

Terms and Conditions of Sale

1. **Applicability.** These Terms and Conditions of Sale (these "Terms") govern all purchases and sales of concrete and all other goods sold by Walker Concrete Company, LLC ("Walker Concrete") and Walker Construction Products, LLC ("Walker Construction") or either of them (Walker Concrete and Walker Construction are sometimes referred to individually and collectively as "Seller") to the party to whom the goods are sold ("Buyer"), and these Terms supersede any contrary provisions presented by Buyer. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order by Seller does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. Buyer's acceptance of or payment for goods sold by Seller, in whole or in part, shall constitute Buyer's acceptance of these Terms. Acceptance is expressly limited to the Terms set forth herein, and Seller objects to any additional or different terms submitted by Buyer.

2. **Payment Terms.** Payment terms are as follows unless different terms are specified in the invoice.

- a. Terms of Walker Concrete invoices are two percent (2%) discount if paid by the 10th of the month following purchase. If not paid by the 10th of the month following purchase, the full balance is due on the 30th of the month following purchase.
- b. Terms of Walker Construction invoices are one percent (1%) discount if paid by the 10th of the month following purchase. If not paid by the 10th of the month following purchase, the full balance is due on the 30th of the month following purchase.

3. **Pricing.** Prices quoted and invoices are based upon minimum (6) cubic yard deliveries per truck, and do not include heating or cooling concrete. Additional charges will be made for deliveries of lesser quantities, and for heating and cooling concrete. Prices quoted apply to deliveries requested or made during Seller's normal and usual workdays and hours. Special arrangements must be made for deliveries after hours, and on weekends or holidays, and additional freight charges may apply.

4. **Fuel Surcharge.** Buyer agrees to pay applicable fuel surcharges. Seller is currently charged a fuel surcharge fee by its outside haulers, which is based on an index that is published monthly. Seller passes this cost along to customers in the form of a fuel surcharge reflected on Seller's invoices.

5. **Environmental Fee.** Buyer agrees to pay applicable environmental fees. While Seller incurs environmental costs of various kinds, the environmental fees reflected in Seller's invoices to customers are not limited to the amounts necessary to recover Seller's actual fuel or environmental costs or any specific portion thereof. Instead, such fees, when combined with other line items in Seller's invoices, are simply intended to help Seller achieve what Seller deems to be an acceptable overall profit margin for Seller's business.

6. **Late Charges.** Buyer shall pay interest at the rate of 1.5% per month on any past due amounts, or the highest rate permissible under applicable law, if less.

7. **Taxes and Similar Charges.** Unless otherwise stated by Seller in writing, prices do not include sales, use, excise, and any other similar taxes, duties and charges of any kind applicable to the goods furnished hereunder or the materials used in the manufacture thereof. Buyer shall be responsible for all such costs. If the price or prices quoted include transportation charges, such price or prices will be adjusted to reflect applicable changes in the transportation charges, taxes on transportation, and sales.

8. **Delivery.** Buyer agrees to give Seller reasonable advance notice of the time and rate of requested deliveries. Seller makes no representation or agreements with respect to time or rate of deliveries, and all deliveries will be made at the convenience of the Seller. Buyer shall provide suitable roadways or approaches to all points of delivery and Buyer shall assume all liability damages to Seller's trucks and/or equipment or the property of any third party from any cause whatsoever occurring during the delivery process and agrees to indemnify and hold harmless the Seller against any and all liability and damages Seller may suffer as a result of such third party claims, including attorneys' fees. Seller shall not be required to provide a job-site coordinator to the delivery site although it may, in its sole discretion, provide such a coordinator from time to time. In the event of any loss or damage to the goods, Buyer shall be responsible for filing all claims.

9. **Delivery Charges.** Buyer agrees to pay a delivery charge in the amount specified by Seller for all goods delivered to Buyer. An additional charge of \$60.00 per hour per truck will be paid by Buyer for holding or waiting time at the job site in excess of 60 minutes. If Buyer requests cancellation of a delivery after the truck has departed from Seller's plant, Seller will endeavor to reassign to another consignee. If accomplished, the cost of reconsignment shall be borne by Buyer. If not accomplished, all trucking charges from and returning to Seller's plant shall be borne by Buyer. There will be an additional freight charge for Sunday or legal holiday deliveries as provided in the carrier's tariff.

10. **Non-Delivery.** The quantity of any installment of goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 24 hours of the time when the goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the goods shall be limited to replacing the goods within a reasonable time or adjusting the invoice respecting such goods to reflect the actual quantity delivered.

11. **Unsigned Deliveries and Billing Discrepancies.** Buyer hereby authorizes Seller to deliver goods with or without signed delivery receipts and further agrees to notify the credit department of Seller in writing of billing discrepancies within forty-five (45) days after receipt of any disputed invoice. Notice of any billing discrepancy, including any instrument tendered as full satisfaction of a disputed debt, shall be sent to:

Walker Concrete Company, LLC
Walker Construction Products, LLC
Attn: Credit Manager
P.O. Box 2637
Stockbridge, GA 30281-2637

Failure to timely notify Seller in writing shall act as a presumption that the deliveries and invoices are valid as stated and invoiced.

12. **Returns.** Special orders and custom goods may not be returned. Goods ordered by mistake or in excess of Buyer's requirements may not be returned without appropriate authorization. Buyer agrees to pay all return shipping and delivery charges for goods authorized for return.

13. **Limited Warranty.** Seller warrants that goods sold to Buyer conform to the applicable standard specifications of the American Society for Testing and Materials ("ASTM"). Except for the warranty set forth in the preceding sentence, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO ANY GOODS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. SELLER'S LIABILITY FOR ANY BREACH OF WARRANTY OR OTHER CLAIM ARISING OUT OF THE SALE OF GOODS TO BUYER SHALL BE LIMITED TO REPLACEMENT OF GOODS FOUND BY SELLER TO BE DEFECTIVE OR NONCONFORMING. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with ASTM specifications shall be paid by Buyer.

14. Limitation of Liability.

a. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

b. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND THE TRANSACTIONS CONTEMPLATED THEREUNDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

c. The limitation of liability set forth in section b, above, shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

d. Any controversy, dispute or claim that Buyer may have against Seller must be initiated no later than one (1) year after the goods were delivered.

15. **Insurance.** Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum reasonably acceptable to Seller with financially sound and reputable insurers.

16. **Compliance with Law.** Buyer shall comply with all applicable laws, regulations and ordinances, and maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms.

17. **Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate any order with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under these Terms; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

18. **Confidential Information.** All non-public, confidential or proprietary information of Seller disclosed by Seller to Buyer, including pricing, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with these terms is confidential and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this section. This section does not apply to information that is:

(a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

19. Force Majeure. Seller shall not be liable or responsible to Buyer, or be deemed to have defaulted or breached these Terms, for any failure or delay in shipping or delivering concrete, or otherwise fulfilling or performing any term of these Terms, when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, accidents, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes, or restraints or delays affecting carriers or inability or delay in obtaining cars, trailer trucks, fuel, or other supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, or governmental interference or regulations. During any such time, Seller shall have the right to apportion among its customers such concrete as it may be able to manufacture and ship.

20. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of Seller. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves Buyer of any of its obligations under these Terms.

21. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22. Collection Costs. Buyer agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in collecting or attempting to collect any present or future indebtedness owed to Seller by Buyer.

23. Waiver of Exemptions. Buyer waives all rights of exemption under the constitution and laws of the United States, the State of Georgia and any other State.

24. Waiver. No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by an authorized representative of Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

25. Modifications. None of the Terms contained herein may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Seller.

26. Governing Law. Except for the interpretation and enforcement of the arbitration agreement set forth below, which shall be governed by the Federal Arbitration Act, 9 U.S.C. §1 *et seq.*, all matters arising out of or relating to these Terms shall be governed by and construed in accordance with the laws of the United States and the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule (whether of the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Georgia.

27. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to these Terms shall be instituted in the courts of the State of Georgia sitting in Henry County, or in the federal courts of the United States sitting in Georgia, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

28. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed, in the case of Buyer, to the address set forth in Buyer's credit application or any other address for Buyer contained in Seller's records, and in the case of Seller, at the following:

Walker Concrete Company, LLC
Walker Construction Products, LLC
P. O. Box 2637
Stockbridge, GA 30281-2637
Attn: Credit Manager
Facsimile No. (770) 507-9340

Either party may designate a different address for notice by giving written notice to the other party. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these terms, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this section.

29. Severability. If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

30. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this invoice including, but not limited to, the following provisions: Compliance with Laws, Governing Law, Submission to Jurisdiction, Arbitration, and Survival.

31. Arbitration. Except for (1) suits seeking only specific performance of the express written payment or delivery terms of these Terms and (2) actions to enforce or perfect materialmen's liens, any and all disputes, controversies, demands or claims arising out of or relating to any sale of Goods by Seller to Buyer, or these Terms, or the breach thereof, or their performance or negotiation, or from any past contracts or

transactions between the same parties, shall be settled by binding arbitration. The parties further agree that in any suit described in clause (1) or (2) of the preceding sentence, any counterclaim or cross claim not itself asserting a claim described in said clause (1) or (2) shall be severed and sent to binding arbitration. Except as otherwise specified herein, any arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator shall issue a reasoned award. Notwithstanding anything else in these Terms or in any rules incorporated herein by reference, there shall be no right, power or authority for any arbitrator(s) to certify any class or to conduct any arbitration on a class or other collective or representative basis, and no arbitrator shall have the power to certify any class. As part of this arbitration agreement, the parties to these Terms expressly waive any and all rights they might otherwise have to seek class certification of claims subject to arbitration, or to assert any such arbitrable claims in a representative capacity on behalf of other persons or entities besides themselves. The arbitrator shall apply the laws of the State of Georgia, except that the interpretation and enforcement of this arbitration agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. §1 *et seq.* Except as may be required by law, neither a party nor any arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Notwithstanding any language to the contrary in any contract documents, the parties hereby agree that the Underlying Award may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules ("Appellate Rules"); that the Underlying Award rendered by the arbitrator(s) shall, at a minimum, be a reasoned award; and that the Underlying Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of an Underlying Award, as defined by Rule A-3 of the Appellate Rules, by filing a Notice of Appeal with any AAA office. Following the appeal process the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof. Buyer and Seller hereby stipulate that the transactions to which these Terms relate involve and affect interstate commerce within the meaning of the Federal Arbitration Act, 9 U.S.C. §1 *et seq.* If any portion of this arbitration agreement is found to be unenforceable for any reason, the remainder shall be deemed severable and shall be enforced, except that if the provisions of this arbitration agreement which preclude class, collective or representative arbitrations are found to be unenforceable for any reason, then this entire arbitration agreement shall then be deemed voidable by either party.

32. Trust Funds. Buyer agrees to hold in trust all funds received by Buyer for goods and services provided by Seller and to promptly pay Seller that portion of such funds owed by Buyer to Seller for same in accordance with O.C.G.A. § 13-11-4. Buyer acknowledges that it has a fiduciary duty to Seller to faithfully account for all funds paid to Buyer for goods and services provided to Buyer by Seller.