

Cemcast Pipe and Precast, LLC

Terms and Conditions

1. Offer and Acceptance. Buyer's acceptance of Cemcast Pipe and Precast, LLC's ("Seller") quote is expressly conditioned on agreement to these Terms and Conditions. Quoted prices are firm for 30 days after bid letting. These Terms and Conditions and the quote constitute the final and binding contract between Buyer and Seller. Any additional or different terms or conditions contained in any document furnished by Buyer, including but not limited to, any purchase order or any acknowledgment, are deemed to be material and are hereby objected to and rejected by Seller. Any deemed offer or counter-offer by Buyer, is hereby rejected by Seller. The contract between Seller and Buyer is strictly in accordance with its express terms and no other terms are accepted by Seller, nor are any other terms implied, whether by performance, course of dealing, or otherwise. No course of dealing or performance and no usage of trade shall be considered in interpreting these Terms and Conditions and the contract and none of the foregoing shall be considered a waiver or modification of these Terms and Conditions or the contract. No statement (whether oral or written) made by any employee, sales person, distributor, agent or contractor of Seller outside these Terms and Conditions and the contract shall be considered a covenant, representation, or warranty and all such statements are hereby specifically disclaimed. If there is a conflict between the terms of the contract and any other document, the terms of the contract control.

2. Delivery; Risk of Loss; Acceptance of Product. All deliveries are FOB Seller's designated location. Buyer will be responsible for the unloading of all products and any loss or damage to the products incurred during or as a result of Buyer's unloading of the products. All risk of loss passes to Buyer upon delivery irrespective of the party providing shipping of the products. Any dates of delivery specified by Seller are only estimates of actual delivery. Seller will not be responsible for any claims or damages arising from or related to any delay in delivery. Seller will not deliver to any location Seller, in its sole discretion, deems to be unfit for delivery. In such instance, Buyer will be responsible to pick-up product at a location deemed fit by Seller, in its sole discretion. Buyer will be deemed to have accepted the products if Buyer fails to provide to Seller written notice of rejection (detailing the reason for rejection) within 24 hours of delivery. The required number of gaskets is included in the price per foot. Buyer will be charged for any extra gaskets.

3. Payment. Payment is due within 30 days of the invoice date. Seller, in its discretion, will invoice on a monthly basis. Buyer will pay Seller for all products produced specifically to fulfill an order of Buyer and stored by Seller at its place of business or other place designated by Buyer. Buyer will be invoiced monthly for any stored products. Interest at the rate of 18% will be charged on all amounts not paid when due. Buyer will be liable for all costs and expenses of collection incurred by Seller, including, but not limited to attorney's fees. Buyer is solely responsible for the payment of all taxes and charges of any nature imposed by any government authority on the sale, use or delivery of the products. Buyer will defend, indemnify, and hold harmless Seller from and against any and all claims for such taxes or other charges as contemplated in this provision. In the event Buyer is delinquent in the payment of any amount owed Seller, Seller, without prejudice to any other rights or remedies, may suspend or terminate performance of any order, decline to ship, stop any product in transit, or require advance payment.

4. Returns; Modification of Orders. Product returns will be accepted in the sole discretion of Seller. Returned products are subject to a minimum 10% restocking for unaltered stock products. In addition to the 10% restocking fee, Buyer will pay the following return fees ("Return Fees"). Return Fees are: (a) products returned to Seller by Buyer, for reasons other than those created by Seller, may be charged a fee to recover all delivery freight charges, and (b) products returned to Seller's place of business by a hauler, for reasons other than those created by Seller, may be charged a fee to recover all delivery freight charges and return freight charges; the fees set forth in both (a) and (b), above, will be based upon the weight of the product returned and the freight rate charged by the hauler. Special order products (whether a product is a special order will be determined in the sole discretion of Seller) may not be returned. Once Buyer places an order with Seller, the order may not be modified without the written consent of Seller, such consent to be in the sole discretion of Seller. In the event an order is allowed modified by Seller, Buyer will be responsible for all related costs, as determined in the discretion of Seller.

5. LIMITED WARRANTY. Seller warrants only to Buyer the product will be free from defects in material and workmanship only for a period of thirty days from the delivery date ("original warranty period"), normal wear and tear excluded. Such limited warranty does not apply to any part or component of a product which is manufactured by a third-party. **THE LIMITED WARRANTY SET FORTH IN THE FOREGOING PARAGRAPH IS THE SOLE AND EXCLUSIVE WARRANTY WITH RESPECT TO THE PRODUCTS. SELLER MAKES NO OTHER EXPRESS WARRANTY OF ANY KIND OR NATURE AS TO THE PRODUCTS OR THEIR PERFORMANCE AND SPECIFICALLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE CONCERNING THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION OR WARRANTY THAT THE PRODUCTS COMPLY WITH ANY LAW, RULE OR REGULATION. SELLER MAKES NO WARRANTIES OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY COMPONENT AND SUCH THIRD-PARTY COMPONENTS ARE SOLD "AS IS."** FURTHER, SELLER MAKES NO IMPLIED WARRANTY OF ANY KIND OR NATURE WITH RESPECT TO PRODUCTS OR ANY THIRD-PARTY COMPONENT AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR COMPLIANCE WITH ANY FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION. SELLER EXPRESSLY DISCLAIMS TO THE FULLEST EXTENT ALLOWED BY LAW ANY WARRANTY PROVIDED UNDER ANY FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION. There is no third-party, intended or otherwise, to which this Limited Warranty applies, including the end-user of the products.

This Limited Warranty will be null and void if (a) any alterations or modifications are made to a product, (b) a product is not maintained in strict compliance with the maintenance requirements set forth in the manual for a product or otherwise provided by Seller, (c) any repairs are made to a product which are not authorized by Seller in writing, (d) any warranty issue is not reported to Seller in writing within the original warranty period, (e) a product is used after the failure first occurs, (f) a product is used for any purpose other than for which it was manufactured, (g) a product is not used in strict compliance with specifications of the product, (h) a product is abused or damaged, (i) Buyer fails to deliver the product to Seller for inspection and testing if requested by Seller or Buyer disposes of the product or any part or component, (j) such failure results from any component of the product not produced directly by Seller, or (k) Seller otherwise determines a product failure is due to any reason other than material or workmanship. Any and all claims under the Limited Warranty must be made, in writing, to Seller by Buyer and before the end of the original warranty period. No claim under the Limited Warranty may be made after the end of the original warranty period. Seller may require Buyer, at Buyer's sole cost and expense, to return to Seller any product which Buyer claims to be defective. The determination of whether a product fails to comply with the Limited Warranty will be determined by Seller. If Seller determines a product fails to comply with the Limited Warranty, the sole and exclusive remedy for any such failure will, at Seller's sole discretion, be either the repair or replacement of the product, or the refund of the purchase price. Buyer is solely responsible for all other costs associated with a defective product irrespective of the nature of such costs. Any replacement product will be covered by the Limited Warranty, but only for the remaining time of the original warranty period.

*Seller's liability for any failure of any product to comply with the Limited Warranty, or for any other claim or liability related to or arising out of the product, including, but not limited to, claims, whether in contract, tort, or otherwise, arising out of, connected with, or resulting from the manufacture, sale, delivery, resale, repair, replacement, or use of the product, shall not exceed the purchase price for such failed product. In no event will Seller be responsible or liable to Buyer or any third party, including the end-user, under any circumstances for any indirect, consequential, special, punitive or exemplary, damages or losses, including, but not limited to, damages for loss of profits, goodwill, use of the product or any other equipment or other intangible losses which may be incurred in connection with the product regardless of the type of claim or the nature of the cause of action, even if Seller has been advised of the possibility of such damages or losses.*

6. Indemnification. Buyer will indemnify and hold harmless Seller, its affiliates and their respective officers, directors, employees, agents and other representatives and will, at Seller's option, defend any action brought against the same with respect to any claims, judgments, actions, suits, demands, damages, liabilities, costs or expenses (including, but not limited to, reasonable attorneys' fees and legal expenses) associated with or arising from the ownership, use or operation of the products by Buyer or any third party, including, without limitation, direct claims and third party claims.

7. Seller Provided Information. No obligation or liability shall arise out of Seller's rendering of technical or other advice in connection with Buyer's order or use of products, and Seller makes no covenants, representation or warranty, express or implied, related thereto. Buyer assumes all risk for loss or damage resulting from the handling or use of any products in accordance with such advice or recommendation. The selection of the products and design of any custom products shall be Buyer's sole responsibility. Seller shall have no liability for any design defects of custom products or if the products ordered are unsuitable for Buyer's intended use. Any advice or assistance by Seller in connection with Buyer's selection or design of the products is at Buyer's sole risk. Seller makes no covenants, representation or warranty whatsoever in connection with such advice or assistance.

8. Security Interest. Title to products will not pass to Buyer until all required payments have been made to Seller. Buyer hereby grants a security interest in the products and the proceeds therefrom to secure all amounts owed to Seller. Buyer shall execute all requested financing statements and other documents evidencing this security interest. Buyer grants Seller access to Buyer's locations to exercise Seller's rights as a secured party. In the event Buyer fails or refuses to execute any documents requested by Seller for purposes of this provision, Buyer hereby, irrevocably and forever, designates Seller as its attorney-in-fact to execute and deliver such documents.

9. Governing Law. The contract and product purchases are governed by and construed under the laws of the State of South Dakota, without regard to conflicts of laws rules. Venue for any disputes will lie exclusively and only in the South Dakota Circuit Court, Second Judicial Circuit. The parties waive all defenses concerning the chosen venue including inconvenience and lack of jurisdiction.

10. Force Majeure. Seller will not be responsible for any resulting loss if the fulfillment of any of the terms or provisions of the contract is delayed or prevented by riots, wars, acts of enemies, national emergency, strikes, floods, fires, acts of God, or by any other cause not within the control of Seller. The provisions hereof will not operate to excuse Buyer from prompt payment of any amounts owed Seller.

11. Notices. Any notices, consents or other communications required or permitted must be in writing and delivered personally, by overnight courier, by certified mail, or by facsimile. Unless otherwise stated, notices, consents or other communication will be deemed received (a) on the date personally delivered or delivered by facsimile; (b) on the next business day if sent via overnight courier; or (c) three business days after sending by certified mail.

12. Confidential Information. All information of Seller, including, but not limited to specifications, drawings, designs, data, information, ideas, methods, patents, technical matters, samples and inventions made, conceived, developed or acquired by Seller (collectively "Confidential Information") is and will be the exclusive property of Seller. Buyer will not at any time disclose, or cause or permit any employee, agent or affiliated, controlled or controlling entity of Buyer to disclose, to any person or entity, or use for its own or their benefit, or reproduce, the Confidential Information. All Confidential Information must be returned by Buyer to Seller upon demand.

13. Miscellaneous. The invalidity or unenforceability of any provision of the contract will not affect the validity or enforceability of any other provision. No waiver of any provisions of the contract by Seller will be deemed or constitute a waiver of any other provision or a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. There are no third-party beneficiaries to the contract. The terms set forth herein constitute the sole terms and conditions of the contract. No other warranty, term, condition or understanding, whether oral or written will be binding upon Seller. Buyer may not assign its rights or obligations under the contract and any such attempted assignment will be null and void. The provisions of the contract will survive termination for the benefit of Seller. No statement made by any person, written or oral, will modify the terms of the contract.