st marys

VOTORANTIM CIMENTOS

Terms and Conditions of Sale - Cement and Cementitious Products

1. **Agreement**. These terms and conditions govern every purchase of cement or cementitious products from St. Marys Cement U.S., LLC ("**Supplier**") by any individual or entity (each, a "**Customer**") and, with any issued quotation, purchase order, delivery ticket, credit agreement, and other documents referenced herein, form an agreement between Supplier and Customer to provide the specified cement or cementitious products ("**Product**") (collectively the "**Agreement**"). Any proposal or attempt to vary the terms of this Agreement is expressly rejected by Supplier, unless signed by an authorized representative. Customer's signature on any part of the Agreement, request for Product, or acceptance of Product each constitute Customer's acknowledgement that it is bound by the Agreement. Seller agrees to make Product available to Customer on an as available basis, and nothing in this Agreement constitutes a guarantee by Supplier of any minimum or specific amount of Product.

2. **Prices**. The Customer agrees to pay the prices as quoted by Supplier or its authorized agents, or as announced by Supplier from time to time, together with other applicable fees, tolls, levies, tariffs, duties or surcharges, cancellation fees, night and weekend charges, and any taxes, bonds or other government levies, tariffs or duties. If cement tankers are required to be delivered to a site that is not readily accessible or, if unusual loading provisions prevail, in the Supplier's opinion, an additional fee per load may apply. An additional fee may apply to any equipment left on site at Customer's request or to any excessive unloading times that are not the fault of the Supplier. Supplier reserves the right to change Product pricing. Prices include freight and delivery to the destination at which title to the Product transfers from the Supplier to the Customer, upon loading of the Product to the Customer or its agent, or delivery to the Customer by Supplier or its agent, as applicable (the "**Point of Sale**"). Unless specified otherwise, the price for Product includes the cost of loading the Product into Customer's designated hauler at Supplier's terminal. Supplier reserves the right to add additional charges for delivery outside of its regular business hours, changes to the delivery location, increases in freight or energy rates and fuel surcharges and for Customer's failure to take delivery in a timely manner (such as detention, demurrage, return movements, diversions and related fees). Any charges or fees imposed, including for fuel or environmental matters, are not represented to be a direct offset or pass through of the Supplier's actual costs to service any individual account, but are intended to address its overall costs.

3. **Terms of Payment**. Customer will pay all invoices within 30 days of the date of the invoice. Late payments will accrue interest at the rate of 1.5% per month (18% per annum) and Customer shall be responsible for all of Supplier's expenses (including legal fees) incurred in collecting any unpaid amounts. Notwithstanding any grant of credit to Customer by Supplier, if at any time the financial responsibility of the Customer becomes unsatisfactory to Supplier or the Customer is in default to Supplier or its affiliates under this or any other agreement, Supplier reserves the right to withhold further Product or require advance cash payment or satisfactory security prior to supplying any further Product. The Supplier shall be entitled to avail itself of any and all mechanic's, materialman's or supplier's lien rights that exist in any applicable jurisdiction to secure payment for Product. The Customer shall make no set-off or deductions (including those for alleged damages) from payments due hereunder.

4. **Point of Sale**. Supplier reserves the right to ship from any plant owned or operated by it, and to determine the route and method of transportation. Customer shall comply with all of Supplier's reasonable instructions regarding, and promptly accept, delivery and discharge of the Product. If, in the Supplier's opinion, suitable ingress and egress are not available or if the Customer or its agent does not sign the bill of lading or otherwise receive the load in the manner agreed to by the parties the Product will, at Customer's expense, be returned to Supplier.

5. **Supplier's Site.** Customer acknowledges that Supplier's sites may include heavy industrial activity or other hazardous conditions. Customer and any agent must, when on the Supplier's site or when handling the Product, comply with all applicable laws, ordinances, by-laws, rules, and regulations, including those regarding safety, and, to the extent they are more restrictive, all of Supplier's rules, policies, and instructions. Customer will ensure that all of its employees and agents entering Supplier's site are properly qualified and wear all required safety apparel. Supplier reserves the right to refuse entry to its site of any vehicle or person it deems unsafe.

6. **Warranty.** Supplier warrants that, at the Point of Sale, Product will conform to all agreed specifications, be of good quality and conform to all applicable national standards. The Product is otherwise sold on an **as is, where is** basis. THE FOREGOING WARRANTY IS EXCLUSIVE. SUPPLIER DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, REPRESENTATIONS, OR GUARANTEES, INCLUDING OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Supplier, having no control over the handling or use of the Product after the Point of Sale, shall not be responsible for the condition of Product after release to the Customer at the Point of Sale, and shall not be responsible for any finished or unfinished work in which Product is used. Any claim for shortage or loss of Product must be made to Supplier within 24 hours after receipt of Product by Customer, and, in such instance, the quantity of loaded or delivered Product that is shown on Supplier's delivery ticket or scale receipt shall be conclusive evidence of the quantity of Product actually loaded or delivered. All other claims, including those based on Product quality, must be made within thirty days of receipt of Product by Customer. All claims must be accompanied by the original bill of lading or delivery ticket noting the shortage, loss or damage. Any objections to the character or quality of Product must be made to Supplier in writing before it is used.

7. **Limitation of Remedies**. The exclusive remedy of Customer or any third party against Supplier for all claims related to warranty or product quality (whether the claims arise in tort, contract, or any other theory of liability), for any loss or damages arising out of, connected with or resulting from the Product or this Agreement, is, at Supplier's discretion, (i) replacement of the Product or (ii) credit for the purchase price paid for the Product, and shall in no event cost Supplier more than the amount paid to Supplier for the Product. Without waiving the foregoing limitations, each of the Supplier and Customer shall defend, indemnify and hold the other harmless from any claims, causes of action, liabilities, losses, costs, taxes, penalties, attorneys' fees, expenses or otherwise, resulting from property damage, personal injury, or death, to the extent caused by its negligence or willful misconduct. Notwithstanding anything else herein, including the Supplier's indemnification obligations, Supplier shall not be liable to Customer or any third party for any lost profits, indirect, consequential, liquidated, punitive, or similar types of damages, whether the liability, loss, or damages arise in tort, contract, or any other theory of liability.

8. **Technical Information and Assistance**. Any technical information or assistance provided by Supplier or its agents, or oral statements made by Supplier or its agents, about the Product, is given without warranty or specification, and accepted at the Customer's risk.

9. **Risk**. Title to Product, risk of loss, damage or deterioration of Product, and liability for damage or injury arising out of Product shall transfer to Customer at the Point of Sale.

10. **Weights**. The standard unit of measure of Product shall be the short ton or the bag, as indicated, unless otherwise specified in the Agreement.

11. ***Force Majeure***. Supplier may delay performance occasioned by events beyond its control without incurring liability for such delay when such delay is caused by a) acts of God or the public enemy, fire, explosion, epidemics, acts of war or terrorism, perils of the sea, flood, drought, war, riot, sabotage, vandalism, accident, breakdown, labor dispute, embargo or other casualty; b) compliance with any order, action, direction or request of any government authority; c) shortage of labor or materials; or d) any other circumstances that are beyond its reasonable control, including Customer's acts or omissions. Supplier will accept no back-charges for any construction delays experienced by Customer or any third party. At Supplier's request, Customer is be responsible for providing adequate silo storage for Products to ensure Supplier has ability to build inventories during off-hours to reduce risk of supply interruptions. Further, and without limiting the foregoing and irrespective of any preexisting supply commitment to Customer, Supplier may, during periods of shortages or disruptions in labor, material or supply chains, allocate Product to Customer in accordance with similarly-situated customers.

12. **Confidentiality.** The Agreement is intended for Customer's use only. The contents of the Agreement are confidential and, unless compelled by law or judicial process, shall not be shared with third parties without Supplier's written consent.

13. **Miscellaneous**. Failure by Supplier to exercise any of its rights hereunder shall not operate as a waiver of such rights. This Agreement supersedes all other agreements, written or oral, regarding the subject matter of this Agreement, and no prior or subsequent understanding, agreement, term, condition or trade custom that conflicts with or is supplementary to this Agreement is binding on Supplier. The term "including" means "including without limiting the generality of the foregoing." This Agreement is not assignable by the Customer. Customer has read and agrees to abide by the Supplier's Anti-Corruption Commitments for Customers, Anti-Corruption Policy and Code of Conduct, each of which is available upon request and may be found at http://salestermsandconditions.vcnainc.com/. This Agreement shall be construed and enforced in accordance with the laws of the State where the terminal from which the Product was loaded is situated, and, in the event of any disputes arising out of this Agreement, the parties submit to the courts having jurisdiction over such terminal. Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.