

TERMS AND CONDITIONS

1. **Acceptance.** Acceptance of Buyer's Order is expressly subject to Southern Concrete Materials/Kerr Concrete (Seller's) terms and conditions of sale, which shall take precedence over any other conditions, and no contrary, additional or different provisions or conditions shall be binding upon Seller unless accepted by an officer of Seller in writing. If the terms and conditions contained herein differ in any way from the terms and conditions of Buyer's order, this proposal shall be construed as a counteroffer and shall not be effective as an acceptance of such order unless Buyer assents to the terms and conditions contained herein. If there has been no offer by Buyer, then this proposal is issued on the condition that the Buyer assents to all the terms and conditions of this proposal. Assent by Buyer shall occur if the Buyer executes this proposal, requests good, directs Seller to begin to fill its order, or fails to object in writing within three (3) days from the date of receipt of this proposal. The terms and conditions contained in this proposal shall constitute the complete and exclusive statement of the terms of the agreement between Seller and Buyer, it being intended by the parties that this proposal sets forth the entire agreement between the parties hereto as to purchase of the goods (hereinafter referred to as the "Materials," i.e., "ready mix concrete" and/or "grout") described herein except, if there is an executed business credit application, such terms shall also apply.

2. **Notice and Delivery.** Seller will take reasonable steps to deliver ready mix concrete and grout to the locations at the times and quantities requested by Buyer, provided Buyer schedules with Seller the deliveries not less than twenty-four hours in advance of the requested deliveries. Seller is authorized to make deliveries requested by Buyer's personnel and agents, including its purchase managers, project managers, superintendents, foremen, builders, subcontractors and concrete placers and finishers. All deliveries will be made to the best of the Seller's ability and no claims for delay of delivery will be allowed by the Seller. Partial deliveries may be made, and Buyer will be charged for each delivery request and will not be entitled to a credit unless the delivery is cancelled prior to the batching and loading operations occurring.

3. **Ready Mix Concrete / Grout.** Seller has available some standard concrete and grout mixtures. Information on these mixtures is available at the offices of Seller or upon request. If Buyer desires a different mixture, it will need to provide in writing the design and proportioning of the mixture to Seller, specifying materials readily available to Seller, and Seller will assign a unique mix code name for the concrete or grout mixture.

4. **Inspection.** Buyer shall inspect the Materials (i.e. the ready-mix concrete and/or grout) at the time of delivery, and failure of Buyer to identify and notify Seller's home office of any and all suspected of known defects and/or nonconformities, in addition to noting such on the delivery ticket, shall be an unqualified acceptance of the Materials.

5. **Pricing.** The prices are based upon current costs and conditions. Also, pricing is based upon delivery locations being within 25 miles of Seller's concrete plants and deliveries occurring during normal operating hours, 7am to 5pm Monday through Friday, excluding federal and state holidays. Delivery outside of normal operating hours can be arranged but additional charges may apply. Prices for overtime, weekends, holidays and deliveries in excess of 25 miles are available upon request. Also, a unit price will be set by Seller for any different concrete and grout mixtures, upon receipt by Seller of the design and proportioning of the concrete or grout mixture provided by Buyer. All sales and use taxes shall be in addition to the pricing. The prices do not include cost of inspection or tests.

6. **Warranty and Limitation of Liability.** Seller warrants that the concrete and grout mixtures, when sampled at the point of discharge from the ready mix truck and tested by Buyer, will meet the 28-day strengths, provided the concrete mixtures are sampled and tested in accordance with ASTM C172 and ASTM C31 and the grout mixtures are sampled and tested in accordance with ASTM C1019, by a certified American Concrete Institute Grade 1 Concrete Field-Testing Technician.

Seller does not guaranty or warrant that the ready-mix concrete or grout shall be (a) in compliance with applicable building codes, (b) in compliance with any specifications, or (c) enough for any conditions. Buyer shall be solely responsible for verifying and obtaining approval that the ready-mix concrete grout mixes are in full compliance with (a) all applicable building or similar codes, (b) all applicable contract documents, including specifications, and (c) are fit for their intended purpose(s), including condition.

SELLER SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OTHER DAMAGES. THIS WARRANTY IS GIVEN AND ACCEPTED IN LIEU OF ALL OTHER LIABILITY OR WARRANTIES ON THE PART OF SELLER, EXPRESS OR IMPLIED, IN FACT OR IN LAW. ALL IMPLIED WARRANTIES AND SPECIFICALLY THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

This warranty shall constitute Buyer's sole and exclusive remedy and Seller's sole and exclusive liability. Seller's liability to Buyer arising out of the manufacturing or delivery of the Materials, whether based on warranty, contract, negligence (including strict liability) or otherwise, shall not (in any case) exceed the cost of correcting defects in the Materials, but shall, in all events, be limited to the purchase of the Materials.

Seller does not warrant and shall have no liability for any ready-mix concrete or grout that has materials or water added to it by or at the direction of request of Buyer's personnel and agents.

7. **Additional Charges.** Seller may charge Buyer an hourly unloading fee of \$75.00 should any delivery truck not be unloaded within sixty (60) minutes after arriving at the place of delivery jobsite. Seller may also charge an additional load charge of \$100 as stated on SCM and Kerr websites.

8. **Unloading.** Buyer shall provide suitable roadways and approaches to points of delivery beyond the public roads. Buyer shall provide safe areas for the ready-mix concrete trucks to be unloaded as well as provide adequate locations where Seller may washout and clean delivery trucks to avoid tracking mud, dirt, rocks, debris or concrete onto public roads. Buyer shall be responsible for all liability for damage to sidewalks, driveways, other property and person incurred as a result of deliveries beyond the curb line. Buyer shall pay for any wrecker or similar charges associated with getting the delivery truck into and out of the jobsite or delivery location.

9. **Payment.** Buyer shall make payment within 30 calendar days of the batching and loading of each concrete ready-mix truck. If requested, Seller will provide an applicable lien waiver in exchange for contemporaneous payment. There shall be no recoupment or setoff or other condition precedent of payment.

10. **Interest and Collection.** Any payment not made when due shall be subject to a charge of one and one-half percent (1½%) finance charge per month of the highest allowed finance charge, whichever is less, on the unpaid balance. Buyer shall pay all costs and expenses incurred in collecting sums due or owing, including court or arbitration fees and costs, attorneys' fees, and expert witness fees, arising before, during, or after trial, including any costs, attorneys' fees, or expenses incurred in any appeal there from.

11. **Insurance.** Seller shall be only obligated to obtain and maintain the minimum insurance requirements as mandated by the State of North Carolina.

12. **Shipments Subject to Payment.** If Buyer fails to make full and timely payments on this or any other agreement between Buyer and Seller in accordance with Seller's terms, Seller may defer further deliveries of Materials until such payments are made, or may, at its option, cancel in whole or part any further deliveries.

13. **Credit Approval.** The sale and delivery of Materials shall always be subject to the approval of Seller's management and Seller may at any time decline to make any delivery of Materials except upon receipt of payment or upon terms and conditions or security satisfactory to Seller's management.

14. **Indemnification.** To the fullest extent permitted by law, Buyer shall defend, indemnify, and hold Seller and its offices, directors, employees and agents wholly harmless from any claims, demands, liabilities, damages, costs, suits by any person or persons, losses, and expenses, including attorneys' fees, arising out of or resulting from the execution of or in connection with the sale, delivery and use of the Materials, including liability for any negligence of a party indemnified hereunder, provided the negligent act was not the sole negligence of a party indemnified hereunder.

15. **Waiver, Alteration or Modification.** No waiver, alteration, or modification of these terms and conditions shall be binding on Seller unless in writing and signed by an officer of Seller.

16. **Notice of Commencement / Payment Bond.** In the event Materials are supplied to a construction project for which either a notice of commencement has been filed or posted or for which a payment bond has been provided, then Buyer shall, within ten (10) days of the first delivery of the Materials, provide to Seller a copy of the notice of commencement and payment bond.

17. **Applicable Law.** This Agreement is made in and shall be governed by the laws of the State of North Carolina, without giving effect to the conflict of law's provisions of the laws of the State of North Carolina

18. **Disputes.** At the discretions and sole election of Seller, Seller may require that any controversy, dispute or claim, of whatever kind, arising out of or relating to the sale, delivery or use of the Materials, be resolved by and in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as from time to time amend and in effect. Any litigation or arbitration arising out of the sale, delivery of use of the Materials shall be brought, maintained and administered in Buncombe County, North Carolina. Should Seller be successful, in whole or part, in prosecuting or defending any lawsuit or arbitration, then Seller shall be entitled to recover its litigation or arbitration expenses, including expert and attorneys' fees, as well as any expenses incurred in any appeal there from. Any controversy, dispute, or claim that Buyer may have against Seller must be initiated no later than one (1) year after the Materials were delivered. Any judgement or arbitration award entered in favor of Seller shall bear interest at the rate of 18% per annum, until paid in full, in lieu of the statutory rate of interest.

19. **Force Majeure.** In the event of war, flood, strike, labor trouble, accident, riot, act of government authority, terrorism, explosion, embargo, civil or military authority, changes in market conditions relating to costs or availability of raw materials, commercial impracticability, or contingencies beyond the control of Seller interfering with or affecting the production or transportation of the Materials or with the supply of any raw material used in connection therewith, Seller may, at its option, cancel, in whole or part, any unshipped balance of the Materials.