



SPECIALTY MATERIALS

## SALES TERMS AND CONDITIONS

ALL CONTRACTS FOR SALE MADE WITH ACG MATERIALS AND ITS  
SUBSIDIARIES ARE SUBJECT TO THESE TERMS AND CONDITIONS

**ACCEPTANCE OF PROPOSAL OR ORDER.** Except as specifically agreed otherwise in writing, these Terms and Conditions set forth herein (the "Terms and Conditions") **shall govern any and all transactions among any "Customer"** (herein so called) and **Harrison Gypsum, LLC d/b/a Arcosa Specialty Materials**, or its wholly-owned subsidiaries, including **LLC, Art Wilson Co., J.A. Jack & Sons, Inc., Imperial Limestone Company Limited**, and affiliates (collectively, "Seller"), being engaged in the production of aggregates and lightweight materials (the "Goods"). The following Terms and Conditions, together with those contained in the body of the applicable Seller invoice, sales contract, proposal, quotation or purchase order (the "Proposal Documents" or "Proposal") shall constitute the entire agreement for the purchase and sale of Seller's Goods. Any acceptance by Seller contained herein is made expressly conditional upon Customer's assent to these Terms and Conditions. Such assent, by Customer, shall be deemed to occur upon the approval of the Proposal Documents or if no signature is obtained from Customer, upon the earlier of (i) the failure of Customer to object, in writing, specifically to any of these terms and conditions, within 10 days from the receipt of the Proposal Documents; or (ii) acceptance of Goods. Further, any terms and conditions contained in Purchaser's Proposal Documents or request for quotation which are different from, or in addition to, these Terms and Conditions, or those contained in the body of an applicable Seller invoice or sales contract, shall not be binding upon Seller, and Seller hereby specifically objects to such terms and conditions. No agreement or understanding, oral, written or otherwise, in any way purporting to modify these Terms and Conditions shall be binding unless hereafter made in writing and signed by an authorized representative of Seller.

**SPECIFICATIONS AND CHANGES.** Except as Seller and Customer specifically agree otherwise in writing, in the event that it shall become impossible for Seller to secure materials required for the Goods purchased by Customer in exact accordance with Customer's specification requirements for any reason beyond the reasonable control of Seller, then Seller may make changes in the specifications not materially affecting the strength or efficiency of the Goods purchased, and Customer agrees that it will not unreasonably withhold its consent to such change. Any changes in the specification desired by Customer must be requested in writing, and Seller shall attempt to comply with such requests, but only upon the condition that a written agreement is entered into with Customer specifying the precise changes and the amount of any adjustment in the purchase price quoted in the Proposal. The quantity or weight of the Goods indicated in the Proposal may not be exceeded without written approval being obtained from Seller. Customer represents and warrants to Seller that the Goods are being purchased for resale or for commercial use.

**DELIVERY.** If delivery is required, the time of delivery of the Goods is conditioned upon (a) the date of acceptance of the Proposal; (b) Seller's ability to secure the materials to enable Seller to meet its production requirements for both the Goods that are the subject of the Proposal and goods ordered prior to Customer's order; and (c) delays due to strikes or other labor troubles; accidents or necessary repairs to machinery; fire, floods or other adverse weather conditions; Government regulations; acts of God; or any other causes beyond Seller's reasonable control. Delay in delivery of any of the Goods pursuant to the foregoing shall not constitute a default under the Proposal. If delivery is included in the Proposal, unless otherwise provided in the Proposal or otherwise agreed in writing by the parties, delivery of Goods shall be F.O.B. Seller's plant. It is understood and agreed that Seller utilizes 3<sup>rd</sup> party shippers to deliver Goods from its plant, and Seller will use commercially reasonable efforts to have the Goods delivered in accordance with Customer's delivery schedule. Customer releases all claims arising due to any delay in delivery. Unless otherwise agreed in writing, Customer agrees to accept delivery of all or any portion of the Goods as delivered to Customer. Customer shall pay for all detention and any other carrier delay charges which do not result from the fault of Seller. All shipments are subject to applicable tariff regulations. Unless otherwise agreed in writing, delivery of the Goods shall occur, and risk of loss shall pass to Customer when the Goods are loaded onto rail car or other transportation equipment at Seller's plant.

**INDEMNITY.** Customer agrees to indemnify, defend and save harmless Seller and its or their respective officers, directors, employees, stockholders, agents and attorneys from any and all claims, damages and liability for injury or death to persons or damage to property, arising out of the sale of Goods hereunder, provided that no indemnity shall arise in the event of Seller's sole negligence.

**INSURANCE.** In regard to truck shipments by Customer, prior to any sale, Customer shall be required to furnish Seller with a certificate of insurance in a form satisfactory to Seller demonstrating that Customer has in effect insurance covering Customer's transportation equipment while on Seller's premises, such insurance to include Commercial General Liability and Automobile Liability Insurance with limits of not less than \$1 million each, naming Seller as an additional insured, Workmen's Compensation Insurance in conformity with the laws of the state in which the Goods are delivered and Employer's Liability Insurance of not less than \$1 million. All policies shall include a waiver of subrogation in favor of Seller.

**WARRANTY.** ALL GOODS ARE HEREBY SOLD AND DELIVERED "AS IS" UNLESS (i) SELLER AND CUSTOMER SPECIFICALLY AGREE OTHERWISE IN WRITING, OR (ii) IN THE CASE OF CERTAIN MANUFACTURED GOODS, AS SELLER SPECIFICALLY PROVIDES OTHERWISE IN WRITING. Seller agrees to fill orders to the best of its ability, based on the availability of the requested Goods. If Seller is unable to provide the requested Goods, Seller will provide substitute Goods approved in writing by Customer. Seller does not provide engineering, building, or architectural advice necessary to determine the correct type of Goods for any particular project. **THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR THAT THE GOODS ARE FIT FOR ANY**

**PARTICULAR PURPOSE OR USE, AND ALL WARRANTIES WHICH MIGHT OTHERWISE ARISE FROM COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY SPECIFICALLY EXCLUDED.**

**TAXES.** Any taxes which are levied on the Goods or on transportation charges associated therewith, when the same are required to be paid by or collected by Seller, shall be added to the purchase price quoted in the Proposal.

**INSPECTION.** Customer may reject and refuse acceptance of Goods which are not in accordance with its specifications; provided, however, Customer shall promptly notify Seller of such rejection and provide Seller with a reasonable period of time to cure such nonconformity. Goods shall not be returned to Seller unless Seller authorizes such return by prior written notice to Customer.

**LIMITATION OF DAMAGES.** In no event shall Seller's liability for rejected Goods, under any circumstances, exceed the purchase price set forth in the Proposal. **IN NO EVENT SHALL SELLER OR ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, STOCKHOLDERS, ATTORNEYS OR AGENTS BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RESULTING FROM OR IN CONNECTION WITH ANY CLAIM OR CAUSE OF ACTION, WHETHER BROUGHT IN CONTRACT OR IN TORT, EVEN IF SELLER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.**

**PAYMENT.** If payment is included in the Proposal, unless otherwise provided in the Proposal or otherwise agreed in writing by the parties, payment on Customer's account is due Net 30. If at any time the financial responsibility of Customer or the undersigned becomes unsatisfactory to Seller, in its sole discretion, Seller can require payments in advance or upon security satisfactory to Seller. If Customer fails to timely pay, Seller reserves the right to cancel the unfulfilled portion of the Proposal without notice. In addition to any other remedy to which Seller may be entitled, Seller shall be entitled to charge interest at the highest rate permitted by law on any invoice not paid in accordance with invoice terms. Nothing herein is intended to affect the obligation of Customer to accept and pay for the Goods. Customer shall not be entitled to deduct from the purchase price invoiced to it by Seller the amount of any claim asserted by Customer against Seller, unless such claim shall have been allowed, in writing, by Seller. **Alternative Dispute Resolution Provisions: At the option of Seller, any dispute, claim or controversy which arises out of the sale of Goods by Seller to Customer may be submitted to an alternative dispute resolution procedure selected by Seller and Customer hereby agrees to submit any such dispute, claim or controversy to any alternative dispute resolution procedure thus selected.**

**DEFAULT.** Customer will be in default if Customer (a) fails to pay Seller any amount when due under the Proposal, (b) fails for a period of five (5) days after receipt of written notice from Seller to fulfill or perform any other written provision hereof, (c) becomes insolvent or bankrupt, or a petition therefor is filed voluntarily or involuntarily and not dismissed within thirty (30) days from filing, or (d) makes a general assignment for the benefit of its creditors, or a receiver is appointed or a substantial part of its assets are attached or seized under legal process and not released within thirty (30) days thereafter. Upon Customer's default, Seller may, at its option, without prejudice to any of its other rights and remedies, and without demand for payments past due, (a) make shipments subject to receipt of cash in advance or upon security satisfactory to Seller, (b) terminate this agreement and declare immediately due and payable the obligations of Customer for Goods previously shipped, and/or (c) suspend any further deliveries until the default is corrected, without releasing Customer from its obligations under this agreement. In any event, Customer shall remain liable for all loss and damage in Paragraph 10, above.

**APPLICABLE LAW.** The terms of this agreement shall be governed by the laws of the State of Oklahoma, without regard to its conflicts of law provisions. The exclusive venue of any claim or dispute arising under this agreement shall be in the State or Federal District Courts of Oklahoma County, Oklahoma.

**SEVERABILITY.** If any provision contained herein shall for any reason be held to be invalid, illegal, void or unenforceable in any respect, such provision shall be deemed modified so as to constitute a provision conforming as nearly as possible to the invalid, illegal, void or unenforceable provision while still remaining valid and enforceable and the remaining terms or provisions contained herein shall not be affected thereby.

**NON-DISCLOSURE, ENTIRE AGREEMENT AND WAIVER.** Customer agrees not to disclose to any third party the terms and conditions of the Proposal or the information received from Seller in either negotiating Customer's order or the Proposal, or in the performance of the Proposal or order, which obligations shall survive completion of the Proposal. The obligations of this provision shall not apply to any information which Customer possessed prior to its disclosure by Seller, was or has become available through the public domain, or is subsequently provided to it by another party having the right to possess and disclose the information. The Proposal and these terms and conditions contain the entire agreement of the parties, and neither party shall be bound by or liable for any statement, promise, inducement or understanding not set forth herein or therein. Any reference to Customer's request for quotation or order does not imply acceptance by Seller of any term, condition or instruction contained therein. Neither party's failure to insist on performance of any term, condition, or to exercise any right or privilege under a Proposal shall constitute a waiver of any breach or of any right or privilege.