

## USE OF WEBSITE

**Victory Trucking Inc** (hereinafter to be referred to as VTI) has established terms and conditions for the sale of construction and residential products, which are set forth on this website. **These terms and conditions control and are incorporated into each sale of Victory's various products offered for sale, including mulch, gravel and stones, as well as construction products and traffic control products.** Buyer accepts these terms and conditions and evidences such acceptance by placement of its order.

Access to and use of this website are subject to the following conditions. This website has been developed by VTI and is administrated by **VTI reserves the right to discontinue or to make partial or complete modifications to this website or to the General Terms and Conditions of Sale and Delivery. Please note that VTI may make changes to these terms and conditions at its discretion and without prior announcement.** VTI asks that buyer regularly consult this website to view the terms and conditions and to note any changes or amendments that may have been made.

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## GENERAL TERMS APPLICABLE TO ALL PRODUCTS SOLD

**Payment Terms.** Unless credit terms have been established for Buyer in advance, payment shall be required upon pick-up or prior to delivery in cash or acceptable credit/debit card.

If credit payment terms are established for Buyer, such terms shall be subject to modification thereafter in the sole discretion of VTI. Unless otherwise specifically provided in the quotation provided to Buyer, payment of all invoices to Buyer shall be due net 30 days from the date of VTI's invoice. For purposes of determining the timeliness of payment, time shall be calculated based upon the date of invoice and date of payment (payment is deemed made by Buyer as of the date of receipt by VTI at the address for such payment provided in the invoice). Payment is due in full on the date stated on the front of the invoice [net 30 days ]. Interest at the lesser of 1½ % per month or the maximum rate allowed by law will be imposed on outstanding and delinquent invoices from the date after payment is due until paid in full. VTI is entitled to rely upon exemption certificates provided by Buyer and Buyer will pay (or subsequently reimburse) to VTI all applicable federal, state and local sales and use taxes. In addition to any other available rights and remedies, VTI will be entitled to recover from Buyer all costs of collection and litigation including, but not limited to, reasonable attorneys' fees and expenses related thereto. Despite the establishment of credit terms for Buyer, VTI reserves the right to condition delivery of orders on payments in advance or to cancel the unfilled portion of orders without notice in the event Buyer shall default in any material term herein, or should Buyer's financial status become impaired or deemed unsatisfactory to VTI (in the exercise of its sole judgment).

**VTI Controlling Terms of Sale.** VTI desires to provide Buyer with prompt and efficient service. However, to negotiate individually the terms and conditions of each sales contract would substantially impair VTI's ability to provide such services. Accordingly, products furnished and services rendered by VTI are sold only on the terms and conditions stated herein and notwithstanding any terms or conditions on Buyer's order or order acknowledgment form, which are expressly rejected. VTI's performance of any contract is expressly made conditional on Buyer's agreement to and acceptance of VTI's terms and conditions. Commencement of performance, shipment and/or delivery shall not be deemed or construed to be acceptance of Buyer's terms and conditions, or any of them. Buyer's acceptance of any product furnished hereunder shall be deemed assent to and acceptance of all the terms and conditions stated herein. VTI shall not be bound by any provision in the Buyer's orders, confirmation or order acknowledgment notices or other business forms. Any conflict between the terms and conditions of a purchase order, confirmation notice or other business form and the terms herein shall be resolved in favor of the terms herein. No modification of any of the provisions of these terms shall be effective unless made in a writing signed by both parties and specifically identifying the provisions of these terms to be modified. Each term hereof is severable. If a court having jurisdiction determines that any term is invalid or unenforceable under applicable law, that determination will not affect the other terms hereof and/or any contract, as the case may be, which other terms will continue to be enforced as if the invalid or unenforceable terms were omitted.

**Waiver.** Failure of VTI to exercise any of its rights hereunder will not be deemed a waiver of any such right; a waiver of any right or obligation hereunder will not constitute a continuing waiver. The unenforceability of any provision of hereunder will not affect the enforceability of any other term or condition set out herein, and each other provision herein will be severable and enforceable to the extent permitted by law.

**Indemnification.** VTI shall have no liability for indemnification to Buyer or any third party, regardless of the basis for any such claim and Buyer acknowledges and agrees that Buyer has no right of indemnity under any circumstance or based on any theory legal or equitable. Further, VTI assumes no obligation of Buyer to any third party, regardless of the nature of the relationship.

## **A. MULCH, GRAVEL AND LANDSCAPE STONE**

**1. Measurement and Availability of Products.** Sale of mulch, limestone, gravel and landscape stone products are based upon bulk quantity prices as determined from time to time by VTI and are measured by weight/yard. Availability of mulch, gravel and landscape stone products and order pick-up and delivery lead times and quantities available are subject to market conditions at time of order and may vary from time to time. **Upon loading of materials purchased title passes subject to obligation of payment for such products and Buyer has no right to return, all sales being final.**

**2. Mulch, Gravel and Landscape Stone Products Sold "AS-IS".** All information and technical assistance is given without warranty or guarantee and is subject to change without notice. Buyer represents and warrants (a) it is not relying upon any representation, statement or other assertion made by VTI or its representatives or agents, with respect to the suitability or fitness of any product for any purpose and that Buyer has formed an independent opinion concerning the suitability and fitness of the material for Buyer's intended end use or application; and (b) Buyer will not assert any claim against VTI or hold VTI liable, with respect to any information, testing or design furnished, or failure to be furnished, by VTI, including, without limitation, technical advice or recommendations.

**3. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING MULCH, GRAVEL AND/OR LANDSCAPE STONE, WHETHER EXPRESS OR IMPLIED, AND HEREBY SELLS AND CONVEYS AND BUYER PURCHASES SUCH PRODUCT(S) "AS IS".**

**4.** There is no return policy afforded AS-IS materials.

## **B. MANUFACTURED PRODUCTS DISTRIBUTED BYVTI**

**1. Warranties for Distributed Products.** In the event manufactured products handled or distributed by VTI are warranted to Buyer, VTI will reasonably assist Buyer to obtain or verify warranty information concerning any manufactured product and confirming application or extension of such warranties to Buyer. **VTI is not responsible or obligated to enforce or honor the warranties extended by the manufacturer to the final consumer, which are in addition to the limited warranties provided herein.** VTI may also distribute literature or sales materials of the manufacturer, but assumes no responsibility for the content of such literature or materials.

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN VTI IS THE EXCLUSIVE OBLIGATION OF SUCH MANUFACTURER OR SUPPLIER, AND NOT THE OBLIGATION OF VTI, UNLESS VTI FURNISHES BUYER WITH A SEPARATE WRITTEN WARRANTY MADE BY VTI ON ITS OWN BEHALF. VTI HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ON ALL MANUFACTURED GOODS AND SERVICES SOLD BY VTI.

**2. Return Policy.** All manufactured products handled or distributed by VTI that Buyer desires to return must be accomplished within 3 days after pick-up/delivery, at Buyer's sole expense. All returns shall be subject to a restocking fee of thirty-five percent (35%) of the original invoice amount, which shall be payable in the same manner as the materials originally purchased by Buyer were paid ((i) if credit terms were given, Buyer shall pay the restocking fee at the same time the invoice for the product is due; (ii) for cash purchase, the restocking fee will be deducted from the net refund and if credit card purchase, a net credit after restock fee will be issued Buyer).

Notwithstanding the foregoing, the return policy shall not be available to Buyer for (1) quantities of less than five (5) units of like product which are not returned in full, unopened cartons in the same condition as when delivered to Buyer, and (2) special order product.

### C. MANUFACTURED SIGNAGE

1. Signage. All traffic signage manufactured by VTI shall be constructed based on specific types as specified by Buyer and in accordance with specifications for such signage as set forth in the Manual on Uniform Traffic Control Devices [MUTCD], as modified and/or supplemented by Indiana Department of Transportation Standard Specifications [in effect at the time of manufacture, and including, but not limited to, Section 919 thereto]. All materials used shall be compliant with applicable standards.

2. Delivery of Signage. Except as is specifically agreed to in writing by VTI, all signage shall be FOB VTI's manufacturing location.

3. Return Policy. Except as to signage which is not compliant with MUTCD./INDOT specifications, signage manufactured to order may not be returned to VTI for any reason.

4. WARRANTIES. EXCEPT AS TO WARRANTIES SPECIFICALLY PROVIDED FOR HEREIN, VTI HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ON ALL MANUFACTURED SIGNAGE SOLD BY VTI.

5. Indemnification of VTI.. By placement and acceptance of delivery of a signage order, Buyer agrees to indemnify, defend and hold harmless VTI from any and all loss and/or liability, from any claim or cause of action of any nature, except as to claims of breach of contract or negligence by VTI.