

## Terms and Conditions

**1. AGREEMENT.** Purchaser and Best Block, LLC for itself and/or on behalf of one or more of its subsidiaries ("Seller") acknowledge, understand and agree that the Purchaser's Credit Application, if any, the Quotation, if any, the specifications stated in the Quotation and these Standard Terms and Conditions (collectively, the "Agreement") shall collectively form the sole and entire agreement by, under and pursuant to which Purchaser shall purchase from Seller, and Seller shall manufacture and sell to Purchaser, the materials described in the Quotation (the "Materials"). This Agreement supersedes any and all prior or contemporaneous oral or written agreements between the parties regarding the same.

Any different or additional terms or conditions contained in Purchaser's acceptance of the Quotation, or any document or instrument constituting this Agreement, whether by purchase order or otherwise, are hereby objected to by Seller and shall have no effect on, and not become part of, the terms and conditions of this Agreement. Additional terms, changes, and alleged subsequent agreements shall not be effective unless and until any of the same are in writing and signed by Seller's and Purchaser's authorized representatives. Notwithstanding any subsequent changes made to the Quotation, these Standard Terms and Conditions (in the form originally referred or attached to the Quotation) shall continue in full and unvaried force and effect except to the extent modified by written agreement signed by Seller's and Purchaser's authorized representatives.

Purchaser's signature to the Quotation, direction to manufacture the Materials, acceptance of delivery of the Materials or the payment for the Materials, shall be deemed an acceptance of these Standard Terms and Conditions. Seller may elect not to manufacture or deliver any Materials until Purchaser returns a signed copy of the Quotation.

**2. DELIVERY AND ACCEPTANCE.** Delivery of the Materials shall be made pursuant to a delivery schedule agreed to by Purchaser and Seller. Purchaser agrees to give the Seller reasonable notice of the time and rate of deliveries. Seller shall not be deemed to have failed to comply with such schedule for any delay where such delay is caused by acts of God, acts of civil or military authority, epidemics, war, riot or any other reason or cause beyond Seller's control. In connection with any such delay, the agreed delivery date(s) shall be extended for a period equal to the duration of the delay.

Seller's responsibility for delivery shall cease FOB shipping point or, if Seller agrees to deliver, FOB jobsite, at the curbside or street or frontage of the address of delivery. Seller reserves the right to charge Purchaser at the applicable rate for any waiting time at the jobsite in excess of one (1) hour.

The type and quantity of Materials delivered and detailed on the delivery ticket must be inspected by Purchaser at the time of delivery for compliance with the Agreement. Variations between actual quantities of Materials delivered and those shown on the delivery ticket must be noted on all copies of the delivery ticket signed by Purchaser. Invoice charges will be based on the quantities shown on the delivery ticket.

Title and risk of loss of each of the Materials shall remain with Seller until delivery of such Materials to the delivery location specified in this Agreement. Purchaser hereby grants Seller a first priority security interest in all such Materials until such time as Seller is paid in full all amounts due under this Agreement. Purchaser further agrees to execute any and all documents that may be required for Seller to perfect such security interest.

Standard Materials sold under this Agreement may be returned by Purchaser for credit only with Seller's prior written consent and only if, in Seller's sole opinion, the Materials to be returned are in re-saleable condition. Seller will deduct from any such credit any and all restocking fees, loading and unloading costs and any costs of repair and delivery costs to and from Purchaser's jobsite. Custom-designed and special Materials of other than normal and standard design regularly sold by Seller may not be returned. The Purchaser will be liable to pay for any custom-designed or special Materials not taken by the Purchaser within sixty (60) days following the last delivery.

**3. PRICING AND PAYMENT.** Unless stated otherwise herein, prices for the Materials quoted are subject to material availability and shall remain firm for a period of thirty (30) days after the date of the Quotation; thereafter, prices for the Materials are subject to change by Seller. Pricing for ordered, but undelivered, Materials are subject to change at any time to account for cost increases and volatility in respect of materials, fuel, energy, and transportation. Prices quoted are based on minimum truckload lots and are subject to increase should Purchaser request delivery in lots smaller than truckload. Prices are applicable only to the project specified in the Quotation, are available only to the Purchaser, and are only for the quantities stated in the Quotation.

Payment terms are net 30 days, without retention or set-off. Seller will submit invoices to Purchaser upon each delivery of Materials pursuant to the Agreement. Purchaser's obligation to pay Seller will not be delayed or conditioned upon installation of the Materials furnished pursuant to the Agreement, Purchaser's receipt of payment from any third-party, or any disputes between Purchaser and the Owner.

Past due amounts will accrue interest at the rate of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is less. Should Purchaser fail to pay when due any amount payable to Seller under the terms of this Agreement, after ten (10) days written notice without cure, Seller may: (a) make demand upon Purchaser for assurances of payment, including but not limited to, requesting immediate payments of all amounts then due and owing to Seller under this Agreement; and/or requesting payment in advance of delivery of all future amounts to become due under this Agreement; (b) suspend future deliveries; (c) file a claim of lien and, if applicable, a claim on bond; (d) terminate this Agreement; or (e) take such other actions as Seller determines are necessary to secure its right to payment.

Seller may exercise the right of set-off under this Agreement as to any sums owed by Seller and/or its affiliates under any other contract or agreement with Purchaser and/or its affiliates. Purchaser agrees to pay Seller any and all collection fees, attorneys' fees, and court costs incurred by Seller in collecting any amounts due under this Agreement.

If during the life of this Agreement, Purchaser's financial responsibility or credit standing becomes impaired or his method of paying accounts become unsatisfactory to Seller, Seller reserves the right to require Purchaser to make payment in advance or give satisfactory security or guarantee that the invoices will be promptly paid when due and if Purchaser fails to do so, Seller reserves the right to cancel this Agreement.

**4. TAXES.** In the absence of an exemption or resale certificate reasonably acceptable to Seller and to the respective taxing authority, all federal, state, and local taxes, assessments, fees, duties and charges levied by reason of this Agreement are in addition to the prices set forth in the Quotation and shall be the sole responsibility of, and paid by, Purchaser.

**5. LIMITED WARRANTY AND LIABILITY DISCLAIMER.** Seller warrants that the Materials at the time of delivery will meet or exceed the applicable ASTM standards on compressive strength and absorption if installed in accordance with applicable ICPI ([www.icpi.org](http://www.icpi.org)) or NCMA ([www.ncma.org](http://www.ncma.org)) standards. The Materials are not warranted as suitable for any use or purpose other than for the purpose for which the Materials are generally intended. This warranty does not cover standard manufacturing variations, color variations/matching or efflorescence. Seller is not responsible for installation of the Materials or defective conditions caused by installation, abuse, impact, abrasion or alteration of the Materials, earth-shifts, excessive or unforeseen site conditions, acts of God or application of de-icing salt or other chemicals to the Materials. Liability under this warranty, if any item of the Materials is found to be defective, is LIMITED to the replacement of the defective item, or at

Seller's option, the refund of the purchase price of the defective item. Seller does not guarantee that the shape or color will be available in the future and will provide an alternate shape or color from its current product line as determined by Seller at the time of an accepted warranty claim. This warranty is valid for one (1) year from the date of delivery of the Materials. This warranty is non-transferable. In the event of a claim under this warranty, notice must be given to Seller, together with original proof of purchase, at its headquarters by sending a letter to: Best Block, LLC a/s Warranties, 5 Concourse Parkway, Atlanta, GA 30328. THIS WARRANTY IS ISSUED AND ACCEPTED IN LIEU OF ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES AND EXPRESSLY EXCLUDES LIABILITY FOR LABOR, FREIGHT AND OTHER COSTS ASSOCIATED WITH REMOVAL AND REPLACEMENT OF THE DEFECTIVE ITEM AND FOR INDIRECT AND CONSEQUENTIAL DAMAGES.

Due to variations in the printing and photographic processes, actual appearance and color of the Materials may differ from the appearance reflected in Seller's website or in any of Seller's brochures or other product literature and appearance and color may differ from one brochure or other product literature to the next. Please be advised that this warranty does not cover those appearances and color variations.

Once installed, the Materials are deemed accepted in terms of surface texture, shape, size, split face geometry, color, color blending and all other aesthetic features.

Seller makes no warranty whatsoever with respect to goods, products, accessories or parts furnished by Seller but not manufactured by Seller, which carry only the warranty, if any, in the applicable manufacturer's warranties (if any) to the extent permitted by the terms of such warranty between Seller and such manufacturer.

**6. LIMITATION OF LIABILITY.** Seller's liability on any claim for loss or damage arising from this Agreement, or the fabrication or sale of any of the Materials pursuant to this Agreement, whether based on contract, warranty, tort (including negligence) or other grounds, shall not exceed the price of the Materials actually received from Purchaser by Seller under this Agreement with regard to which such claim for loss or damage is made. Neither Seller nor Purchaser will be liable to the other party, or any third party beneficiary, whether as a result of breach of contract, warranty, tort (including negligence and strict liability) or other grounds, for special, consequential, incidental, punitive (if allowed by law) or other indirect damages of any kind, including, but not limited to loss of data, loss of profits or revenue, loss of use of the Materials furnished by Seller pursuant to this Agreement or any associated product, cost of capital, cost of substitute products, facilities, services, downtime costs, or claims, or for liquidated damages (delay or otherwise) incurred by such party from any third party.

**7. INDEMNIFICATION.** To the fullest extent permitted by applicable law, each party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other party and its affiliated companies along with its respective officers, directors, owners, employees and agents (collectively the "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including but not limited to reasonable attorneys' fees) of any person or entity, to the extent arising out of, any injury, death or destruction of property, but only to the extent caused by or arising from the negligent acts or omission of the Indemnifying Party, its employees, any subcontractor, supplier or person or entity over which it controls or exercises control over (collectively, "Claims"); provided, that the Indemnifying Party shall have no obligation to indemnify for any Claims to the extent caused by or arising from the negligence or willful misconduct of any Indemnitee and provided further that "Claims", for purposes hereof, shall not include damages, compensation or benefits payable under any insurance policies, workers' compensation acts, disability benefit acts, or other employees' benefit acts.

Seller shall indemnify, defend and hold harmless the Indemnitees from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including but not limited to reasonable attorneys' fees) to the extent arising from any claims made by third parties that the use or sale of the Materials infringes any United States patent covering the Materials. Provided, however, this paragraph will not apply in the event that the infringement results from use of the Materials in combination with other materials, goods, or manufacturing processes.

**8. ASSIGNMENT.** Neither party shall assign this Agreement or any interest herein without the prior written consent of the other party, and any attempted assignment, whether by operation of law or otherwise, shall be void without such prior written consent.

**9. NOTICE.** Any notice required to be sent to Seller shall be in writing and sent by Certified Mail, postage prepaid, to the Seller's office set forth on the Quotation, or as specified in the applicable paragraph in this Agreement, with a copy to Seller, 5 Concourse Parkway, Suite 1900, Atlanta, Georgia 30305, Attention: Legal Department. Any notice required to be sent to Purchaser shall be in writing and sent by Certified Mail, postage prepaid, to the Purchaser's office set forth on the Quotation.

**10. SEVERABILITY.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated. The parties agree that each term and provision of this Agreement shall be construed according to its fair meaning and not strictly for or against any party.

**11. VENUE AND CHOICE OF LAW.** The parties hereto agree that venue for any action brought for the breach of or the enforcement of this Agreement will lie in the county of the Project site described in the Quotation. This Agreement shall be governed by and shall be construed in accordance with the laws of the state of the Project site described in the Quotation, without regard to its conflicts of law provisions. AS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT, BOTH PARTIES WAIVE THE RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

**12. WAIVER.** Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

**13. CORRECTIONS.** Seller reserves the right to correct typographical or clerical errors appearing in the Quotation or other documents constituting the Agreement.

Effective July 2022  
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