically provided herein, an electronic signature or electronic mark of acknowledgement, such as "I Agree" or equivalent, placed in a space marked for such an input by Purchaser shall have the same force and effect as the use of manual signatures, whether conducted on Purchaser's mobile device(s), or Seller's electronic forms. Text response of receiver to Seller shall also have the same force and effect as manual signatures. By acknowledging any consent form presented to Purchaser, Purchaser understands and agrees that it intends to conduct business electronically and have its authorized representative signature captured electronically to execute certain forms for the purchase and/or ability to haul material on behalf of Purchaser's organization and end purchasers. Seller shall make commercially reasonable efforts for Purchaser to either access forms on seller's website or receive copies of forms signed electronically at the email address that Purchaser provided to and on file with Seller. Purchaser may withdraw consent to do business electronically at any time; provided, however, if Purchaser withdraws such consent, neither Purchaser nor its agents are permitted to leave Seller's locations with products whether for Purchaser or on behalf of a third party without prior consent of an authorized agent of Seller.

17. Except for payment obligations, each party to this agreement shall be excused for delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party.