



ARCOSA SPECIALTY MATERIALS  
TERMS AND CONDITIONS OF SALE

**1. ACCEPTANCE OF PROPOSAL.** Except as specifically agreed otherwise in writing, these Terms and Conditions of Sale set forth herein (the “Terms and Conditions”) shall govern any and all transactions among a “Customer” placing orders for or otherwise purchasing expanded clay and shale lightweight aggregates, traditional aggregates including gypsum, anhydrite, limestone, sand, gravel and processed downstream mineral products (the “Goods”) from the **Arcosa Specialty Materials** entity as defined below<sup>1</sup> (each as the case may be, the “Seller”). The following Terms and Conditions, together with those contained in the body of the applicable Seller invoice, sales contract, proposal, quotation or purchase order (together, 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 ten (10) days from the receipt of the Proposal Documents; or (ii) acceptance of the Goods. Further, any terms and conditions contained in Customer’s 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 Customer 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.

**2. SPECIFICATIONS AND CHANGES.** When Seller and Customer have agreed in writing to Customer specifications, Seller will make its best effort to provide Goods in accordance with Customer’s specifications. In the event that it shall become commercially unreasonable for Seller to produce Goods in exact accordance with Customer’s specification requirements, then Seller may make changes in the specifications not materially affecting the Customer’s intended use of the Goods purchased. Any requested changes by Customer to the original specification must be requested in writing. 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 Customer acknowledges any adjustment to 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 first obtained from Seller. Customer represents and warrants to Seller that the Goods are being purchased for resale or for commercial use.

**3. DELIVERY.** The time of delivery of the Goods is conditioned upon (a) the date of acceptance of the Proposal and (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. Seller shall not be liable for any delay or failure to perform or deliver, in whole or in part, due to: (a) conditions, circumstances, or events beyond Seller’s reasonable control, including but not limited to legal orders; strikes, lockouts, or other industrial disturbances; acts of war; acts of terrorism; embargoes, boycotts or blockades; epidemics, pandemics or outbreak of other diseases; acts of God; unusual or adverse weather conditions; fire, accident or explosion; plant shutdowns; unavailability of transportation; unavailability of raw materials; fuel shortages; default by suppliers or carriers; shortages of skilled labor; or the enactment or implementation of any law, regulation, order, or decree that is not in effect at the time the order is placed; or (b) any act or failure to act by Customer’s agents, contractors or representatives. 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. Title and risk of loss shall pass to Customer when the Goods are loaded onto the transportation equipment at Seller’s plant, terminal or any other point of origin. Seller is not responsible for any contamination, degradation or segregation of the Goods that may occur during the delivery process, including but not limited during the unloading or stockpiling of the Goods. If Customer requests delivery of the Goods by Seller, it is understood and agreed that Seller will use third party carriers to deliver Goods from its plant, terminal or any other point of origin. Seller will use commercially reasonable efforts to have the Goods delivered in accordance with Customer’s delivery schedule, and Customer releases all claims arising due to any delay in delivery. When a schedule has been agreed to by Seller, Customer must obtain Seller’s written consent in order to change the schedule. Unless otherwise agreed in writing, Customer agrees to accept delivery of all or any portion of the Goods as delivered to Customer. **Customer acknowledges that Seller’s use of particular units of measurement or conversion factors at its plants (or by Seller’s third-party carrier in the case of a Seller delivery) shall control over any discrepancies that may result from the Customer’s or its third-party carrier’s use of alternative units of measurement or conversion factors.** Customer shall pay for all detention and any other carrier delay charges which do not directly result

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1. Harrison Gypsum, LLC; Diamond Gypsum, LLC; Washita Valley Logistics, LLC; Western Oklahoma Development Group, LLC; Jack Acquisitions, Inc.; J.A. Jack & Sons, Inc.; Art Wilson Co.; Imperial Limestone Company Limited; Western States Gypsum, Inc.

from the fault of Seller. Trucks held at the delivery location for more than thirty (30) minutes may, at Seller's discretion, be billed to Customer at Seller's standard rate per truck load, for each quarter hour of excess time; provided, however, that such charges shall not apply if delivery is F.O.B. Seller's plant. Barge and rail shipments held at delivery location beyond the allotted time for unload will be charged to the Customer on a per day rate per the applicable shipping agreement. If there are repeated delays in unloading, Seller reserves the right to suspend deliveries until timely delivery conditions are corrected. All shipments are subject to applicable tax, tariff or duty regulations. If any such tax, tariff, duty or similar charge is now or hereafter imposed by any governmental authority or agency, foreign or domestic, upon the Goods sold hereunder or upon the production, sale, transportation or delivery thereof on Seller, directly or indirectly, the amount of any such tax, tariff, duty or similar charge shall be added to the Proposal and charged to Customer for payment. Customer acknowledges that Goods ordered by mistake or in excess of requirements cannot be returned for credit and will be charged to Customer as though delivered in accordance with these Terms and Conditions.

**4. INDEMNITY.** Customer agrees to indemnify, defend and hold harmless Seller and its affiliated entities and their respective directors, officers, employees, and agents (collectively, the "Indemnitees") 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 or caused by or attributable to the negligence of Customer or of its third party carrier during operations on Seller's premises, provided that no indemnity shall arise in the event of Seller's sole negligence.

**5. INSURANCE AND SAFETY GUIDELINES.** In regard to truck shipments made or arranged by Customer, prior to any sale, Customer shall be required to furnish Seller with a certificate of insurance (with appropriate endorsements) in a form satisfactory to Seller demonstrating that Customer has in effect insurance covering Customer's transportation equipment or Customer's third party carrier's equipment while on Seller's premises, such insurance to include Commercial General Liability and Automobile Liability with limits of not less than \$1 million each, 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. Customer's policies shall be endorsed to name the Indemnitees as additional insureds with such status on a primary and non-contributory basis to any insurance maintained by Seller.

All policies shall include a waiver of subrogation in favor of Seller and its affiliated entities except where prohibited by law. Customer agrees to cooperate with Seller's insurance credentialing service to obtain required certificates and endorsements. Customer will cause carriers (whether Customer controlled or third-party operators) to comply with Seller's safety requirements and procedures during operations on the Seller's premises, and Customer acknowledges that entry upon a Seller's premise is conditioned upon such compliance.

**6. WARRANTY. ALL GOODS ARE HEREBY SOLD AND DELIVERED "AS IS" AND WITH NO WARRANTY UNLESS SELLER AND CUSTOMER SPECIFICALLY AGREE OTHERWISE IN WRITING.** Customer acknowledges that it is responsible for securing any 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.**

**7. 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. It is the responsibility of Customer, claiming Sales Tax Exemption, to provide to Seller valid exemption documentation for the appropriate taxing authority, at or before delivery of goods, in order for Customer to be relieved of sales tax liability.

**8. INSPECTION.** To the extent Customer and Seller have agreed to specifications in writing, Customer may reject and refuse acceptance of Goods at delivery, which are not in accordance with exact specifications; provided, however, Customer shall promptly notify Seller of such rejection within five (5) days of such delivery 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.

**9. LIMITATION OF DAMAGES.** In no event shall Seller's liability for rejected Goods or otherwise under these Terms and Conditions, 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.**

**10. PAYMENT.** Payment on Customer's account is due "NET 30 DAYS OF INVOICE" and shall become past due immediately thereafter. 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 other security satisfactory to Seller. If Customer fails to

timely pay, Seller reserves the right to cancel the unfilled 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 offset or setoff from the purchase price 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, including any action against any guarantor applicable to this Proposal, may be submitted to an alternative dispute resolution procedure selected by Seller and Customer, and guarantor hereby agrees to submit any such dispute, claim or controversy to any alternative dispute resolution procedure thus selected.**

**11. 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 sustained by Seller due to Customer's default, including, but not limited to, collection fees and costs, reasonable attorney's fees and interest as provided in Paragraph 10, above.

**12. APPLICABLE LAW.** The terms of these Terms and Conditions shall be governed by the laws of the State of Texas, without regard to its conflicts of law provisions. The exclusive venue of any claim or dispute arising under these Terms and Conditions shall be in the State or Federal District Courts of Dallas County, Texas.

**13. 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 or order. 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 the Proposal shall constitute a waiver of any breach thereof or of any right or privilege associated therewith.