

## USE OF WEBSITE

**Victory Trucking Inc** (hereinafter to be referred to as VTI) has established terms and conditions for the sale of its ready mix concrete and other 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 its ready mix concrete, mulch, gravel and stones, as well as construction 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 s 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 becomes 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 regardless of the basis for any such claim and Buyer acknowledges and agrees that Buyer has no right of indemnity under any circumstance of based on any theory legal or equitable.

## A. TERMS AND CONDITIONS OF SALE OF READY MIX CONCRETE.

**1. Title to Concrete.** Title to the ready mix concrete shall pass at time the various constituent products are loaded into the ready mix delivery vehicle. Concrete should be discharged as quickly after arrival at site as practicable. Delaying discharge may affect the strength, density and durability characteristics of the mix design of the concrete. **Addition of water, coloration materials or other admixtures at the job site is within the sole discretion of Buyer and Buyer is advised that such actions will affect the slump, strength and quality of the ready mix concrete as manufactured and risk of such changes are borne by Buyer.**

Concrete temperature will be dictated by the environmental and material conditions at the time of delivery and may require the implementation of controlled measures during production at the expense of Buyer. Buyer is responsible for the requirements of American Concrete Institute ("ACI") 305R and 306R, except as pertains to production of the ready mix concrete.

**2. Possible Additional Costs.** In addition to payment terms as provided for in the General Terms Section above, Buyer is responsible for full payment of, including all costs of disposal and VTI's return charge per truck for, (i) orders not cancelled at least one hour prior to delivery time (or in any event prior to loading the order into the ready mix truck);

(ii) concrete delivered due to Buyer's mistake or in excess of requirements; (iii) concrete not deliverable due to unsuitable approaches as required under **Section 3** below. Concrete prices and quantities are based upon the wet volume at the time of discharge from the truck. Yield will be established in strict accordance with applicable ASTM standards. Buyer will pay all charges incident to inspection or tests made by or on behalf of Buyer.

**3. Particular Requirements of Buyer.** VTI ready mix concrete is manufactured to the specifications provided by Buyer. Requirements for workability, placeability, durability, surface texture, density and structural design are within the knowledge of the Buyer and Buyer is referred to ACI Standards 211.1 and 211.2 for guidance in making decisions as to the mix of concrete needed for a particular job. Buyer is responsible to see that the concrete is handled in accordance with best construction practices. Buyer shall direct the unloading of the ready mix concrete and shall provide suitable site conditions to delivery points beyond paved streets that allow the safe and efficient discharge of the concrete. For delivery beyond curb lines, Buyer assumes all liability for damage to curbing, sidewalks, driveways, overhead lines, pipes, septic tanks, plantings, shrubs and trees and/or other property, and Buyer will indemnify and hold VTI harmless from and against any and all liability, loss and expense incurred as a result of such delivery, including but not limited to towing charges, except to the extent caused by VTI's gross negligence or willful misconduct. Buyer expressly waives any right of subrogation against VTI.

**4. Delivery of Concrete.** Regular delivery hours are 7:00 a.m. - 4:30 p.m., Monday through Friday. An additional charge may be added for deliveries outside of these hours and for any waiting/unloading periods that exceed off-load time per load (determined by multiplying 5 minutes times the total cubic yards of ready mix concrete on board the truck). Although delivery charges are incorporated into the invoice price of the ready mix concrete, additional delivery charges may be imposed with respect to short loads (less than the maximum cubic yards the truck is capable of delivering). Buyer should give VTI at least 48 hours prior notice of the time and rate of requested deliveries ("will call"). In addition to the will call notice, Buyer shall provide written confirmation to VTI at least 24 hours prior to scheduled delivery. Delivery schedules will be mutually agreed upon between VTI and Buyer. VTI reserves the right to reject

any order. Agreed-upon deliveries will be made to the best of VTI's ability to dispatch, however, Buyer waives any claims associated with any delays in delivery.

5. **Cleanup of Drums and Chutes.** Buyer must provide an appropriate location at the delivery site (in compliance with applicable laws) for VTI to washout the truck's chutes after discharging concrete.

6. **Limited Warranty.** Buyer is solely responsible for determining the type and quantity of goods to be purchased. Concrete will be batched and delivered in accordance with ASTM C-94. VTI warrants that its products will meet or exceed applicable American Society for Testing Materials ("ASTM") and ACI strength standards, when tested in accordance with and evaluated by standard specimens selected, made, handled and cured in accordance with the applicable provisions of ASTM Practice C 31/C 31 M.

Buyer's sole remedy and VTI's sole liability for claims of breach of this warranty shall be VTI's choice of either a) a quantity of conforming concrete delivered to the job site equal to the previously provided concrete; or b) refund of monies paid by Buyer to VTI for the non-conforming concrete.

NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT OR ELSEWHERE TO THE CONTRARY, BUYER'S SOLE REMEDY AND VTI'S SOLE LIABILITY FOR CLAIMS OF BREACH OF THIS WARRANTY SHALL BE VTI'S CHOICE OF EITHER A) A QUANTITY OF CONFORMING CONCRETE DELIVERED TO THE JOB SITE EQUAL TO THE PREVIOUSLY PROVIDED CONCRETE; OR B) REFUND OF MONIES PAID BY BUYER TO VTI FOR THE NON-CONFORMING CONCRETE.

VTI SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR NATURE, ARISING AT ANY TIME, FROM ANY CAUSE WHATSOEVER, INCLUDING LOSS OF REVENUE OR PROFIT. IN NO EVENT WILL VTI BE RESPONSIBLE FOR DAMAGES DUE TO THE ACTIONS OF OTHERS OR THE FAILURE OF BUYER TO COMPLY WITH ITS OBLIGATIONS.

ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY EXCLUDED. THE REMEDY SET FORTH IN THIS SECTION 6 WILL CONSTITUTE THE SOLE REMEDY OF Buyer UNDER THIS LIMITED WARRANTY.

7. **Notice of Claim.** Because of the permanent nature of concrete and the expense involved in the manufacture and installation of concrete, Buyer must advise VTI as to any perceived non-compliance with order specifications. As a condition precedent to the establishment and pursuit of any claim asserted by Buyer based upon alleged defect in the ready mix concrete provided by VTI, Buyer must:

**A. Projects Where Entire Concrete Order will be delivered in less than 7 business days:** Slump, air-content, and temperature tests shall be obtained each day (for each class of concrete provided) at the time of placement no less frequently than one slump, air-content, and temperature test for each 150 cubic yards poured per day. Slump testing shall be performed in the manner prescribed in ASTM C 143 and air testing shall be performed in the manner prescribed in ASTM C 138. In the event the administered test indicates a slump value that is greater than one inch from the specified slump, or air entrainment of +/- 1% of specified air, Buyer shall immediately inform VTI by written medium (text, e-mail) with a confirming telephone call. If Buyer is unprepared for discharge of the concretes from the vehicle, the producer shall not be responsible for the limitation of minimum slump after 30 min have elapsed starting either on arrival of the vehicle at the prescribed destination or at the requested delivery time, whichever is later.

**B. Projects Where Entire Concrete Order Will Be Delivered over Period Greater than 7 Days.** On projects involving multiple pours extending beyond 7 work days strength of the concrete based upon Buyer-specified strengths shall be the basis for acceptance of VTI concrete. Tests of concrete required to determine compliance with Buyer's strength specification shall be made by a certified ACI Concrete Field Testing Technician, Grade I or equivalent. Samples of concrete shall be obtained as prescribed in ASTM Practice C 172 and made and cured in accordance with ASTM Practice C 31/C 31 M. Samples to perform strength tests and slump, air-content, and

temperature tests shall be obtained each day (for each class of concrete provided) at the time of placement no less frequently than one strength, slump, air-content, and temperature test for each 150 cubic yards poured per day. For strength test purposes at least three standard test specimens shall be made from a composite sample. All documentation of compliance with testing protocols as provided for in the applicable ASTM, including, but not limited to, all chain of custody records, written reports, memorandum, e-mail or other form of documentation prepared by or for Buyer regarding such results together with all notes, data and other evidence evidencing the nature and manner of the specific testing (including, but not limited to, the time, standards employed in conducting such testing and the name of the person who conducted the testing), notes regarding the method of forming and finishing the concrete, and specific information as to any water added to the mix by Buyer, as well as any other admixtures (of any type) introduced to the ready mix concrete by (or at the direction of) Buyer at the delivery site before installation, shall be retained by Buyer.

Concrete delivered for each day shall be conclusively acceptable to Buyer if the strength testing, performed on properly secured samples in accordance with ASTM C 39 at 28 days following date sample was obtained, reveals that (i) the average of any three consecutive strength tests shall be equal to, or greater than, Buyer's specified strength and (ii) no individual strength test shall be more than 500 psi below Buyer's specified strength (or, in the case of specified strength in excess of 5000 psi, a number equal to  $(.1) \times$  the specified strength). In addition, Buyer must perform strength testing in accordance with ASTM C 39 on one cylinder from each composite sample to be tested, and a copy of the written report evidencing the results from the testing company (together with the delivery-ticket number for the concrete and the exact location in the work at which each load represented by a strength test is deposited) shall be provided to VTI no later than 5 pm on the day following the date testing was performed; provided, however, that such results are informational only and shall not form a basis for determination of acceptance or rejection of delivered concrete.

If Buyer asserts that any sample strength- tested falls below the acceptance criteria set out above, Buyer shall provide the results of testing performed by (or on behalf of) Buyer, together with all records regarding such sample (as described above) to VTI in writing within 48 hours after the results of such testing are obtained by (or otherwise available to) Buyer. A failed sample shall not be conclusive evidence of breach of VTI's warranty or provide a basis for revocation of acceptance.

General Provisions. Buyer shall retain all sampling records for all relevant periods hereunder. Notwithstanding the foregoing testing requirements, Buyer shall, in addition to the testing requirements imposed hereunder, provide copies of all test results performed by Buyer to VTI in writing within 48 hours after the results of such testing are obtained by (or otherwise available to) Buyer. Notwithstanding anything herein to the contrary **water added to a load of concrete which is not authorized in writing by VTI management shall render any and all warranties null and void.**

8. **Rejection of Load.** In the event Buyer shall reject any load of concrete at point of delivery, Buyer shall communicate such rejection in writing, specifying the basis for such rejection with particularity, identifying (i) the testing relied upon by Buyer as basis for the determination of the non-conformity of the load and (ii) providing the specific test details, by written communication to VTI prior to the unloading of the next batch of ready mix concrete delivered to Buyer at the job site.

9. **Time is of Essence.** Any failure by Buyer to give written notice within the time periods provided for above will be deemed a conclusive waiver by Buyer of all such claims against VTI referred to in Sections 7 and 8 above, it being understood that in all respects time shall be of the essence.

10. **Use of Ready Mix Concrete.** Buyer represents and warrants that (a) it understands the nature and characteristics of ready mix concrete and any hazards associated with its use; and (b) it will adequately instruct and warn all persons, including all third parties, who may come in contact with, or be in the vicinity of, the ready mix concrete in the proper safe use and handling of the ready mix concrete. Material safety data sheets are provided on the VTI website to provide Buyer with pertinent information regarding health and safety hazards relating to the safe and responsible handling and installation of its ready mix concrete. Buyer acknowledges it has read or is familiar with the available information on ready mix concrete hazards, proper use, and handling.

## **B. 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.

## **C. MANUFACTURED PRODUCTS DISTRIBUTED BY VTI**

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 products.