

## TERMS AND CONDITIONS OF SALE

The term "Seller" shall mean the Brickworks Supply Center or Glen-Gery entity listed on the applicable purchase order. The term "Buyer" shall mean any person or entity that orders or otherwise purchases Product from Seller. All goods, products & or materials ordered by Buyer shall be referred to as "Product".

Unless Buyer and Seller have executed a separate agreement applicable to Product orders, all Product orders are subject to these Terms and Conditions of Sale ("Terms and Conditions").

All sales, orders, and shipments are subject to approval by Seller's Credit Department.

Except for orders delivered from Seller's retail sites, Buyer shall verify all orders are to be 'released for shipment', a minimum of 24 hours in advance of pickup. Releases are verified by the customer service team at the order site.

Quotations are not binding and are subject to change without notice, unless otherwise specified in writing. Acceptances of orders taken by dealers or representatives of Seller are not binding until accepted and acknowledged by Seller in writing.

THESE TERMS AND CONDITIONS APPLY TO THE SALE OF PRODUCTS FROM SELLER TO BUYER AND NO ADDITIONAL OR DIFFERENT TERMS CONTAINED IN ANY DOCUMENT SUBMITTED BY BUYER SHALL APPLY. IF ANY DOCUMENT SUBMITTED BY BUYER, INCLUDING BUYER'S PURCHASE ORDER, EXPRESSLY LIMITS ACCEPTANCE THEREOF TO THE TERMS OF THE DOCUMENT OR PURCHASE ORDER, CONTAINS AN OBJECTION TO ANY TERMS HEREIN OR CONTAINS ANY TERMS THAT ARE ADDITIONAL TO OR DIFFERENT FROM THOSE CONTAINED HEREIN, SELLER EXPRESSLY REJECTS SUCH TERMS.

Seller reserves the right to modify prices, including open orders, upon thirty (30) days' prior written notice to Buyer. Prices quoted are based on direct shipment to buyer's specified delivery point, unless otherwise indicated. If Buyer is unable to accept delivery upon the arrival of the Products, Seller may charge Buyer a holding charge based on current rates and re-delivery fees, as applicable.

Special Packaging Prices. Special packaging and/or handling will be added to the quoted price.

### 1. CUSTOM / NON-CATALOG ORDER PRODUCTS

Custom / Non-Catalog Order Products include:

- All shapes
- Masonry units which have no price on the current price list
- Blends of two or more kinds
- Thin brick cut from full brick and Tru-Brix
- Kerfing and waxing of products
- Sizes not shown on the current price list
- Products manufactured to specifications other than the ASTM specifications listed herein
- Other products designated as special order on the current price list

### 2. CUSTOM / NON-CATALOG ORDER TERMS

Buyer shall call Seller's customer service representative for prices and availability of custom / non-catalog order items. No custom / non-catalog orders will be accepted without a signed Order Confirmation. Custom/Non-Catalog orders may not be canceled after production has started and payment must be made for the entire quantity ordered regardless of whether the Product is delivered. All Custom / Non-Catalog Product ordered but not shipped within 120 days after the agreed availability date will be invoiced to the Buyer at the discretion of the Seller. The Buyer agrees that the Product will be kept at the plant for ninety (90) calendar days from date of invoice after which time the Unshipped Custom / Non-Catalog Product may be disposed of at Buyer's expense unless other arrangements are agreed to by Seller. No Custom / Non-Catalog Product may be returned for credit. All price quotations for Custom/Non-Catalog order units are based on the quantities set forth on the quote. Quoted prices are subject to change with quantity revisions.

### 3. RIGHT TO CANCEL NON-CUSTOM / NON-CATALOG ORDER PRODUCTS

Seller reserves the right to cancel an order for price list items (not Custom/Non-Catalog Order Items) when no shipment has occurred within 90 days of requested date or no significant activity for 30 days after the last shipment date. Orders received against the Seller's Specials/Obsolete list must ship within 30 days or subject to cancellation. Canceled orders may be reinstated if a firm shipping schedule is provided by the Buyer and approved by the Seller's Regional Sales Manager.

#### 4. PRODUCT SPECIFICATIONS

Brick/thin brick shall meet the ASTM specifications set forth herein or the applicable ACI specifications. Any specifications which modify or otherwise change ASTM specifications shall be submitted by the Buyer to Seller in writing and are subject to Seller's express written agreement.

Clay masonry units are manufactured to meet ASTM standards, C32, C62, C126, C216, C652, C902 C1088, C1272 or C1405. If no standard is specified for a Product listed on the price list, it will be manufactured to meet ASTM C216, C902 or C1088.

A Grade brick/thin brick meet current relevant ASTM specifications and Seller's standards.

B Grade brick/thin brick meet current relevant ASTM specifications but do not meet Seller's standards.

Specials/Obsolete, Painters, Culls, and Mixed seconds brick/thin brick may not meet current relevant ASTM specifications and do not meet Seller's standards and are "SOLD AS IS" without warranty.

#### 5. STANDARD AND SHAPE ORDERS; SPECIAL PRODUCTION

Special order terms, above, also apply to both standard and special shape orders. Shape units listed on plant price lists and illustrated in Seller's Shape Catalog are not subject to alteration except at added cost. Quotation will be furnished on special shapes (any unit not listed on plant price lists) upon receipt of detail drawings, noting finished faces, and takeoff quantities. Not all shapes are available in every texture or finish.

All shapes are manufactured to conform to the Dimensions and Permissible Variations as defined in relevant ASTM Specifications for brick or thin brick.

Any item that is not a standard item must have an approved drawing and/or specification agreed upon by the parties in writing. Once such item is in the process of production, buyer shall not have the right to change the quantity or alter such shapes and/or special products ordered.

Brand Products. Where "brand" materials are specified, Seller reserves the right to substitute materials of equal or greater quality.

#### 6. WEIGHTS

Approximate unit weights, when shown, are for the Buyer's convenience in estimating carloads, truckloads, etc. Buyer is responsible for ensuring load weight complies with DOT regulations.

#### 7. OTHER CHARGES

(Palletizing, Container Charge, Fed Ex, Shrink Wrapping, etc.)

- LTL Stretch wrap and palletizing - \$35 per pallet; non-refundable if order cancelled.
- Pallet Charges only - \$15 per pallet
- No charge for wrapping shapes, Trux-Brix, thin/waxed brick or samples. Once product is wrapped specific to an order, any cancelled orders will be assessed a \$20 per cube/pallet restocking fee.
- Special request for shrink/stretch wrapping only - \$20 per cube/pallet; non-refundable if cancelled.
- Order and shipment quantities should be in even cube counts. Seller will not sell partial cubes/pallets
- Rail Car Loading Charge \$600 per rail car. Plants with off-site sidings will incur additional charges. Non-Refundable once released for shipment preparation.
- Container Loading Charge- \$350 per container for additional blocking and bracing.
- There will be an additional charge for heated material.

#### 8. DELIVERY TERMS

For Orders where Buyer has requested that Seller provide delivery the following shall apply:

Delivery waiting time. On all classes of deliveries, waiting time will be charged at Seller's prevailing rates for delays to trucks occasioned by Buyer whether at Seller's yards, plants or in unloading at the jobsite.

LTL Shipping. Any less than load delivery will be subject to a delivery charge based on current rates.

Tailgate Deliveries. Prices are based upon "tailgate" deliveries only. Seller has the right to charge Buyer additional fees for deliveries other than "tailgate" deliveries.

Delivery Location Conditions. Buyer agrees to provide suitable roadways or approaches to points of delivery other than on paved streets. Seller reserves the right to stop deliveries if the roadways or approaches are unsatisfactory to Seller or its agents. If the Buyer orders deliveries to be shipped to points of delivery beyond the public roadway, Buyer shall secure all necessary permits at its sole

cost and expense. Buyer assumes all liability for damage to sidewalks, driveways, or other property, and agrees to indemnify and hold Seller harmless against all liability, loss and expense incurred, as result of deliveries to Buyer delivery points beyond the public roadway.

Delivery Truck Damage. Buyer agrees to pay any and all costs of repairs necessitated by damage to Seller's or its agent's or carrier's trucks and/or equipment resulting from any cause whatever during the process of delivery on Buyer's worksite or unloading, excluding damages caused by Seller's, its agent's or carrier's, or its or their employee's negligence or the mechanical failure of their equipment.

## 9. SAMPLES

Samples must be ordered by type number through Seller's customer portal. Seller will charge for shipping service for any and all samples.

### Wood Frame Slab Panel

Brick/thin brick - flats are set in a 14" x 26" wood frame with mortar joints. There are six (6) mortar colors for Wood Frame Slab Panel Samples. These are (a) Natural Grey, (b) G501 White, (c) G404 Light Buff, (d) G209 Medium Buff, (e) G204 Brown, and (f) G602 Black. If a mortar color is not specified, Seller's Natural Grey Color Mortar Blend will be used.

### Mini Board

Brick/thin brick - flats in running bond, adhered to 13" x13" board.

### Loose Brick Carton

Full size loose brick with dividers, in sealed corrugated carton.

### Field Panels

Full Brick Field Panels over 150 Pieces will be assessed a list price charge for the specified brick. Thin Brick Field Panels over 100 Flats or requiring corners will be assessed a charge. Any charges for field panels below the above-mentioned quantities are at the discretion of the plant and reviewed on an individual basis. Freight charges will be assessed to field panels.

## 10. TAXES

All shipments are subject to applicable local, state and federal taxes and tariff regulations. The Buyer shall pay or reimburse the Seller for all applicable taxes.

## 11. RETURNS AND RESTOCKING FEE

Seller will not accept returns of any of its Products without written pre-approval of such returns by Seller's site manager at his/her sole discretion. If a return is authorized it will be subject to a restocking fee determined by Seller.

## 12. RISK TRANSFER/SHIPPING

Title shall pass to Buyer in conjunction with Risk Transfer from Seller to Buyer in accordance with Incoterms® 2010. Seller's shipments will be governed by Incoterm® 2010 rules to define Risk, Freight Obligations, and Title transfer from Seller to Buyer. Unless otherwise agreed upon by the parties in writing, the following shall apply to Products shipped hereunder:

If Buyer is arranging shipping, then:

### FCA - Free Carrier

(Shipping Point – Seller's Plant or Yard site)

Buyer arranges transport and Title passes to Buyer when product is loaded and delivered to the Buyer's carrier. Trucks will be loaded in order of arrival and Seller is not responsible for loading delays.

If Seller is arranging shipping, then:

### CPT - Carriage Paid To

(Named Point of Destination)

Seller arranges transport of product to a named point of destination and transport cost may be passed to the Buyer. Delivery, Title, and Risk Transfer to Buyer occurs when the Product is loaded and delivered to the first carrier. Truck delivery will be made only on hard surface roads to jobsite, otherwise to street curb. Unless unloading charge is included herein, Buyer must provide necessary labor for immediate unloading. Delay of trucks at job site beyond one hour will be charged to Buyer at the prevailing rate.

### DAP - Delivered at Place

(Named Point of Destination)

Seller delivers the Product to a named point of destination and transport cost may be passed to the Buyer. Delivery, Title, and Risk Transfer to Buyer occurs when the Product is delivered to the named point of destination. Truck delivery will be made only on hard surface roads to jobsite, otherwise to street curb. Unless unloading charge is included herein, Buyer must provide necessary labor for immediate unloading. Delay of trucks at job site beyond one hour will be charged to Buyer at the prevailing rate.

## 13. RECEIPT / INSPECTION

Buyer acknowledges the Products are deemed free from all defects and deficiencies and no claims for defects or deficiencies or failure to conform with Specifications (defined below) can be made unless

said claims are made within forty-eight (48) hours of receipt of shipment. Claims for latent defects must be made to Seller in writing immediately upon discovery and in no event later than one (1) year after installation of the Product, or such claims shall be deemed waived by Buyer. Seller shall be given a reasonable opportunity to investigate all claims. No allegedly defective or non-conforming Products may be returned to Seller without Seller's prior written consent.

#### **14. INSTALLED PRODUCT AND CLEANING**

Except for claims covered by Seller's warranty set forth herein, no claims will be considered after Product is installed. Use is acceptance of Product as conforming to project requirements. Use of acid to clean brick or tile is not recommended.

#### **15. DAMAGE CLAIMS**

No claims and/or back charges will be allowed for shorting, sorting and/or handling of damaged and/or defective Product unless Seller has approved such charges in writing after checking and verifying that such material is not acceptable, and in no event shall a claim be recognized if Product has been improperly handled, altered or repaired prior to inspection.

#### **16. LIMITATION OF LIABILITY**

Seller will not be liable for any claim for damage to Product resulting from improper storage, handling, installation, or cleaning, by Buyer or any other party. This includes but is not limited to, damage that may be caused to Product as a result of exposure to release agents, retarders, accelerators, cleaning agents or other chemicals, or cleaning with high pressure. IN NO EVENT SHALL SELLER BE LIABLE UNDER ANY THEORY OR REMEDY, (CONTRACT, IMPLIED WARRANTY, TORT, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY) FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, LOST PROFITS OR OTHER DAMAGES, ARISING FROM PRODUCT OR ITS USE. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE FEES PAID TO SELLER BY BUYER FOR THE GOODS GIVING RISE TO SUCH LIABILITY.

#### **17. WARRANTY; DISCLAIMER OF WARRANTIES**

The Products delivered to Buyer hereunder shall conform to the applicable Product specifications referenced herein (the "Specifications"). The Buyer shall have the obligation to request in writing any particular Specifications. Any such request shall be subject to Seller's written acceptance. Seller is not responsible for failure by Buyer to so specify types

of classifications under ASTM or ACI or any other specifications.

EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, OR PROVIDED BY THE MANUFACTURER OF PRODUCT, IF APPLICABLE AND ABLE TO BE TRANSFERRED TO BUYER, SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, WORKMANSHIP OR FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT.

SHOULD THE PRODUCT FAIL TO CONFORM TO THE FOREGOING WARRANTIES, SELLER WILL, AT ITS OPTION REPLACE PRODUCT, DAP DESTINATION OR REFUND THAT PORTION OF THE PURCHASE PRICE OF PRODUCT WHICH FAILS TO MEET THESE WARRANTIES.

IN PARTICULAR, BUT WITHOUT LIMITATION, SELLER MAKES NO WARRANTIES REGARDING THE ABSENCE OF EFFLORESCENCE AND DISCOLORATION AFTER THE PRODUCT(S) HAVE BEEN INSTALLED AND THE SELLER SHALL NOT BE LIABLE FOR ANY OF THE SAME.

#### **18. FORCE MAJEURE**

Seller will not be responsible for delays in production or delivery for any reason resulting from acts of God, earthquakes, sabotage, fire, flood, strikes, lockouts, other labor issues of any kind, priorities, allocations, limitations or other restraints which affect manufacture or delivery, accidents, pandemics, war, insurrection, delays in transportation, equipment failure, damage to equipment or facilities, shortage or delays of transportation, fuel, or materials, present or future laws and governmental interference or regulation, or for any other reason beyond Seller's reasonable control.

#### **19. ARBITRATION / DISPUTE RESOLUTION**

At the election of either party to this contract, any controversy or claim-legal or equitable arising out of or relating to this contract or any breach thereof, including but not limited to any claim or controversy based upon any express or implied warranty, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The decision of the arbitrator(s) shall be final and binding upon the parties and may not be vacated, modified or appealed.

Notwithstanding the provisions of the preceding paragraph, an election by either party to arbitrate

shall in no way affect Seller's right to file a petition to establish a mechanic's lien (or any similar lien provided by common law or statute for the protection or materialman) or to file suit against the surety named in a labor and product payment bond covering the project in question. In the case of a mechanic's lien or similar lien, the appropriate court shall have authority to conduct a hearing to determine whether such lien, final or interlocutory, should issue, and to enter the appropriate order establishing the lien.

## **20. EXPENSES**

In the event Seller employs counsel to enforce Seller's rights and interests under or relating to these Terms and Conditions, including but not limited to all efforts by counsel to collect any amount due Seller through arbitration or litigation, Buyer agrees to pay the reasonable attorney's fees and costs incurred by Seller.

## **21. GOVERNING LAW**

These terms and all matters between Seller and Buyer will be governed by the laws of the State of Delaware. The parties agree that any disputes hereunder shall be brought exclusively in Delaware.

## **22. PAYMENT TERMS**

Please refer to invoices for current payment terms and conditions. Outstanding balances are subject to a finance charge of 1-1/2% per month, which is an annual rate of 18%. Seller's failure to collect interest on any outstanding balance shall not constitute a course of conduct or otherwise waive Seller's right to collect interest on any outstanding balance. If at any time the financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, Seller reserves the right, in addition to any and all other rights of Seller hereunder, to require advance payments or other satisfactory security.

## **23. ENTIRE AGREEMENT**

Unless Buyer and Seller have executed a separate agreement applicable to Product orders, these Terms and Conditions supersede all previous agreements or communications, whether written or oral, which relate to the Product order. These Terms and Conditions shall supersede any other contract terms between the parties for Products supplied by Seller. Buyer specifically acknowledges and agrees that these Terms and Conditions expressly limit acceptance to the terms contained herein. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms and Conditions. No modification, alteration or amendment shall be effective unless in writing and signed by authorized officers or representatives of both parties.