

1. **Acceptance.** SELLER'S ACCEPTANCE OF BUYER'S PURCHASE ORDER IS EXPRESSLY MADE CONIDITIONAL ON BUYER'S ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS OF SALE WHICH ARE IN LIEU OF ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN BUYER'S PURCHASE ORDER OR OTHER DOCUMENT OR COMMUNICATION PERTAINING TO BUYER'S ORDER OR THE GOODS. BUYER'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT SHALL BE CONCLUSIVELY PRESUMED FROM BUYER'S ACCEPTANCE OF ALL OR ANY PART OF THE GOODS OR FROM PAYMENT BY BUYER FOR ALL OR ANY PART OF THE GOODS. NONE OF THESE TERMS AND CONDITIONS MAY BE ADDED TO, MODIFIED, SUPERCEDED OR OTHERWISE ALTERED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED EXECUTIVE OF SELLER. FAILURE OF SELLER TO OBJECT TO ANY TERMS OR CONDITIONS WHICH MAY BE CONTAINED IN ANY DOCUMENT OR FORM OF BUYER SHALL NOT BE CONSTRUED AS A WAIVER OF THESE CONDITIONS, NOR AS AN ACCEPTANCE OF ANY SUCH TERMS AND CONDITIONS.

2. **Payment Terms.** Payment terms are net thirty (30) days from the date of this invoice unless specifically indicated otherwise in writing. Any payment not made by the due date of this invoice shall be subject to a late payment charge of 1.5% per month compounded on the unpaid balance of any amount then past due.

3. **Warranty.** Seller warrants that the goods supplied under this invoice (the "Goods") shall conform to the description stated on the reverse side hereof, subject to natural variations of color, size and texture common to products of this type. It is the Buyer's responsibility to determine if the stone is fit for their purpose and no warranty is given by the Seller unless agreed specifically in writing as performance of different stone will vary in different circumstances. THE FOREGOING WARRANTY IS SELLER'S SOLE WARRANTY WITH RESPECT TO THESE GOODS. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. SELLER'S LIABILITY FOR BREACH OF WARRANTY IS LIMITED SOLELY TO THE TOTAL PRICE INDICATED ON THE REVERSE SIDE OF THIS DOCUMENT. FAILURE TO GIVE NOTICE OF A WARRANTY CLAIM WITHIN TEN (10) DAYS FROM DATE OF DELIVERY SHALL CONSTITUTE A WAIVER BY BUYER OF ALL CLAIMS WITH RESPECT TO THE GOODS. THE FOREGOING SHALL CONSTITUTE THE SOLE REMEDY OF BUYER AND THE SOLE LIABILITY OF SELLER UNDER THIS WARRANTY.

4. **LIMITATION OF LIABILITY.** SELLER'S LIABILITY TO BUYER, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED IN ANY CASE THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. THE PRICE STATED FOR THE GOODS IS CONSIDERATION FOR LIMITING SELLER'S LIABILITY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS INVOICE MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE DATE OF THIS INVOICE. WITHOUT LIMITATION OF THE FOREGOING, IN NO EVENT WILL SELLER BE RESPONSIBLE OR LIABLE FOR PENALTIES OR PENALTY CLAUSES OF ANY DESCRIPTION OR INDEMNIFICATION OF BUYER OR OTHERS FOR COSTS, DAMAGES OR

EXPENSES ARISING OUT OF OR RELATED TO THE GOODS.

5. **Claims.** Claims by Buyer for shortages or errors in delivery must be made within five (5) days after delivery of the Goods. Goods purchased on the basis of weight are subject to customary quantity variations recognized by practice in the industry.

6. **Returns.** No Goods shall be returned for credit without first obtaining written consent from an executive officer of Seller.

7. **Cancellation.** Orders accepted by Seller are subject to cancellation by Buyer only upon the express written consent of Seller.

8. **Indemnification.** In addition to the foregoing, Buyer agrees to save and hold Seller harmless from any claims, demands, liabilities, costs, expenses or judgments arising in whole or in part, directly or indirectly, out of the negligence or lack of care of Buyer or Buyer's customers, agents, employees or invitees involving the Goods supplied by Seller. This indemnification shall include all costs, attorney's fees and other expenses paid or incurred by or imposed upon Seller in connection with the defense of any such claim.

9. **Governing Law.** Any agreement arising out of this transaction shall be deemed to have been made in Noblesville, Hamilton County, Indiana. The Parties agree that the validity, interpretation, and performance of any agreement arising out of this transaction shall be governed by the substantive laws of the State of Indiana. Buyer and Seller agree to the exclusive jurisdiction for the resolution of any disputes hereunder to the circuit or superior courts of Hamilton County, Indiana. This shall be the sole and exclusive jurisdiction and venue for the purpose of adjudication of any rights and liabilities hereunder.

10. **Default.** In the case of default or breach by Buyer in the performance of any or all of the provisions of this agreement Seller may cancel any outstanding order from Buyer and declare all obligations immediately due and payable and shall have, in addition, all remedies afforded by the Uniform Commercial Code as enacted in Indiana, and any other applicable law. Buyer shall, in addition, be liable for Seller's expenses incurred in exercising any remedies available to it including reasonable attorney's fees and legal expense. All unpaid obligations shall bear interest at the contract rate provided under terms of payment above.

11. **Delay.** If Buyer requests deferral of deliveries, Seller's agreement to defer delivery shall not excuse Buyer from its obligation to pay for the Goods at the same times and in the same amount as the original delivery schedule, including interest due pursuant to these terms and conditions.

12. **Waiver.** Seller's failure or neglect to enforce any term of this agreement shall not be construed as a waiver of that, or any future rights the Seller may have under this agreement.

13. **Delivery.** If Seller delivers the Goods, it will make every effort to place materials on site where instructed, however, if no person is present at the time of delivery, Buyer agrees that the Goods may be placed at the sole discretion of the delivery driver. Seller will not be responsible for any damage to walks, grass, landscaping, irrigation equipment, utilities, sidewalks, driveways, or any concrete slabs caused by the delivery or transportation of the Goods. If Seller loads the Goods on Buyer's vehicle, Seller shall not be liable for any damages to Buyer's vehicle or third-parties. Buyer shall be solely responsible for risks of transporting the Goods.