



AN ARCOSA COMPANY

6131 Selinsky Rd.
Houston, TX 77048
(713) 987-0000
www.cherrycompanies.com

Stationary Crushing Standard Terms and Conditions

The following standard terms and conditions ("Terms") shall apply unless otherwise superseded by the Special Conditions.

- 1 **Acceptance of Contract.** If the product quote and these Terms (collectively, the "Quote") are accepted, it will constitute an agreement under which Cherry Crushed Concrete, Inc. ("Seller") agrees to sell the products indicated on page 1 of this Quote ("Products") to Customer, and Customer agrees to purchase such Products from Seller at the prices and within the estimated shipping dates as noted on page 1 of this Quote. This Quote is accepted by Customer on the first to occur of the following: Customer signing the Quote and transmitting it to Seller; or (2) by accepting, or making any payment for, any Products furnished hereunder. This Quote, together with any Application For Credit entered into by Seller and Customer ("Credit Application"), constitutes the sole and entire agreement of the parties with respect to the Products and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Quote, unless a separate overriding written contract has been entered into and signed by the parties.

- 2 **Availability & Delivery.** All Products to be purchased hereunder are subject to availability at the time of shipment. Seller shall deliver the Products to Customer at Seller's stockpile at the originating plant ("Seller's Location"). Seller is not responsible for any contamination, degradation or segregation of the Products that may occur during the delivery process, including but not limited during the unloading or stockpiling of the Products. If Customer requests delivery of the Products by Seller, it is understood and agreed that Seller will use Seller or third-party carriers to deliver Products from its plant. Seller will use commercially reasonable efforts to have the Products delivered in accordance with Customer's delivery schedule, and Customer releases all claims arising due to any delay in delivery. When a schedule has been agreed to by Seller, Customer must obtain Seller's written consent in order to change the schedule. Unless otherwise agreed in writing, Customer agrees to accept delivery of all or any portion of the Products as delivered to Customer. Customer acknowledges that Seller's use of particular units of measurement or conversion factors at its plants (or by Seller's third party carrier in the case of a Seller delivery) shall control over any discrepancies that may result from the Customer's or its third party carrier's use of alternative units of measurement or conversion factors. Customer shall pay for all detention and any other carrier delay charges which do not directly result from the fault of Seller. Trucks held at the delivery location for more than thirty (30) minutes may, at Seller's discretion, be billed to Customer at Seller's standard rate per truck load, for each quarter hour of excess time; provided, however, that such charges shall not apply if delivery is F.O.B. Seller's plant. If there are repeated delays in unloading, Seller reserves the right to suspend deliveries until timely delivery conditions are corrected. All shipments are subject to applicable tariff regulations. Customer acknowledges that Products ordered by mistake or in excess of requirements cannot be returned for credit and will be charged to Customer as though delivered in accordance with these Terms and Conditions.

- 3 **SPECIFICATIONS AND CHANGES.** When Seller and Customer have agreed in writing to Customer specifications, Seller will make its best effort to provide Products in accordance with Customer's specifications. In the event that it shall become commercially unreasonable for Seller to produce Products in exact accordance with Customer's specification requirements, then Seller may make changes in the specifications not materially affecting the strength or efficiency of the Products purchased. Any requested changes by Customer to the original specification must be requested in writing. Seller shall attempt to comply with such requests, but only upon the condition that a written agreement is entered into with Customer specifying the precise changes and Customer acknowledges any adjustment to the purchase price quoted in the Proposal. The quantity or weight of the Products indicated in the Proposal may not be exceeded without written approval being first obtained from Seller. Customer represents and warrants to Seller that the Products are being purchased for resale or for



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commercial use.

- 4 **Shipping.** Unless otherwise indicated, all prices are F.O.B. Seller's Location. Customer shall pay all costs to ship the Products.
- 5 **Title and Risk of Loss.** Title to the Products passes to Customer when Seller has received full payment for such Products. All risk of loss to the Products passes to Customer as the Products are loaded onto third-party or Customer's carrier.
- 6 **Inspection & Acceptance.** Customer is responsible for inspecting, at the Seller's Location, all Products tendered hereunder before such Products are shipped to Customer. All Products are deemed accepted by Customer unless Customer rejects the Products for defects or defective delivery prior to such Products leaving the Seller's Location. Customer shall not take possession of any Products Customer rejects.
- 7 **Limited Warranties and Remedies.** Seller warrants that, at the time of delivery to Customer's chosen carrier, the Products will be of the Product type set forth in this Quote. ALL PRODUCTS ARE HEREBY SOLD AND DELIVERED "AS IS" AND WITH NO WARRANTY UNLESS SELLER AND CUSTOMER SPECIFICALLY AGREE OTHERWISE IN WRITING. Customer acknowledges that it is responsible for securing any engineering, building, or architectural advice necessary to determine the correct type of Products for any particular project. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR THAT THE PRODUCTS ARE FIT FOR ANY PARTICULAR PURPOSE OR USE, AND ALL WARRANTIES WHICH MIGHT OTHERWISE ARISE FROM COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY SPECIFICALLY EXCLUDED. If the Products fail to conform to this limited warranty, Customer's sole and exclusive remedy, and Seller's entire liability will be, at Seller's election, (i) the repair or replacement by Seller, within a reasonable time, of the non-conforming Products, or (ii) the refund of the price paid for the non-conforming Products, and in either case only if Customer rejects the Products in accordance with paragraph 5 above.
- 8 **Payment Terms.** Unless otherwise provided in the Special Conditions, or in the Credit Application, all accounts are payable in current funds prior to delivery of the Products at Seller's Location. With respect to past due amounts, Customer agrees to pay interest at the maximum non-usurious rate on any past due indebtedness until paid and further agrees to pay all costs incurred in collection of past due indebtedness, including reasonable attorney's fees. If at any time the financial responsibility of Customer or the undersigned becomes unsatisfactory to Seller, in its sole discretion, Seller can require payments in advance or other security satisfactory to Seller.
- 9 **Force Majeure.** Seller shall not be liable for any price increase, delay, or failure to perform or deliver, in whole or in part, due to: (a) conditions, circumstances, or events beyond Seller's reasonable control, including but not limited to legal orders; strikes, lockouts, or other industrial disturbances; acts of war; acts of terrorism; embargoes, sanctions, boycotts or blockades; epidemics, pandemics or outbreak of other diseases; acts of God; unusual or adverse weather conditions; fire, accident or explosion; plant shutdowns; unavailability of transportation; unavailability of raw materials; fuel shortages; default by suppliers or carriers; shortages of skilled labor; or the enactment or implementation of any law, regulation, order, or decree that is not in effect at the time the order is placed; or (b) any act or failure to act by Customer's agents, contractors or representatives
- 10 **Taxes.** Customer will be responsible for any taxes owed as a result of the sale of Products hereunder unless the Customer provides Seller with a valid tax exemption certificate indicating that such taxes should not be collected. Any taxes which are levied on the Products or on transportation charges associated therewith, when the same are required to be paid by or collected by Seller, shall be added



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to the purchase price quoted in the Proposal. It is the responsibility of Customer, claiming Sales Tax Exemption, to provide to Seller valid exemption documentation for the appropriate taxing authority, at or before delivery of Products, in order for Customer to be relieved of sales tax liability.

11 **Modifications.** This Quote may not be modified or altered in any way unless expressly approved in writing by a duly authorized representative of Seller. Any acceptance by Customer that changes the Quote will not be effective.

12 **Counterparts.** This Quote may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document.

13 **Venue.** All matters relating to this Quote shall be governed in accordance with the laws of the State of Texas. Each party irrevocably submits to the exclusive jurisdiction of the federal and/or state courts in Harris County, Texas.

14 **Assistance by Seller.** Any technical information or assistance Seller or its affiliates provides is given and accepted at Customer's sole risk and is not a warranty or specification.

15 **Indemnification.** To the maximum extent allowable by law, Customer shall defend and indemnify Seller and its employees and agents against all sums, costs, liabilities, suits, damages and other expenses (including reasonable attorney's fees) that Seller may incur as a result of Customer's or its agent's negligence or Customer's or its agent's use, ownership, maintenance, transfer, transportation or disposal of the Product.

16 **LIMITATION OF DAMAGES.** In no event shall Seller's liability for rejected Goods or otherwise under these Terms and Conditions, under any circumstances, exceed the purchase price set forth in the Proposal. IN NO EVENT SHALL SELLER OR ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, STOCKHOLDERS, ATTORNEYS OR AGENTS BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RESULTING FROM OR IN CONNECTION WITH ANY CLAIM OR CAUSE OF ACTION, WHETHER BROUGHT IN CONTRACT OR IN TORT, EVEN IF SELLER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

17 **Miscellaneous:**

(a) This Quote shall be valid for thirty (30) days. Prices are subject to change in the event Customer does not return a signed acceptance of the Quote to Seller within thirty (30) days.

(b) Upon acceptance of the Quote, the price will be valid for ninety (90) days from the issuance of the Quote, at which time Seller may elect to increase quoted price based on market conditions.

(c) In addition to the price per ton indicated above, Seller may hereafter add a surcharge to reflect fuel and transportation costs. This surcharge may be added without notice at Seller's discretion. Should Customer request delivery in trucks or trailers that are different from Seller's customary delivery vehicles, Seller will attempt to comply with such request, but such request is subject to an additional surcharge at Seller's discretion. Demurrage will be assessed after the first hour at a rate of \$85 per hour.

(d) Quoted price is for whole-job price only; split-job price is subject to price escalation

(e) The Customer will be responsible for all preparatory work required at the Customer's jobsite prior to the delivery of the Products, including, but not limited to compaction. Seller shall not be responsible for any delay in delivery of the Products if such preparatory work is not performed.

(f) Seller cannot guarantee daily delivery tonnage due to truck availability and



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waives any liability for same, including but not limited to, liquidated or delay damages

(g) If deliveries are to occur at Customer's jobsite, Customer shall be responsible to provide Seller or Seller's third-party carrier a safe and secure delivery area for offloading the Products. Deliveries made inside curb line or on the lot are at Customer's risk only, and Seller accepts no responsibility whatsoever for damage resulting from such deliveries.

(h) Seller's normal hours of operation are: Mon - Fri 5600AM to 5:00PM, Sat. 6:00AM to 12:00pm. Sundays, Holidays and night work must be mutually agreed upon and an Opening Fee will be assessed per 12-hour shift.

(i) Customer is required to provide Seller with complete and accurate Job Information prior to any deliveries, failure to provide such information may delay delivery of Product.

(j) Crushed concrete base meets deleterious material requirements of 1.5% within TXDOT 247 specification

(k) The terms and conditions provided herein shall form the entirety of the agreement between Seller and Customer; all other terms and conditions not specifically included or referenced herein are hereby rejected