

Terms and Conditions of Sale – Aggregates

1. **Agreement.** These terms and conditions govern every purchase of aggregate products from VCNA Prairie LLC (“**Supplier**”) by any individual or entity (each, a “**Customer**”) and, with any issued quotation, purchase order, delivery ticket, credit agreement, and other documents referenced herein, form an agreement between Supplier and Customer to provide the specified aggregate products (“**Product**”) (collectively the “**Agreement**”). Any proposal or attempt to vary the terms of this Agreement is expressly rejected by Supplier, unless signed by an authorized representative. Customer’s signature on any part of the Agreement, request for Product, or acceptance of Product each constitute Customer’s acknowledgement that it is bound by the Agreement.
2. **Prices and Payment Terms.** Once accepted by Customer, the price on the Agreement, including for Product, freight or otherwise, is subject to change by Supplier upon 60 days’ notice. Unless specifically noted, the price on the Agreement does not include taxes, bonds or other government levies, tariffs or duties, delivery charges, fuel surcharges, cancellation fees, environmental fees, charges due to Customer’s delays, actions or inactions, or evening or weekend charges, all of which, if applicable, are payable by the Customer. Customer will pay all invoices within 30 days of the date of the invoice. Supplier reserves the right to change Product pricing. Late payments will accrue interest at the rate of 1.5% per month (18% per annum) and Customer shall be responsible for all of Supplier’s expenses (including legal fees) incurred in collecting any unpaid amounts. Notwithstanding any grant of credit to a Customer by Supplier, if at any time the financial responsibility of the Customer becomes unsatisfactory to Supplier or the Customer is in default to Supplier or its affiliates under this or any other agreement, Supplier reserves the right to withhold further Product or require advance cash payment or satisfactory security prior to supplying any further Product. The Customer shall make no set-off or deductions (including those for alleged damages) from payments due hereunder. Any charges or fees imposed, including for fuel or environmental matters, are not represented to be a direct offset or pass through of the Supplier’s actual costs to service any individual account, but are intended to address its overall costs.
3. **Volume, Loading, Pick-up, and Delivery.** The standard measurement unit of Product shall be the short ton, unless otherwise specified in the Agreement. Any claim for shortage of Product must be made to Supplier within 24 hours after receipt of Product by Customer, and, in such instance, the quantity of loaded or delivered Product that is shown on Supplier’s delivery ticket or scale receipt shall be conclusive evidence of the quantity of Product actually loaded or delivered. Supplier does not guarantee the availability of Product. Fees will apply to order cancellations depending on when cancellation notice received. If an order is picked up by Customer or its agent, then Customer acknowledges that Supplier’s sites may include heavy industrial activity or other hazardous conditions. Customer and any agent must, when on the Supplier’s site or when handling the Product, comply with all applicable laws, ordinances, by-laws, rules, and regulations, including those regarding safety, and, to the extent they are more restrictive, all of Supplier’s rules, policies, and instructions. Customer will ensure that all of its employees and agents entering Supplier’s site are properly qualified and wear all required safety apparel. Supplier reserves the right to refuse entry to its site of any vehicle or person it deems unsafe. If Supplier agrees to deliver Product, additional delivery charges shall apply, with trucking rates based on standard load volumes; additional charges based on customized load sizes and delivery location may apply. Vehicle availability is not guaranteed. Further, Customer shall provide suitable access to the point of delivery and Supplier reserves the right to stop deliveries until, in its discretion, such access is provided.
4. **Warranty.** Supplier warrants to Customer that: (i) it has good and marketable title to the Product; and (ii) the Product meets the specifications identified on the Agreement. The Product is otherwise sold on an **as is, where is** basis. Supplier explicitly disclaims any responsibility for (a) any finished work in which Product is used; (b) determining the suitability of Product for any particular use; (c) the Product where it has been substantially altered or mixed with any material by a party other than Supplier. This warranty is not assignable by the Customer. **THE FOREGOING WARRANTY IS EXCLUSIVE. SUPPLIER DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, REPRESENTATIONS, OR GUARANTEES, INCLUDING OF MERCHANTABILITY, ENVIRONMENTAL CONDITION, OR FITNESS FOR A PARTICULAR PURPOSE.** Warranty claims must be made in writing within 7 days from the date of receipt of the Product, and accompanied by the Agreement and all evidence in Buyer’s possession which supports its claim. Claims will be determined based on Supplier’s quality assurance test results for samples of the Product taken from the relevant shipping face at its site.
5. **Limitation of Remedies.** The exclusive remedy of Customer or any third party against Supplier for all claims related to warranty or product quality (whether the claims arise in tort, contract, or any other theory of liability), for any loss or damages arising out of, connected with or resulting from the Product or this Agreement, is, at Supplier’s discretion, (i) replacement of the Product or (ii) credit for the purchase price paid for the Product, and shall in no event cost Supplier more than the amount paid to Supplier for the Product. Without waiving the foregoing limitations, each of the Supplier and Customer shall defend, indemnify and hold the other harmless from any claims, causes of action, liabilities, losses, costs, taxes, penalties, attorneys’ fees, expenses or otherwise, resulting from property damage, personal injury, or death, to the extent caused by its negligence or willful misconduct. Notwithstanding anything else herein, including the Supplier’s indemnification obligations, Supplier shall not be liable to Customer or any third party for any lost profits, indirect, consequential, liquidated, punitive, or similar types of damages, whether the liability, loss, or damages arise in tort, contract, or any other theory of liability.
6. **Technical Information and Assistance.** Any technical information or assistance provided by Supplier or its agents, or oral statements made by Supplier or its agents, about the Product(s), is given without warranty or specification, and accepted at the Customer’s risk.
7. **Risk.** Title to and risk of loss of the Products shall pass to the Customer upon loading to the Customer or its agent, or delivery to the Customer by Supplier or its agent, as applicable.
8. **Force Majeure.** Supplier may delay performance occasioned by events beyond its control without incurring liability for such delay when such delay is caused by a) acts of God or the public enemy, fire, explosion, epidemics, acts of war or terrorism, perils of the sea, flood, drought, war, riot, sabotage, vandalism, accident, breakdown, labor dispute, embargo or other casualty; b) compliance with any order, action, direction or request of any government authority; c) shortage of labor or materials; or d) any other circumstances that are beyond its reasonable control, including Customer’s acts or omissions. Supplier will accept no back-charges for any construction delays experienced by Customer or any third party.
9. **Confidentiality.** The Agreement is intended for Customer’s use only. The contents of the Agreement are confidential and, unless compelled by law or judicial process, shall not be shared with third parties without Supplier’s written consent.
10. **Miscellaneous.** Failure by Supplier to exercise any of its rights hereunder shall not operate as a waiver of such rights. This Agreement supersedes all other agreements, written or oral, regarding the subject matter of this Agreement, and no prior or subsequent understanding, agreement, term, condition or trade custom that conflicts with or is supplementary to this Agreement is binding on Supplier. The term “including” means “including without limiting the generality of the foregoing.” This Agreement is not assignable by the Customer. Customer has read and agrees to abide by the Supplier’s Anti-Corruption Commitment which is available upon request and at http://www.stmaryscement.com/Documents/Customer_Anti-Corruption_Commitments.pdf. This Agreement shall be construed and enforced in accordance with the laws of the State where the Product was extracted, and, in the event of any disputes arising out of this Agreement, the parties submit to the courts having jurisdiction over such site. Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.